UNIVERSITY OF WINCHESTER

A corpus-led, critical, examination of the lexis and processes concerned with the linguistic construction of judicially defined ‘privacy’

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This Thesis has been completed as a requirement for a postgraduate research degree of the University of Winchester.

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ABSTRACT

A Corpus-led, Critical, Examination of the Lexis and Processes Concerned with the Linguistic Construction of Judicially Defined 'Privacy'.

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This thesis examines the concept of 'privacy' in domestic case law. It considers the problem of privacy, and issues relating to semantic and stylistic attributes that the judiciary brings to it. It then considers a set of linguistic tools ('Corpus Linguistics'), applied through a software application ('#Lancsbox') to a body of privacy case law, to identify patterns of linguistic construction. The thesis then describes an epistemological focus, derived from the social theories of Pierre Bourdieu, with which these linguistic patterns can be interpreted, and placed into the wider context of the social forces underlying the practices of the 'juridical field'. There follows a case law review in which themes and patterns within domestic privacy case law are identified and discussed. The corpus linguistic methods are delineated and then applied to a corpus of case law, and to a base corpus representing the generality of British, English text, to obtain lists of keywords, collocates, recurrent 'clusters', and text samples ('Concordances').

These data are examined according to the discussed Bourdieusian perspective. It is found that the data from the 2 corpora are remarkably different in their stylistic and semantic representation of privacy, suggesting that the judicial construction of privacy is markedly different from its construction outside the juridical field.

The ‘meanings’ of privacy are narrowed within the context of domestic case law, when compared with other genres and styles of text, confirming a narrowing of discourse around the meanings of privacy by the juridical field. Within this ‘narrowed discourse’ of judicially defined privacy there are recurrent themes, confirming discursive influences from other fields, such as the fields of commerce, and the media. There follows a discussion of some of the socio-political issues which may underlie these discursive themes that the court brings to privacy. This research has wider implications for future research into the relationship between the court and the media fields within privacy discourse, and in respect of the value of the application of sociological and socio-linguistic methods to legal issues.

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Chapter 1
Introduction and Aims of Research

Summary of the Background to the Issues and Overview of the Study

In 2004, in the case of *Campbell v MGN*[2] [hereafter referred to as '*Campbell'*], the House of Lords ['the HoL'] reversed on its historic reluctance to recognise free-standing privacy rights. In only the previous year in *Wainwright v The Home Office*[3], Lord Hoffmann had affirmed that there is no 'general cause of action for invasion of privacy'[4] in domestic common law. In both cases, the HoL considered the impact of the Human Rights Act 1998 [hereafter referred to as 'HRA 1998'], which embedded the provisions of the European Convention on Human Rights (the 'ECHR'] into domestic law, including Article 8, the right to 'private and family life' [hereto abbreviated to 'Article 8 rights'], and Article 10, the right to 'freedom of expression' ['Article 10 rights']. In *Wainwright*, the HoL noted that the events giving rise to the Applicants' claim pre-dated the HRA 1998 and therefore they maintained that they were not bound to consider the provisions of that Act. Accordingly, Wainwright's application was dismissed[5].

In contrast, the events in *Campbell* occurred after the HRA 1998 came into force. In *Campbell*, the HoL considered Naomi Campbell's Article 8 claim against the Mirror Group Newspapers, to suppress publication of articles and photographs concerning her use of narcotics. These included photographs of the venue of a Narcotics Anonymous meeting, from which it was possible to determine the address of that venue. Campbell's claim did not meet the existing requirements for breach of confidence, since no prior confidential agreement could be identified in respect of the information being published. Despite this, the HoL held that (in Baroness Hale's words): 'there was here an infringement of Miss Campbell's right to privacy that cannot be justified'[6]. Introducing what was dubbed by the legal scholar, Hector MacQueen[7], as a 'quiet revolution' in privacy law, the HoL approach was to outline a new framework that the domestic courts should adopt when considering Article 8 privacy rights. This new framework

[2] *Campbell v MGN* Ltd [2004] UKHL 22.
[3] *Wainwright v Home Office* [2003] UKHL 53, [2004] 2 AC 406
[4] Ibid, at 23.
[5] However, in a subsequent reference, Wainwright v UK 12350/04 [2006] ECHR 807, the ECtHR made compensatory awards to the Applicants in Wainwright.
[6] *Campbell* (n 1) [125].
[7] Hector MacQueen, 'Protecting Privacy' (2004) 8 Edinburgh Law Review 3, 420.

rested on two key developments in the law of confidence which together represented a *volte-face* from the HoL ruling in *Wainwright*:

a. The principle of breach of confidence was extended beyond the obligations of trust arising in personal relationships and into any circumstances where (in the words of Lord Nicholls) there is a 'wrongful disclosure of private information'[8] . There had already been a progressive 'loosening' of this requirement, for example, the *'Spycatcher' Case*[9] established that obligations of confidentiality could be extended to third parties where they had knowledge that such an obligation existed. *Campbell* represented a significant break from the courts' previous approach, however, since it shifted the focus of privacy law away from *in personam* personal obligations, and towards *in rem* general obligations. The emphasis was therefore shifted away from the personal obligations of privacy, and towards the 'private' nature of the information. The new cause of action (named 'misuse of private information' by Lord Nicholls[10]) developed in parallel to the older provisions for breach of confidence, commencing a process of development of a new privacy tort[11].

b. A threshold test was approved by the HoL in respect of misuse of private information claims ['MOPI'], as expressed by Lord Nicholls: 'essentially the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy'.

The 'reasonable expectations of privacy' test had previously been approved by the ECtHR as a benchmark for Article 8 claims in the cases of *Halford v the UK*[12] and

[8] *Campbell* (n 1) [12].
[9] *A-G v Guardian Newspapers Ltd* (No. 2) [1990] 1 AC 109.
[10] *Campbell* (n 1) [14].
[11] Whilst Lord Nicholls may have named the emergent cause of action in *Campbel*l there was a long period of uncertainty over whether it constituted a separate tort, or whether 'misuse of information' was a parallel development within the doctrine of breach of confidence. This point was settled in *Vidal Hall v Google* [2014] EWHC 13 (QB) where Tugendhat J confirmed that misuse of information was a separate tort. Confusion around the new laws of privacy, and overlap with other causes of action such as breach of confidence and defamation, will be discussed in the case law review in Chapter 4.
[12] *Halford v United Kingdom* (1997) ECHR 32.

von Hannover (No 1)[13]. It measures the subjective expectations of litigants against normative, or 'common sense'[14] standards of 'reasonableness'. It is a flexible test, which 'permits a nuanced approach to every case'[15]. However, both the principle of reasonable expectations and the action for misuse of private information has attracted criticism from legal scholars.

The HoL ruling in *Wainwright* has not been overruled, and it remains available for citation as precedent. However, a comparative citation count of *Wainwright* and *Campbell* in the domestic higher courts using the LawCite, online citation tool[16] confirms that the framework laid down by the House of Lords in *Campbell* has become the Courts' preferred approach to Article 8 claims, with 176 citations of *Campbell* in cases in the domestic higher courts against no citations of *Wainwright*. Since *Campbell,* the concepts of 'misuse of private information' and 'reasonable expectations of privacy', have developed incrementally, as case law has defined their scope. There is now a substantial and varied patchwork of domestic case law, based on Article 8 claims. These law reports provide an official record not only the judicial rulings in respect of the particular case under consideration, but also (as Maria Jose Marin[17] points out, in her own corpus-based study of legalese) the deliberations over facts and principles which support those findings. Traditional doctrinal scholarship typically focuses on the analysis of a single law report, or group of related law reports, to identify and abstract these wider principles (Shane Kilcommins, 2016[18]). This may require a close analysis of the lexical choices and syntax of those reports (as an official record of the presiding judges' verbal deliberations) in order to understand their meanings. As Andrew Goodman (2005)[19] in his practitioner's guide, *How Judges Decide Cases* advises: '[lawyers must] understand the judge's arguments by finding them in, or constructing them out of, sequences of the important sentences and keywords'.

[13] *Von Hannover (No 1) v Germany* (2004) ECHR 294.
[14] Ibid. Judge Zupančič [35].
[15] Ibid.
[16] 'LawCite' (Alpha Version) < http://www.paclii.org/LawCite> accessed 21 October 2022.
[17] María José Marín, 'Legalese as Seen Through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' [2017] 6 International Journal for Language and Law 18.
[18] Shane Kilcommins, 'Doctrinal Legal Method (Black Letterism): Assumptions, Commitments and Shortcomings' in Laura Cahillane and Jennifer Schweppe (eds) *Legal Research Methods: Principles and Practicalities* (Clarius Press 2016).
[19] Andrew Goodman, *How Judges Decide Cases* (XPL Law 2005) [63].

Meanings in law, and generally, however are not merely conveyed in language but in the social context in which language is used (Thomas Lee and Stephen Mouritsen, 2018[20]) and in the 'strategies' that are constructed through the use of language (Pierre Bourdieu, 1977[21]). Accordingly, language reflects not only the thing being represented, but can convey something of the 'semantic schemas'[21a] which frame the thing being described (and which inform the speaker's choice of words). The speaker's choice of words can also be revealing of the social forces which drive those schemas[22]. With regard to the language of the law reports those social forces could include cultural influences within the legal sector (including legal influences from other jurisdictions) and influences arising from the judges' upbringing, and membership of other social groups[23].

It has been widely suggested that privacy values and the status of privacy may be undergoing a process of transformation, or diminishment, in relation to the growing prominence of the Internet and surveillance technologies. Some studies, for example, have focussed on a phenomenon termed the 'privacy paradox', a perceived disjunct between expressed privacy values, and the application of privacy protective practices[24]. Other studies have focused on the eroding influences of cultures of social media[25] on privacy values, or the widespread use of

[20] Thomas Lee and Stephen Mouritsen, 'Judging Ordinary Meaning' [2018] 127 Yale Law Journal 127.
[21] Pierre Bourdieu, 'The Economics of Linguistic Exchanges' (1977) 16 Social Science Information 645.
[21a] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' (2001) 21 Text 3, 437.
[22] Ibid, at 646. For Bourdieu, meaning is rooted in the social strategies and rituals that surround language use, which are expressed through word choices, syntax, body hexis, etc: 'Language is a praxis: it is made for saying, i.e. for use in strategies which are invested with all possible functions and not only communication functions. It is made to be spoken appropriately'.
[23] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805, 842.
[24] See, for example, Cory Hallam and Gianluca Zanella,'Online Self-Disclosure: The Privacy Paradox Explained as a Temporally Discounted Balance Between Concerns and Rewards' [2017] 68 Computers in Human Behavior Volume 217, and; Martin Kirsten, 'Breaking the Privacy Paradox: The Value of Privacy and Associated Duty of Firms' (2020) 30 Business Ethics Quarterly 1, 65.
[25] For example, Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately: Twitter Users, Context Collapse and the Imagined Audience' (2010) 13 New Media and Society 1, 114; and, Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces: What Expectations of Privacy Do We Have in Social Media Intelligence' (2016) 24 International Journal of Law and Information Technology 3, 279.

surveillance technologies by the state and by private corporations[26]. Some scholars have suggested that these technologies have challenged cultural and historical paradigms of privacy which have informed the manner in which privacy and privacy threats are perceived[27]. Some scholars have suggested wider ideological challenges to privacy values in relation to agendas of social order and risk management[28], and the commercial requirement for 'packaged' data[29]. In this environment of changing privacy values, and models of privacy there is a wide scope for the courts to develop a conception of privacy which lacks coherence, or which fails to have meaning to the majority of citizens in relation to common privacy intrusions. Instead, privacy laws may reflect the cognitive schemas, the norms and values, of the presiding judges, who are overwhelmingly drawn from a narrow socio-economic range[30]. The laws may also overwhelmingly reflect the experience of privacy and threats to privacy of privacy litigants, who are also unrepresentative of the demographic range of the UK as a whole. Privacy laws which are incoherent, which are based on flawed logics, or models of privacy that poorly reflect practical experiences of privacy, or which draw on normative assumptions or technical knowledge which are not generally held, could fail to protect privacy for the majority of citizens. As a result of this privacy itself may become less valued. Privacy may in practical terms cease to be a right, and it could become a privilege only available to those who can afford litigation. Access to civil justice has, in fact, been restricted since the ruling in *Campbell*, through the implementation of s. 44 of the Legal Aid, Sentencing and Punishment of Offenders

[26] For example, Stephen Fay, 'Tough On Crime, Tough On Civil Liberties: Some Negative Aspects of Britain's Wholescale Adoption of CCTV Surveillance During the 1990's' (1998) 12 International Review of Law, Computers and Technology 315; and, Julie Cohen, 'Turning Privacy Inside Out' (2019) 20 Theoretical Inquiries in Law 1, 1.

[27] See, for example: David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (OUP 2001); Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (Edward Elgar 2016); and, David Lyon*, The Culture of Surveillance: Watching as a Way of Life* (Polity Press 2018).

[28] E.g., David Garland, *The Culture of Control* (no 27); and David Lyon, *The Culture of Surveillance* (no 27).

[29] E.G., José Van Dijck, *The Culture of Connectivity: A Critical History of Social Media* (OUP 2013).

[30] The Ministry of Justice, (*The Judicial Diversity Statistics*, 2022) <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2022-statistics>accessed> accessed 1st November 2022. Whilst an indication is given of gender, ethnicity and age, with also a breakdown of type of training (legal executive, barrister or solicitor), it is noteworthy that there are no clear indicators of socio-economic class such as state/private education.

Act 2012, which effectively abolished recovery of CFA success fees in most cases from 6 April 2019. With high costs of civil litigation, it seems reasonable to infer that privacy litigation (particularly after April 2019) is largely unavailable to those of modest income.

This study will apply a range of linguistic methods, collectively termed 'corpus linguistics' to a body of privacy case law, with the aid of specialised, 'concordancing' software. It is considered that the use of these methods will allow a large sample of case law to be analysed simultaneously, to identify linguistic, stylistic, and syntactic patterns, including subtle patterns unlikely to be revealed through normal visual analysis of case reports.

The study data will be interpreted using a critical epistemological approach based on the works of the French sociologist, Pierre Bourdieu. Bourdieu's model assumes an internal dynamic within the legal field, which influences the activities of the legal field, and the relationship between the legal field, with other socio-economic interests (such as the printed media) and with society as a whole[31]. The application of this model allows the court reports to be evaluated in a holistic manner in respect of their potential impact within the legal field and legal canon, but also their relationship and impact on wider cultural understandings of privacy. It is considered that this approach has value because failure to define Article 8 rights to private and family life in terms that have meaning to most citizens, rather than the narrow socio-economic demographics from which privacy litigants are typically drawn, could have a broad social and cultural impact.

Aim and Objectives

Aim

The Aim of this research is:

[31] Pierre Bourdieu, *Outline of a Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) 191; Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805; Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992).

1. To critique and consider the fitness for purpose of the judicial concept of 'privacy', in relation to experiences of privacy invasion outside of the legal field.

Objectives

In order to achieve the aim, the following objectives will be met:

1. To identify, and critically evaluate, the properties of judicially defined privacy as it is represented in the law reports of the domestic higher courts and tribunals from the date of the House of Lords' ruling in *Campbell* (6 May 2004) to present.

2. To compile two large, representative texts:

i. The first will be composed from written law reports relating to privacy disputes from the domestic higher courts and tribunals from 6th May 2004 (the date of the House of Lords ruling in *Campbell*) to 1st May 2022.

ii. The second will be a representative sample of written text relating to privacy discourse, taken from a generic English language repository.

3. A combination of quantitative statistical measures and detailed qualitative textual analysis research methods will be applied to these texts to identify regularities in lexis, syntax, mode of speech, narrative.

4. The data obtained from the analysis of each of the two representative texts will then be cross analysed in order to establish and distinguish themes and patterns within privacy discourse. This includes identifying any emergent ontological assumptions about the nature of privacy, and connections to other fields of discourse such as property or wealth.

5. The implications of the data will be discussed in terms of its usefulness as a platform for a critical review of developments in both the law and in legal institutions, in relation to invasions of privacy.

Practical Application and Original Contribution

Practical Application of this Research

It is anticipated that the findings of this research will be of practical assistance with respect to the following matters:

- To provide provision for new developments in linguistic and conceptual frameworks for privacy which (having meaning in wider society) allow privacy rights to be preserved for society as a whole.

- To consider practical ways in which a wider range of privacy rights can be enforced for the wider demographic range of citizens.

Original Contribution of the Study

It is anticipated that the original contribution of this study will be in the following areas:

- The use of corpus linguistics methods, applied to law reports, through concordancing software, as a means of researching matters of domestic privacy law.

- The application of an interpretive framework based on the writings of the French sociologist, Pierre Bourdieu as a platform to critically evaluate developments in domestic case law.

The ontological assumptions underlying the methods and the research approach will be identified and discussed in Chapter 3 (Methodology).

Chapter 2
The Problem of Privacy

Introduction

Privacy is an 'essentially contested'[33] concept. The meanings of privacy are complex, and the value and socio-cognitive function of privacy is unclear. The moral status of privacy has been threatened by popular and academic criticism, and privacy norms have been challenged by developments in communications technology (including the growth of the Internet as a communications medium), information technologies, and surveillance technologies. The issue of the Court adjudicating on privacy norms within the context of technological advances and a changing cultural environment will be explored in this chapter.

This chapter begins with a critical literature review of attempts that have been made to define privacy, to describe its properties, and its social, cultural, and cognitive function. It further discusses the cultural changes and challenges to privacy, focussing on both the wider challenges to the status of privacy presented by technological developments and the cultural challenges within the legal environment, including the process of consolidating European civil rights law with domestic common law principles. Exploring the broader philosophical, semantic and cultural issues which render the concept of privacy problematic, this chapter examines the relationship between the 'legal field' and 'wider society' regarding discourses on privacy and changing privacy values, concluding with some initial observations and hypotheses.

This chapter focuses on the following issues:

i. Semantic and philosophical issues: defining privacy and its function;

ii. Privacy in the digital age;

iii. The Problem of Changing Privacy Norms and the Court's Part in That Process;

iv. Integrating European Civil Rights Law with Domestic Common Law;

[33] Deirdre Mulligan, Colin Koopman and Nick Doty, 'Privacy is an Essentially Contested Concept: A Multi-Dimensional Analytic For Mapping Privacy' [2016] 374 Philosophical transactions Series A, Mathematical, Physical, and Engineering Sciences 2083.

v. Changing models of privacy;

vi. Conclusions.

There will be a separate review of privacy case law, examining emergent themes and regularities, at Chapter 4.

i. Semantic and Philosophical Issues: Defining Privacy and its Function

One of the problems likely to be encountered by the Court when adjudicating privacy norms is that 'privacy' is a difficult concept to define. The concept of privacy has been described as 'fuzzy' (Asimina Vasalou, Adam Joinson and David Houghton, 2015[34]; Kieron O'Hara, 2018[35] and an inarticulable 'concept in disarray' (Daniel Solove, 2009[36]). It has been suggested that the meanings of privacy are too diverse for the word to have practical value, and the various meanings attributed to it are more effectively conveyed through selecting multiple words from a palette of synonyms which share 'family resemblances'[37]. This was found also to be the case for privacy values by Amina Vasalou, Anne-Marie Oostveen, Chris Bowers and Russell Beale who, in a study, found that most respondents had difficulty identifying abstract, generalised, privacy values, but were able to identify particular situations in which privacy values may arise[38] .

Some privacy theorists have distinguished different types of privacy, for example Ruth Gavison[39] distinguishes between 3 manifestations of privacy (secrecy,

[34] Asimina Vasalou, Adam Joinson and David Houghton, 'Privacy as a Fuzzy Concept: A New Conceptualization of Privacy for Practitioners' (2015) 66 Journal of the Association for Information Science and Technology 5, 918.
[35] Kieron O'Hara, 'Essentially Contested, A Family Resemblance or a Concept of a Family of Conceptions' (7th Privacy Conference Amsterdam 7th October 2018) <https://eprints.soton.ac.uk/425031/1/SSRN_id3262405.pdf> accessed 10th November 2021.
[36] Daniel Solove, *Understanding Privacy* (Harvard 2009) 1.
[37] Asimina Vasalou, Adam Joinson and David Houghton, 'Privacy as a Fuzzy Concept' (no 34), although the phrase 'family resemblances' had been coined by Ludwig Wittgenstein, *Philosophical Investigations* (Gertrude Anscombe tr., Basil Blackwell 1953).
[38] Amina Vasalou, Anne-Marie Oostveen, Chris Bowers and Russell Beale, 'Understanding Engagement With the Privacy Domain Through Design Research' (2015) 66 Journal of the Association for Information Science and Technology 6, 1263.
[39] Ruth Gavison, Privacy and the Limits of Law (1980) 89 The Yale Law Journal 3, 421.

anonymity and solitude), and Anita Allen[40] distinguishes 3 'dimensions' of privacy (physical privacy, informational privacy and proprietary privacy). Other scholars (such as William Prosser, 1960[41]; and Daniel Solove, 2006[42]) have sought to capture the multi-faceted nature of privacy through distinguishing between the types of 'harm' arising from privacy damaging practices. As Ruth Gavison advises[43] words which have close family resemblances with privacy (such as 'secrecy', 'anonymity', and seclusion) can carry very different connotational meanings. This may relate to the unusual socio-cognitive position occupied by privacy. As Raymond Wacks (2015) notes in the quotation at the head of this chapter, privacy appears to be located in the space between individuals and society. Consequently, there is both a normative, social, aspect to privacy, and a cognitive, psychological and emotional aspect. Furthermore, privacy norms appear to be highly contextual, with different systems of privacy norms operating in different social circumstances (Helen Nissenbaum, 2010[44]; Alice Marwick and Danah Boyd, 2010[45]).

In the light of its semantically rich and diverse nature, the differing epistemological approaches of: interfacing law and information technology (e.g. Mireille Hildebrandt, 2016[46]), law and philosophy (Helen Nissenbaum, 2010[47]), law (Daniel Solove, 2009[48]; William Prosser, 1960[49]) social psychology (Kirsty Hughes, 2012[50]; Erving Goffman, 1959[51]) cultural studies (Jose Van Dijck[52]) and sociology

[40] Anita Allen, 'Coercing Privacy' (1999) 40 William and Mary Law Review 3, 723.
[41] William Prosser, 'Privacy' (1960) 48 California Law Review 3, 383.
[42] Daniel Solove, 'A Taxonomy of Privacy' (2006) 154 University of Pennsylvania Law Review 3, 477.
[43] Ruth Gavison, 'Privacy and the Limits of Law' (no 39).
[44] Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford 2010).
[45] Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[46] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (no 27).
[47] Helen Nissenbaum, *Privacy in Context: Technology, Policy and the Integrity of Social Life* (Stanford 2010).
[48] Daniel Solove, *Understanding Privacy* (Harvard 2009).
[49] William Prosser, 'Privacy' (1960) 48 California Law Review 3, 383.
[50] Kirsty Hughes, 'A Behavioural Understanding of Privacy and its Implications for Privacy Law' (2012) 75 Modern Language Review 5, 806.
[51] Erving Goffman, *The Presentation of Self in Everyday Society* (Penguin 1959).
[52] José Van Dijk, The Culture of Connectivity: A Critical History of the Social Media (OUP 2013).

(David Lyon, 2018[53]; David Garland, 2001[54], Amatai Etzioni, 1999[55]) have been applied to explain the ontological nature of privacy and its psycho-social function. Privacy has been described as a normative barrier which protects our sense of self and facilitates personal expression (Ruth Gavison, 1980[56]; Erving Goffman 1959[57]; Irwin Altman, 1975[58]); a culturally defined 'meta-norm' which regulates the flow of information (Helen Nissenbaum, 2010[59]; Alice Marwick and Danah Boyd, 2010[60]); a political shield which delimits governmental or commercial interference (Julie Cohen, 2019[61]; Paul Schwartz, 2008[62]; Amitai Etzioni, 1999[63]), an 'affordance' which facilitates social interactions, and identity construction (Mireille Hildebrandt, 2016[64]), and the existential state of 'being let alone' (Samuel Warren and Louis Brandeis 1890[65]). The diversity of privacy theories has led some privacy schlolars to consider taxonomical distinctions between privacy paradigms for example Sylvia de Mars and Patrick O' Callaghan (2016)[66] suggest a distinction is drawn between 'control based' theorists (who emphasise the normative shield created by privacy) and 'dignitarian' theorists (who emphasise the mental state of well-being promoted by the experience of privacy, Normann Witzleb (2007) suggests a distinction is made between 'non-reductionist' privacy theorists, who hold that privacy is 'too amorphous to provide useful guidance for the development of legal rules'[67], and 'reductionist' theorists who argue that a 'coherent concept of privacy can be formulated'[68].

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[53] David Lyon, *The Culture of Surveillance: Watching as a Way of Life* (Polity Press 2018).
[54] David Garland, *The Culture of Control*: Crime and Social Order in Contemporary Society (OUP 2001).
[55] Amitai Etzioni, *The Limits of Privacy* (Perseus Press 1999).
[56] Ruth Gavison, 'Privacy and the Limits of Law' (no 43).
[57] Erving Goffman, *The presentation of Self in Everyday Society* (no 51).
[58] Irwin Altman, *The Environment and Social Behaviour* (Brooks/Cole 1975).
[59] Helen Nissenbaum, *Privacy in Context* (no 47).
[60] Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[61] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[62] Paul Schwartz, 'Reviving Telecommunications Surveillance Law' [2008] 75 University of Chicago Law Review 287.
[63] Amitai Etzioni, *The Limits of Privacy* (no 55).
[64] Mireille Hildebrandt, 'Law as Information in the Era of Data-Driven Agency' (2016) 79 Modern Language Review 1, 1.
[65] Samuel Warren and Louis Brandeis, 'The Right to Privacy' (1890) 4 The Harvard Law Review 192.
[66] Sylvia de Mars and Patrick O' Callaghan, 'Privacy and Search Engines: Forgetting or Contextualizing?' (2016) 43 Journal of Law and Society 2, 265.
[67] Normann Witzleb, 'Justifying Gain-Based Remedies for Invasions of Privacy' (2009) 29 Oxford Journal of Legal Studies 2, 347.
[68] Ibid, at 348.

Within this background of lack of consensus on the meanings and function of privacy, it is pertinent to enquire how the Courts approach the task of enforcing those norms, if they are so difficult to locate, the functional/ontological status of privacy so difficult to define, and the psycho-social benefit of privacy so difficult to encapsulate. It may also be reasonable to consider whether the Court is approaching that task in a manner that protects the persons experiencing breaches of privacy, and in a consistent way that allows would-be privacy tortfeasors to modify their behaviour so that it remains within the bounds of the law.

ii. Privacy in the Digital Age

For the Courts' privacy rulings to reflect and preserve generally held privacy norms, there needs to be an understanding of where these norms might arise, and the principles that underlie them. The wider principles and paradigms which underlie privacy are considered in section iv, below, 'The problem of changing privacy paradigms'. This section considers the problem of understanding the contexts in which privacy norms may arise. The problem arises since *Campbell*, and many of the privacy cases that followed, occurred in circumstances that are particular to more affluent sectors of society. The dispute in *Campbell* arose from the famous model's Application to the court to suppress publication of newspaper articles containing photographs and personal details. This kind of intrusion is only likely to concern members of the public who are sufficiently famous to be considered 'newsworthy'. Moreover, the expense of legal proceedings would be likely to deter those of limited means from taking a privacy dispute to court. In order to safeguard privacy rights for society as a whole. However, the US based privacy critics Julie Cohen (2019)[69] and Paul Schwartz (2008)[70] argue that the courts must provide clear guidance and boundaries in relation to a wider range of threats to privacy. This includes mass privacy threats (from corporations and state institutions) which affect large groups in society but might be less likely to be challenged at court; and may even occur without the knowledge or awareness of

[69] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[70] Paul Schwartz, 'Reviving Telecommunications Surveillance Law' (no 62).

the data holders (Lauren Scholz, 2013[71]). The scope of judicially defined privacy should be sufficiently wide to provide guidance in relation to, for example, the increase in range and variety of 'monitoring and tracking' (Helen Nissenbaum, 2010[72]) activities which have been undertaken by a diversity of governmental, private, and commercial agencies. This includes technologies such as CCTV cameras, biotechnology, radio frequency identification, (RFID) facial recognition software, drones, DNA databases, geo-tracking technologies, etc. It also includes the online environment generally, which has been described as a 'superpanopticon' (Marion Brivot and Yves Gendron 2011[73]) in which 'every interaction is like a credit card purchase' (Helen Nissenbaum, 2010[74]). Unless these technologies are captured by judicial conceptions of privacy the concept of 'privacy values' may have little meaning outside the legal field, and the narrow demographic range of privacy litigants, and the scope of privacy rights progressively diminished. Perhaps this process of diminishment is already advanced. Mireille Hildebrandt, 2016[75] suggests that the law has a wider purpose beyond individual cases to establish: 'an institutional normative order, a practice or a specific 'regime of veridiction'', implying that the courts have so far fallen short in their performance of this wider purpose.

While privacy theorists may have differing conceptions of the meaning and function of privacy, it seems that, as Raymond Wacks (2015)[76] notes, privacy operates in an environment at the interface of the individual and society. It follows from this that any wider social or cultural changes can impact upon cognitive understandings of privacy for the individual. Moreover, the relationship between the individual and the social environment has been widely described as dynamic, rather than static. As the ethnomethodological experiments of Harold Garfinkel[77] demonstrate values and norms are not fixed, but they are subject to a

[71] Lauren Scholz, 'Institutionally Appropriate Approaches to Privacy: Striking a Balance between Judicial and Administrative Enforcement of Privacy Law' (2014) 51 Harvard Journal on Legislation 1, 194.
[72] Helen Nissenbaum, *Privacy in Context* (no 47) [21].
[73] Marion Brivot and Yves Gendron, 'Beyond Panopticism: On The Ramifications of Surveillance in a Contemporary Professional Setting' (2011) 36 Accounting, Organisations and Society 3, 135.
[74] Helen Nissenbaum, *Privacy in Context* (no 47) [28].
[75] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (no 27) [143].
[76] Raymond Wacks, Privacy: A Very Short Introduction (no 32) 34.
[77] Harold Garfinkel, *Studies in Ethnomethodology* (Prentice-Hall 1967).

constant process of reappraisal and negotiation by actors in relation to their environment.

Many privacy theorists (such as Mireille Hildebrandt, 2019[79]; and Helen Nissenbaum, 2010[80]) have noted a widespread reappraisal of privacy values in relation to developments in the fields of information technology, digital, and communication technology. The development of the online environment as a venue for social and commercial activity, and increased use of monitoring and tracking technologies, may have changed the physical and social environment, which has impacted on cultural attitudes to privacy. Scholars, such as David Lyon (2018)[81] and David Garland (2001)[82] have suggested that increased familiarity with surveillance technologies, such as CCTV security cameras, have reduced resistance to the presence of those technologies, and fostered acceptance of the intrusion they present. This change in public consciousness is illustrated by the results of a comparative study of attitudes towards surveillance in 3 British schools by Michael McCahill and Rachel Finn (2010)[83], who found that the pupils from the working class districts, who were more used to the presence of CCTV cameras, had the lowest expectations of privacy, generally. It has also been suggested that participation in Internet subcultures based on values of disclosure and 'sharing' has presented a direct challenge to the status of privacy, which has diminished its normative influence. These studies include those by: Gwen Bouvier, 2015[84]; José Van Dijck 2013[85]; Zizi Papacharissi and Emily Easton 2013[86]; Alice Marwick and Danah Boyd (2010[87]). Some critics have suggested that there has been a sustained

[79] Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (no 27).
[80] Helen Nissenbaum, *Privacy in Context* (no 47).
[81] David Lyon, *The Culture of Surveillance* (no 53).
[82] David Garland, *The Culture of Control* (no 54).
[83] Michael McCahill and Rachel Finn, 'The Social Impact of Surveillance in Three UK Schools' (2010) 7 Surveillance and Society 3, 273.

[84] Gwen Bouvier, 'What is a discourse approach to Twitter, Facebook, YouTube and Other Social Media: Connecting With Other Academic Fields?' (2015) 10 Journal of Multicultural Discourses 2, 149.
[85] José Van Dijck, *The Culture of Connectivity* (no 52).
[86] Zizi Papacharissi and Emily Easton, 'In the Habitus of the New: Structure Agency and the Social Media Habitus' in John Hartley, Axel Bruns and Jean Burgess (eds) *New Media Dynamics, Blackwell Companion* (Blackwell 2013).
[87]Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).

ideological attack on privacy values by governmental agencies following policies of mass social control (for example, Lilian Edwards and Lachlan Urquhart[88], and Konrad Lachmeyer and Normann Witzleb[89]; as well as David Garland in his excellent Foucauldian analysis of the 'culture of control'[90]). Critics have also considered the cultural impact of social media and IT corporations following 'hidden agendas' of commercial exploitation of personal data (Ella Lillqvist and Anu Harju, 2018[91]; José Van Dijck, 2013[92]).

There is some evidence to support the argument that privacy values may be undergoing a process of change, or diminishment:-

i. Some privacy studies have noted a dissonance between a person's stated privacy values and actual implementation of privacy protective practices (for example, studies by Kirsten Martin, 2020[93]; Cory Hallam and Gianluca Zanella, 2017[94]; Zhenhui (Jack) Jiang, Cheng Suang Heng and Ben Choi 2013[95]).

ii. It is suggested by some privacy theorists that privacy rights are routinely exchanged for other benefits, which may include personal commercial or social reward (David Pozen, 2016[96]; and Sören Preibusch, 2013, who refers to the 'privacy calculus'), but also perceived wider, social benefits such as protection

[88] Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces: What Expectations of Privacy Do We Have in Social Media Intelligence?' (2016) 24 International Journal of Law and Information Technology 3, 279.
[89] Konrad Lachmeyer and Normann Witzleb, 'The Challenge to Privacy from Ever Increasing State Surveillance: A Comparative Perspective' (2014) 37 University of New South Wales Law Journal 2, 748.
[90] David Garland, *The Culture of Control* (no 54).
[91] Ella Lillqvist and Anu Harju, 'Discourse of Enticement: How Facebook Solicits Users' (2018) 10 Critical Approaches to Discourse Analysis Across Disciplines 1, 63.
[92] José Van Dijck, *The Culture of Connectivity* (no 52).
[93] Kirsten Martin, 'Breaking the Privacy Paradox: The Value of Privacy and Associated Duty of Firms' (2020) 30 Business Ethics Quarterly 1, 65.
[94] Cory Hallam and Gianluca Zanella,'Online Self-Disclosure: The Privacy Paradox Explained as a Temporally Discounted Balance Between Concerns and Rewards' (no 24).
[95] Zhenhui (Jack) Jiang, Cheng Suang Heng and Ben Choi, 'Privacy Concerns and Privacy-Protective Behavior in Synchronous Online Social Interactions' (2013) 24 Information Systems Research 3, 579.
[96] David Pozen, 'Privacy-Privacy Tradeoffs' (2016) 83 The University of Chicago Law Review 1, 221.

from crime and terrorism (David Garland, 2001[97]), child protection and public health (Amitai Etzioni, 1999[98]). This phenomenon is sometimes called 'privacy trade-offs'. There is disagreement over whether privacy trade-offs are voluntary or are influenced by wider social forces such as, a general sense of futility and 'fatalism' in relation to routine loss of privacy (David Pozen[99]), competing value systems (Alice Marwick and Danah Boyd[100]), the evolution of cultures of control and surveillance (Lilian Edwards and Lachlan Urquhart[101]), or direct ideological challenge (José Van Dijck[102], and David Garland[103]). Julie Cohen[104] suggests a complete reappraisal of the notion of privacy 'trade-offs' is required on the basis that the issue of consent cannot be said to apply to many processing and surveillance activities, which occur without the knowledge of the data holder.

The significance and extent of these phenomena is disputed but there is a widespread view in academia, the media, and in wider society, that cultural attitudes towards privacy are changing. The technology entrepreneur, Scott McNealy's (possibly apocryphal) announcement to an assembled group of reporters that 'you have no privacy, get over it' may appear to be premature, and perhaps motivated by wishful thinking, but may reflect a wider belief that privacy values are outdated. The moral basis of privacy has also been challenged. The 'communitarian' moral critic Amitai Etizioni (1999)[105] has criticised privacy as a 'selfish' value, antipathetic to effective management in areas of wider social concern such as child protection, public health and protection from crime and terrorism. Some feminist scholars have also criticised the moral basis of privacy for justifying and maintaining unequal gender power relations, through frustrating legal and social scrutiny of the domestic environment. Catherine, MacKinnon, for example, writes:

> The right to privacy looks like a sword in men's hands presented as a shield in women's. Freedom from public intervention coexists uneasily

[97] David Garland, *The Culture of Control* (no 54).
[98] Amitai Etzioni, *The Limits of Privacy* (no 55).
[99] David Pozen, 'Privacy-Privacy Tradeoffs' (no 96).
[100] Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[101] Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces' (no 88).
[102] José Van Dijck, The Culture of Connectivity (no 52).
[103] David Garland, The Culture of Control (no 54).
[104] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[105] Amitai Etzioni, *The Limits of Privacy* (no 55).

> with any right that requires social preconditions to be meaningfully delivered[106]

These criticisms are not recent, and both Amitai Etzioni and Catherine MacKinnon were writing before the Internet achieved its current prominence as a medium for economic and social activity. Anita Allen, writing with apparent prescience in 2000, foresaw some of the threats facing women in the online environment. Advocating a balanced approach to online privacy protections, she suggested that that the problem was that, women had been at the receiving end of 'too much of the wrong kinds of privacy[108], adding that:

> Women often had too much privacy in the senses of imposed modesty, chastity, and domestic isolation and not enough privacy in the sense of adequate opportunities for individual modes of privacy and private choice.

For Allen, the term 'privacy' is used to refer to 3 concepts of, informational privacy, physical privacy, and proprietary privacy[109], and privacy rights have suffered from a process of conflation of these 3 very different rights. In a more recent paper Anita Allen (2013)[110], concerned about the use of surveillance technologies by governmental agencies and corporations, suggests that privacy protections are essential to the functioning of democracy, and that citizens have a social responsibility to exercise all of the informational privacy rights available to them.

However, notwithstanding changes in the function of privacy in relation to informational rights, the argument that individual privacy rights present an ideological barrier to collective welfare, is reflected in comments frequently made in the media and social media where an expressed wish for privacy can be perceived as sinister, and implicit evidence of the desire to engage in socially unacceptable activity. Anita Allen, herself, notes that too much privacy ... can obscure the sources of tortious misconduct, criminality, incivility, surveillance, and

[106] Catharine A. MacKinnon, *Towards a Feminist Theory of the State* (Harvard 1989) 191.
[108] Anita Allen, 'Gender and Privacy in Cyberspace' [2000] 52 Stanford Law Review 1175, 1177.
[109] Anita Allen, 'Coercing Privacy' (1999) 40 William and Mary Law Review 3, 723.
[110] Anita Allen, 'An Ethical Duty to Protect One's Own Information Privacy?' (2013) 65 Alabama Law Review 4, 845.

threats to public health and safety[111]. Daniel Solove, though an advocate of privacy, also acknowledges the 'morally ambiguous'[112] nature of the right, which can be used to shield many activities 'from the worthy to the wicked'[113]. For him, the value is in its 'profound effects on the structure of power and freedom within society as a whole'[114], rather than the way in which individuals use it.

Despite these criticisms, studies tend to demonstrate that privacy values remain important to most participants. Lauren Scholz's review[115] of online privacy practices, for example, found that application of privacy protections was frequently haphazard but that this was largely due to lack of technical expertise, rather than expressed wish. This finding is born out in the 2019 study of online practices of young people by Michael Adorjan and Rosemary Ricciardelli[116]. In that study it was found that young people chose social media platforms which were perceived as less intrusive over older formats such as 'Facebook'. In another study Zhenhui (Jack) Jiang, Cheng Suang Heng and Ben Choi (2013)[117] found a widespread lack of awareness of privacy risks, but high levels of privacy concern. These high levels of privacy concern are reflected also in the emotive terms often used to describe privacy intrusions (Amina Vasalou, Anne-Marie Oostveen, Chris Bowers and Russell Beale 2014[118]).

Perhaps the concept of privacy is simply too abstract to have meaning, since studies have shown that respondents express strong privacy concerns in relation to hypothetical, practical, examples of privacy loss[119]. Since (as Anita Allen suggests[120]) privacy has various manifestations It is possible that popular criticisms

[111] Anita Allen, 'Gender and Privacy in Cyberspace' (no 108) [1177].
[112] Daniel Solove, Understanding Privacy (Harvard 2009) 99.
[113] Ibid.
[114] Ibid, at 93.
[115] Lauren Scholz, 'Institutionally Appropriate Approaches to Privacy: Striking a Balance Between Judicial and Administrative Enforcement of Privacy (2014) 51 Harvard Journal on Legislation 1, 193.
[116] Michael Adorjan and Rosemary Ricciardelli, Rosemary, 'A New privacy paradox? Youth Agentic Practices of Privacy Management Despite 'Nothing to Hide' Online' (2019) 56 Canadian Review 1, 8.
[117] Zhenhui (Jack) Jiang, Cheng Suang Heng and Ben Choi, 'Privacy Concerns and Privacy-Protective Behavior in Synchronous Online Social Interactions' (no 55).
[118] Amina Vasalou, Anne-Marie Oostveen, Chris Bowers and Russell Beale, 'Understanding Engagement with the Privacy Domain Through Design Research' (no 38).
[119]Ibid.
[120] Anita Allen, 'Coercing Privacy' (no 109).

which appear to be directed at privacy as a concept, are actually only directed to particular manifestations of privacy. Furthermore, the application of privacy settings in the online environment requires some technical knowledge and awareness of privacy risks. A study on public attitudes towards maintenance of a DNA database by Dana Wilson-Kovacs, David Wyatt and Christine Hauskeller (2012)[121], revealed that the public's broad acceptance of such a database was largely driven by a lack of awareness of the science around the uses of DNA in crime detection, cloning technology, etc. Responses to privacy breaches can vary widely according to the nature of the private 'thing' and the context of the intrusion[122]. It has widely been suggested that privacy norms have a highly contextual nature, and they cannot be understood without paying regard to the social milieux in which these norms are exercised (and the intrusion has occurred[123]). The consequence of this is that what appears to be a lack of coherence and consistency in privacy values, might be instead a failure of the observer to sufficiently consider the social circumstances in which those values are expressed. Notwithstanding a reported, widespread, unwillingness to take simple privacy protective measures, such as checking security settings on social media (Grant Blank, Gillian Bolsover and Elizabeth Dubois 2014[124]) it seems that abstract privacy values continue to exert a powerful cultural influence. Some privacy narratives remain popular in newspapers (and online media), such as the struggle of celebrities in the face of aggressive journalistic tactics. The political impact of mass surveillance by governmental bodies and private corporations also continues to attract significant media attention, with concerns around data abuse and mass privacy breaches reported in both the traditional and new media. Within political discourse, political interest groups and pressure groups dedicated

[121] Dana Wilson-Kovacs, David Wyatt and Christine Hauskeller,'"A Faustian Bargain?" Public Voices on Forensic DNA Technologies and the National DNA Database' (2012) 31 New Genetics and Society 3, 285.
[122] Amina Vasalou, Anne-Marie Oostveen, Chris Bowers and Russell Beale, 'Understanding Engagement with the Privacy Domain Through Design Research' (no 38).
[123] Helen Nissenbaum, *Privacy in Context* (no 47); and, Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[124] Grant Blank, Gillian Bolsover and Elizabeth Dubois, 'A New Privacy Paradox: Young people and privacy on social network sites' (Global Cyber Security Capacity Centre: Draft Working Paper, 13th August 2014) < http://www.oxfordmartin.ox.ac.uk/downloads/A%20New%20Privacy%20Paradox%20April%202014.pdf> accessed 12th May 2019.

to privacy and data protection rights continue to maintain a strong media presence, often competing against advocates of 'safety' on the Internet.

Accordingly, whilst the matter of privacy can perhaps provoke a wide range of emotional responses, including a fatalistic acceptance of certain types of privacy intrusion, this may be due to the concept of privacy being in a state of change, rather than an erosion of privacy values *per se*. Perhaps the 'privacy paradox' is more indicative of increased complexity and confusion of social and social-cognitive structures around privacy than a diminution of privacy values. It cannot be assumed, however, that privacy values will survive without the effective enforcement of privacy rights in terms which have meaning to the majority of citizens.

iii. The Problem of Changing Privacy Norms and the Court's Part in That Process

In the preceding section it was suggested that if the Court wished to be effective in protecting privacy values for the whole of society, it would need to have regard to wider threats to the concept of privacy. These threats include tracking and monitoring technologies, which appear to be influencing cultural attitudes to privacy. This section considers the nature of the Court's relationship with wider society and its influence on privacy discourse. As has been previously noted, privacy operates at the interface of individuals with their environment. It has also been noted that there is a dynamic interaction between the individual and the environment, with the result that changes to the social environment are likely to impact on the way that privacy is experienced by the individual. It is proposed that the courts and the legal environment (or 'juridical field') that they occupy are subject to a similar process of mutual feedback with wider society. Judges in their courtroom deliberations are subject to cultural influences from wider society, as well as being subjected to influences from within the legal environment. Conversely, through defining a phenomenon in its judgements, the judiciary exerts its own discursive influence on that phenomenon, which can impact on the way in which that phenomenon is perceived in wider society.

Judicial processes cannot be assumed to be neutral in the process by which a phenomenon is conceived in wider society, but they can exert an influence upon it (this is the basis for Julie Cohen's recommendation that the language of privacy law should be reviewed[125]). There is some evidence that the mere act of framing a phenomenon as a' legal issue' narrows the field of discourse around that issue, excluding non-legal paradigms in relation to that issue, and changing the way it is perceived. Several examples of this process have been noted in studies by Annabelle Mooney (2012)[126], and Anne Lise Kjær and Lene Palsbro (2008)[127]. Annabelle Mooney (2012) conducted a linguistic analysis of newspaper cuttings on human rights. She noted a progressive linguistic reframing of 'human rights' as a legal entity, with consequent lessening of other constructions of human rights (for example human rights as a political entity). In another linguistic analysis of human rights Anne Lise Kjær and Lene Palsbro (2008) found that human rights issues were being co-opted by the legal sector in an ideological conflict against EU institutions. The result was that issues of human rights were becoming conflated with issues of Danish nationalism.

It is considered that there is an inherent risk that narrowing the field of debate on any moral issue, particularly one which has historically attracted input from a wide range of academic perspectives, will narrow the issue itself. This problem may be compounded by the poor social diversity amongst the senior judiciary[127a] which has historically been disproportionately drawn from a narrow socio-economic demographic. There is a risk that the normative standards applied by the Court have been unduly reflective of the standards held within the narrower demographic range from which the judiciary are largely drawn, which do not necessarily reflect norms outside of those demographics. The extent and the mechanisms of the Courts' influence on societal norms has not been measured, although a few studies (such as Annabelle Mooney's study, discussed above) tend to bear out that legal structures have a discursive influence on the perception of moral values outside of the legal field. However, whilst the nature of the Court's

[125] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[126] Annabelle Mooney, 'Human Rights Law, Language and the Bare Human Being' (2012) 32 Language and Communication 3, 169.
[127] Anne Lise Kjær and Lene Palsbro, 'National Identity and Law in the Context of European Integration: the Case of Denmark' (2008) 19 Discourse and Society 5, 599.
[127a] The Ministry of Justice, (The Judicial Diversity Statistics, 2022) (no 30).

influence may be unclear, it nevertheless does not seem unreasonable to assume that the Courts and legal institutions, in their function as arbiters on human rights issues, hold a powerful influence over the normative language of those issues, which impacts on the manner in which they are understood in other sectors of society (see, for example, Urska Sadl and Henrik Olsen's 2017 study of the progressive discursive influence of the language (and models) of legal rights on the field of international relations[128]). Further, based on the premise that the function of the Court's judgements is that they are intended to have universal impact, and normative authority outside of the legal field[129], this thesis will proceed on the basis that the Court's judgements have some influence over debate on moral issues in wider society, albeit the extent of this influence is unclear.

There is a clear value therefore in considering how, in an era in which privacy values are said to be going through a process of transformation, the Courts have linguistically represented privacy. This includes how the Courts have defined privacy and its properties, the cultural values the Courts have identified in respect of privacy, the social contexts in which privacy norms have been found to operate, as well as the particular privacy norms that the courts have identified. The likely influence of the Courts' findings on the way in which privacy issues are viewed in wider society, renders an examination of the application of the Courts' rulings particularly pertinent. Specifically, there is value in consideration of whether the courts have defined privacy in terms that safeguard citizens against privacy intrusions, and whether the courts' conception of privacy is wide enough to safeguard fundamental privacy values themselves, as citizens become progressively desensitised to intrusions.

iv. Integrating European Civil Rights Law with Domestic Common Law

[128] Urska Sadl and Henrik Olsen, 'Can Quantitative Methods Complement Doctrinal Legal Studies? Using Citation Network and Corpus Linguistic Analysis to Understand International Courts' (2017) 30 Leiden journal of international law 2, 327.
[129] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23) [846].

The Article 8 rights considered by the HoL in *Campbell* had their origins in European civil rights law, being an article in the ECHR. European civil rights law has developed according to its own processes, and has accumulated its own body of case law, resting on its own set of principles, expressed through its own terms and idioms. When Parliament enacted ECHR rights into domestic law (through passing the HRA), it presented the domestic courts with the twin challenge of integrating the 'new' rights created by the HRA 1998 into the existing canon of domestic case law; whilst consolidating into domestic law the new language and approach (including case law from Strasbourg) that sustained those rights. The language and framework of human rights sustained in the ECHR was unfamiliar to the domestic common law system: the rights are expressed in fundamental, abstract, terms which are then applied to the particular facts of the dispute at hand (Thomas Kleinlein, 2019[130]) whereas within the domestic common law system general legal principles are typically derived from a patchwork of judicial rulings on a group of cases which share common features, a process described by Andrew Goodman (2005) as 'syntoptical reading'[131].

The task of integrating the two systems of law in a manner which allowed the domestic courts to rule on European Convention issues undoubtedly presented a problem in respect of all the rights contained in the ECHR. However, the task presented additional challenges in respect of Article 8 rights. Unlike other rights such as Article 10, freedom of expression, and Article 6, right to a fair trial, there was no 'freestanding' right to privacy under domestic law prior to the passage of the HRA. It was therefore necessary to recognise this right, and the conditions that surrounded it, within the framework of the common law canon. Whilst the common law process is flexible, and capable of adapting in response to change, importing a 'new' legal principle from a different legal framework, and incorporating the body of case law that had been created around that legal principle, undoubtedly created additional challenges to the domestic courts, with additional risks that the principle would be applied inconsistently.

[130] Thomas Kleinlein, 'The Procedural Approach Of The European Court Of Human Rights: Between Subsidiarity And Dynamic Evolution' (2019) 68 International and Comparative Law Quarterly 1, 91.
[131] Andrew Goodman, *How Judges Decide Cases* (no 23) [65].

v. Changing models of privacy

Whilst scholars are conscious of the wider social implications (and potential damage) of judicial findings in the field of privacy, it cannot be assumed that the Court would consider this. Although patterns and regularities within the Courts' approach may become apparent to a researcher, when retrospectively reviewing a body of case law together, the task of the judiciary is to provide rulings on individual cases based on their particular facts. The Courts' task adjudicating on legal disputes requires a pragmatic approach to issues, and for this reason some scholars have called for an 'outcomes based' approach to privacy adjudication which avoids some of the pitfalls encountered in defining privacy and its functions. Instead, they focus on the 'harms' caused by particular kinds of privacy intrusion (see, for example, David Pozen, 2016[132]; Daniel Solove 2006[133]; William Prosser 1960[134]). Normann Witzleb (2007)[135] suggests that 'gain-based remedies' should be quantified in privacy cases based on an assessment of harm. He argues that this would reduce the scope for vexatious privacy applications (where the applicant has suffered no significant financial loss as a result of the breach), and it would help to redress a perceived imbalance against Article 10 rights of the media. Furthermore, it is considered that a 'harms based' approach could circumvent some of the semantic issues encountered in defining privacy, but there must still be a paradigm of privacy, a conceptual framework that connects the perceived 'harm' to the solution. This exposes another problematic aspect of privacy, that could be fundamental to some of the reported changes in cultural attitudes to privacy and diminishment of privacy values. Some of the older models of privacy, which have historically informed both the Court's approach to privacy and cultural perceptions of privacy, are being challenged by monitoring and tracking technologies and the growing social and commercial importance of the online environment. There are many historical, philosophical, and literary models of privacy which are likely to shape privacy discourse but here 3 models are considered, which have historically influenced conceptions of privacy: the

[132] David Pozen, 'Privacy-Privacy Tradeoffs' (no 96).
[133] Daniel Solove, 'A Taxonomy of Privacy' (no 42).
[134] William Prosser, 'Privacy' (no 41).
[135] Normann Witzleb, 'Justifying Gain-Based Remedies for Invasions of Privacy' (no 67).

distinction between the public and private spheres; the metaphor of Big Brother; and Foucault's panopticon. Each of these is considered, in turn.

a) The 'Private' and 'Public' spheres

The distinction between the private and public 'spheres', or 'realms', has its origins in seventeenth century discourses on civil liberties debates of the that period headed by political philosophers such as John Locke (1690)[136], and enacted in historic property rights cases such as *Seymayne's case* (1604) 5 Co Rep 91. As Sir Edward Coke observed in that case: 'the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence'. For Sir Edward Coke, and for John Locke, the conceptual boundaries between the two spheres were visibly reinforced by physical boundaries (walls, windows, fences, etc), within which the proprietors enjoyed relative freedom from harassment. Periodic advances in surveillance technologies that circumvent those physical barriers may have challenged this notion of environmental distinctions between the public and private spheres, for example developments in phone tapping technology. Notwithstanding this the concept of a division between private and public spheres has retained its power in informing a concept of normative boundaries between the self and society. Irwin Altman's notion of 'privacy regulation'[137], for example, draws upon a notion of privacy enforced by normative barriers, expressed through subtle social cues. More recently Kirsty Hughes, (2012[138]) and Ruth Gavison, (1980[139]) have emphasised the importance of psycho-social barriers in creating an *experience* of privacy, and the importance of this for psychological well-being. The biggest and most sustained challenge to the concept of the private and the public realm is the growth of the online environment which has taken surveillance technologies inside the home environment. The Internet has been described as being monitoring and tracking technology 'by design', operating as an 'informational panopticon' (Helen Nissenbaum, 2010[140]). Within the online environment barriers separating the 'public' and the 'private' may be ineffective against intelligent algorithms designed to capture data. The

[136] John Locke, *Second Treatise of Government* (Crawford Macpherson ed., Hackett 1980).
[137] Irwin Altman, *The Environment and Social Behaviour* (no 58).
[138] Kirsty Hughes, 'A Behavioural Understanding of Privacy and its Implications for Privacy Law'(2012) 75 Modern Law Review 5, 806.
[139] Ruth Gavison, Privacy and the Limits of Law (no 39).
[140] Helen Nissenbaum, Privacy in Context (no 47) [75].

panopticonic nature of the Internet in which all activity can be recorded, has been supported by technologies (such as social media platforms) which are designed to reward the sharing of data (Ella Lillqvist and Anu Harju, 2018[141]; José Van Dijk, 2013[142]), and ideologies and sub-cultures which promote values of disclosure (José Van Dijk, 2013[143] Papacharissi and Easton 2013[144] Lilian Chouliaraki, 2010[145]; Alice Marwick and Danah Boyd 2010[146]).

b) The Big Brother metaphor: the embodiment of state power

The image of the omniscient 'Big Brother', an image first described in George Orwell's dystopian novel *Nineteen Eighty-Four*[147], together with historical examples of state tyranny such as Nazi Germany, may have historically influenced perceptions of threats to privacy, providing a terrifying image of unfettered state power. Although George Orwell wrote the novel in 1948, it seems that he tapped into a widespread and pervasive sense of pessimism regarding the future prospects of

human rights, which, as Raymond Wacks[148] observes has informed most subsequent fictional representations of future society. There have been various attempts to codify and regulate state powers, protecting the civil rights of citizens against abuses by their governments. This includes the ECHR, which is explicitly enforceable against a 'High Contracting Party' i.e. the governments of the signatory states).

It has been suggested that the Big Brother metaphor no longer describes the diversity of surveillance activities that occur through the routine use of monitoring and tracking technologies, and it has therefore lost its power as a model. Daniel

[141] Ella Lillqvist and Anu Harju, 'Discourse of Enticement: How Facebook Solicits Users' (91).
[142] José Van Dijk, *The Culture of Connectivity* (no 52).
[143] Ibid.
[144] Zizi Papacharissi and Emily Easton, 'In the Habitus of the New: Structure Agency and the Social Media Habitus' (no 86).
[145] Lilian Chouliaraki, 'Self-Mediation: New Media and Citizenship' (2010) 7 Critical Discourse Studies 4, 227.
[146] Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[147] George Orwell, *Nineteen Eighty-Four* (Penguin Classics 2021).

[148] Raymond Wacks, *Privacy: A Very Short Introduction* [2].

Solove (2000)[149] for example, notes that monitoring and tracking technologies are deployed by a range of agencies, commercial and governmental, for a multiplicity of purposes, some of which might be to the benefit of the individual, and many of which are intended for private commercial reasons, rather than governmental control. He suggests that Franz Kafka's *Trial*[150], more accurately represents the chaos and dehumanising effects of modern surveillance. Marion Brivot and Yves Gendron (2011)[151], contradict the notion of a single authority figure, as they describe the end stages of a panopticonic project in which all members of an organisation have become co-opted into a culture of voyeurism. They studied the institutional effects of the introduction of a case management system into a Parisian law practice. In that practice the intended purpose of the system was wilfully subverted by staff, as it became incorporated into strategies of mutual surveillance and control.

c) The concept of the Panopticon: the sense of being watched

The Panopticon is a design for a prison, attributed to the English utilitarian philosopher, Jeremiah Bentham[152]. In Bentham's design the cells are arranged around a central tower, from which it is possible for a single viewer to observe all the prisoners, without the prisoners being able to observe each other, or the viewer. Accordingly, the prisoners would never know whether they are being observed but would be mindful that at any time they could be watched. Although Bentham's design has never been fully implemented, it suggests a model for social control which has subsequently interested philosophers and social theorists, most notably the French philosopher, Michel Foucault. In his work, Discipline and Punish (1975)[152] Foucault develops the concept of 'panopticism' to describe the complex processes by which surveillance acts as a constraining force. For Foucault, the Panopticon is a powerful metaphor for a model of social order which has been predominant in Europe since the 19th century. There is no Big Brother figure within Foucault's panopticonic society, since power is dispersed; but the

[149] Daniel Solove, 'Privacy and Power: Computer Databases and Metaphors for Information Privacy' [2000] 53 Stanford Law Review 1393.
[150] Franz Kafka, *The Trial* (Penguin Modern Classics 2019).
[151] Marion Brivot and Yves Gendron, 'Beyond Panopticism' (no 73).
[152] Jeremiah Bentham, *The Correspondence of Jeremy Bentham, Volume 1* (Timothy Sprigge ed., UCL Press 2017).
[152] Michel Foucault, Discipline and Punish: The Birth of the Prison (Alan Sheridan tr, Penguin 1977).

authority structures which enforce it are internalised within the individual's psyche. Foucault describes the insidious effect of the Panopticon on the cognition of the inmates, as they are conditioned to become complicit in their own surveillance:

> Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers[153]

'Discipline and Punish' was published before the development of the internet and 'the wholesale adoption of CCTV surveillance during the 1990s' (Stephen Fay, 1998[154]). However, the panopticon model has been adopted more recently by scholars to explain social changes brought about by these developments. Lilian Edwards and Lachlan Urquhart (2016)[155]; Marion Brivot and Yves Gendron (2011)[156] describe the effects of panopticonic processes brought about by surveillance technologies, on individuals and organisations, whilst David Lyon (2018[157], 2002[158]) and David Garnham (2001[159]) describe broader societal changes fostering cultures of fear, mutual suspicion and control. Some scholars, however, have found the panopticonic model unhelpful for understanding the effects of surveillance. Marion Bivot and Yves Gendron (2011), whilst adopting the model, criticise the panopticon model for becoming a 'sociological cliché', with questionable 'suitability as a metaphor for contemporary surveillance'[160]. They criticise the logics of the model, which assumes a passive compliance in a single panopticonic project. They suggest instead the concept of a 'superpanopticon',

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[153] Ibid, at 201.
[154] Stephen Fay, 'Tough on Crime, Tough On Civil Liberties: Some Negative Aspects of Britain's Wholescale Adoption of CCTV Surveillance During the 1990's' (1998) 12 International Review of Law, Computers and Technology 315.
[155] Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces' (no 88).
[156] Marion Brivot and Yves Gendron, 'Beyond Panopticism' (no 73).
[157] David Lyon, *The Culture of Surveillance: Watching as a Way of Life* (no 53).
[158] David Lyon, 'Everyday surveillance: Personal data and Social Classifications' (2002) 5 Information, Communication and Society 2, 242.
[159] David Garland, *The Culture of Control* (no 54).
[160] Marion Brivot and Yves Gendron, 'Beyond Panopticism' (no 73) [137].

unconstrained by 'temporal or spatial constraints', in which surveillance activities have become so completely enmeshed into Western consciousness that, rather than being passively accepted, they are wilfully incorporated into personal strategies of 'visibility and observation'. Other scholars have criticised the Panopticon model for its failure to capture the psychological effects of contemporary surveillance, Daniel Solove (2000), for example, notes the multi-faceted nature of contemporary surveillance, where individuals can be watched simultaneously, by multiple agencies, each of which may be following its own agenda and many of which occur without the knowledge, or awareness, of the person being watched [161].

The distinction between the private and public spheres, originally delineated by physical boundaries, may continue to operate as cognitive distinctions between the 'self', and 'other'. Some scholars have suggested that the cognitive distance between the abstract notions of 'public' and 'private' which inform social distinctions, and the experience of the online environment (in which social distinctions become indistinct) creates a sense of 'normlessness' (or 'context collapse') in the social environment of Internet sub-cultures, and has accelerated the process of the development of oppositional norms of sharing and disclosure (Lilian Edwards and Lachlan Urquhart, 2016[161]; Alice Marwick and Danah Boyd, 2010[162]). The enduring conceptual distinction between public and private spheres may also be reflected in the language of privacy for example the notion of separate provisions operating in the public and private spheres may be reflected linguistically in distinctions between associated concepts such as: public and private property, finance, law, records, etc.

The metaphor of Big Brother continues to be invoked in critiques of the actions of the state (Paul Schwatz, 2008[163]) refers to the model in his critique of policies of governmental surveillance which, in the light of the Snowden revelations regarding the surveillance activities of the State, continues to be an important topic within privacy debate. The image of Big Brother has also retained some of its

[161] Daniel Solove, 'Privacy and Power' (no 149).
[161] Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces' (no 88).
[162] Alice Marwick and Danah Boyd, 'I Tweet Honestly, I Tweet Passionately' (no 25).
[163] Paul Schwartz, 'Reviving Telecommunications Surveillance Law' (no 62).

influence in popular culture, being sufficiently familiar to be used as the name of a popular reality TV programme in which participants are constantly observed. The enduring power of the image of Big Brother in the field of civil liberties is evidenced in the name of a civil liberties pressure group (Big Brother Watch), dedicated to privacy rights. Critics in the media (including social media) continue to use the adjective: 'Orwellian', to describe disproportionate incursions on civil liberties by the executive.

Michel Foucault's model may be considered obsolete and a 'sociological cliché' by Marion Bivot and Yves Gendron (2011); and many prominent contemporary privacy scholars, have looked to other social theorists to provide an interpretive framework. Helen Nissenbaum, for example, looked to the works of Pierre Bourdieu in formulating her concept of 'contextual integrity[164,] and Mireille Hildebrandt, invoked the Habermassian concept of 'Offentlichkeit'[165], in distinguishing the private and public spheres. However, even those scholars who reject Foucault's model in whole, frequently invoke the concept of the Panopticon as a reference point in privacy debate (for example Helen Nissenbaum discusses the experience of being 'trapped in an information panopticon'[166]. For some scholars, such as David Garnham[167] the growth of the 'surveillance society' represents a realisation of the panopticonic project. For these theorists Foucault's model could be helpful in describing the more nuanced processes of internalisation of surveillance practices on individuals and groups. The concept of the Panopticon has also gained popularity outside the academic field, and it is frequently invoked in debate on privacy in popular culture, in the media, blogs, and social media.

The Framework in *Campbell*

The HoL decision was to approve the 'reasonable expectations of privacy' test, applied by the ECtHR in *Halford*. This implicitly aligned its approach to Article 8 claims (and the future direction of its rulings) to that of the ECtHR. This does not, however, preclude a progressive divergence from the ECtHR's approach, as

[164] Helen Nissenbaum, Privacy in Context (no 47) [130].
[165] Mireille Hildebrandt, Smart Technologies and the End(s) of Law (no 27) [84].
[166] Helen Nissenbaum, Privacy in Context (no 47) [75].
[167] David Garland, The Culture of Control (no 54).

Jonathan Mance (2009) points out[168]. The HoL in *Campbell* did not express preference for any single model of privacy, or any single definition of privacy. Neither have the domestic higher courts explicitly developed a model of privacy in the privacy cases which have followed *Campbell.* This does not mean, however, that judges are not unconsciously influenced by various representations of privacy in scholarly works, as well as in history, art and popular culture. Neither does it preclude the possibility that a *de facto* model of privacy will be evident in the body of domestic privacy case law when viewed together. Chapter 4 of this thesis examines a large body of domestic privacy case law for lexical patterns, themes, and narratives; and this will reveal some of the mental schemas, and underlying assumptions which inform Court rulings on privacy. The current review, however, considers three of the features of privacy implicit in the language of the framework in *Campbell*, these are: the relationship of privacy to confidentiality, the concept of privacy as information, and the concept of privacy as normative.

Privacy is related to confidentiality

The HoL in *Campbell*, declined to create a separate privacy tort, but extended existing provisions for breach of confidence, by: '[shaking] off the limiting constraint of the need for an initial confidential relationship'[169]. Lord Tugendhat has since, in 2014, confirmed that the misuse of private information is a separate tort in the case of *Judith Vidal-Hall & others v Google Inc* [2014] EWHC 13[170]. However, there was a period of 10 years in which the two types of 'privacy' claim (MOPI, and breach of confidence) developed in parallel. This approach in *Campbell* has been met with enthusiasm from some legal critics such as Hector MacQueen (2004)[171], and Thomas Lauterbach (2005)[172], who regard a broadening of the scope of the law of confidence as an essential balance to aggressive journalistic practices.

[168] Jonathan Mance, 'Human Rights, Privacy and the Public Interest: Who Draws the Line and Where?' (2009) 30 Liverpool Law Review 3, 263.
[169] *Campbell v MGN Ltd* (no 2) [Lord Nicholls 14]
[170] This was subsequently approved by the Court of Appeal in *Google Inc. v Judith Vidal-Hall and others* [2015] EWCA Civ 311.
[171] Hector MacQueen, 'Protecting Privacy' (no 7).
[172] Thomas Lauterbach, 'Privacy Law and Press Freedom A celebrity fight-back ''par excellence''' (2005) 21 Computer Law and Security Review 1, 74.

However, it is notable that these scholars were writing soon after the decision in *Campbell.* Some of the more recent articles have criticised the approach in *Campbell*. Jojo Mo (2017[173]) and Nicole Moreham (2014[174]) for example, have criticised the principle of misuse of private information on the basis that it identifies of the concept of privacy with information. It is suggested that this causes unnecessary confusion, and it fails to provide adequate protections against threats to physical privacy. Both these critics advocate the introduction of a separate tort of intrusion. Jojo Mo, comments that Lord Tugendhat's confirmation in *Vidal Hall v Google*, that MOPI is a separate tort, fails to resolve these limitations. He suggests that the High Court's basis for recognising MOPI as a separate tort is unclear, since the 'tort' does not have the usual tortious features. He comments that: 'most tort actions require the claimant to prove specific elements and do not require the courts to engage in a balancing exercise[175]'. Eric Barendt, (2016[176]) has criticised the principle of 'reasonable expectation of privacy', describing it as a "redundant concept" Eric Barendt (2016a[177]; 2016[178]) and Normann Witzleb (2007[179]) are critical of overlap, and potential inconsistencies, with other areas of law such as the law of defamation. Normann Witzleb (2007) argues that whilst the concepts of privacy and confidentiality may be semantically related, they are very different legal concepts, requiring a very different approach at law. Whereas obligations of confidentiality are related to the quality of a relationship that exists between individuals, MOPI claims arise from the quality of the information which has been disclosed.

Privacy and The Misuse of Private Information

Lord Nicholls, possibly anticipating future confusion named the new provisions 'misuse of private information', to distinguish them from the older 'breach of confidence' provisions. This established a conceptual connection between privacy

[173] Jojo Mo, 'Misuse of Private Information as A Tort: The Implications of Google v Judith Vidal-Hall' (2017) 33 Computer Law and Security Review 1, 87.
[174] Nicole Moreham Beyond Information: Physical Privacy in English Law (2014) 73 The Cambridge Law Journal 2, 350.
[175] Jojo Mo, 'Misuse of Private Information as A Tort' (no 173) [92].
[176] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (2016) 8 Journal of Media Law 2, 129.
[177] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept?' in Andrew Kenyon (ed) *Comparative Defamation and Privacy Law* (CUP 2016).
[178] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (no 176).
[179] Normann Witzleb, 'Justifying Gain-Based Remedies for Invasions of Privacy' (no 67).

and information, and it connected case law developments in privacy to the language of data protection law (Nicole Moreham, 2014[180]). The association of privacy with information, however, brings with it an association of privacy with notions of risk (Mireille Hildebrandt 2016[181]). It has been argued that this, in turn, has the potential for dehumanising privacy rights (Niels van Dijk, Raphaël Gellert and Kjetil Rommetvei 2016[182]), diminishing the ethical status of privacy and fostering actuarial calculations of acceptable intrusions by corporations and governmental bodies. As Julie Cohen notes: 'actuarial decision making treats human beings as collections of data points... in a way that is objectifying[183]'.

There is some practical merit in framing privacy as a technical issue, rather than an ethical issue, since it may assist with enforcement of privacy laws in the online environment. Framing privacy in the technical language of data protection may, for example, assist software developers and IT/IC technicians (who may not be legally trained) in the task of building privacy controls into algorithmic design (Kobbi Nissim and Alexandra Wood, 2018[184]). However, the conceptual association of privacy with information has logical flaws, since it fails to capture the subjective, psychological, experience of privacy intrusions which can be felt even when no information loss has occurred (for example, the humiliating experience of being subjected to an intrusive strip search).

Privacy is a Normative Concept

The threshold test for misuse of private information, 'reasonable expectations of privacy' establishes privacy as a normative concept (Nicole Moreham, 2018). As Nicole Moreham points out:

> concluding that a person has a reasonable expectation of privacy is shorthand for saying that, subject to any overriding competing interests, the claimant is entitled to expect his or her privacy to be protected'[185]

[180] Nicole Moreham, 'Beyond Information: Physical Privacy in English Law' (no 174)
[181] Mireille Hildebrandt, Smart Technologies and the End(s) of Law (no 27) [77].
[182] Niels van Dijk, Raphaël Gellert and Kjetil Rommetvei, 'A risk to a right? Beyond Data Protection Risk Assessments' (2016) 32 Computer Law and Security Review 2, 286.
[183] Julie Cohen, 'Turning Privacy Inside Out' (no 26) [8].
[184]Kobbi Nissim and Alexandra Wood, 'Is Privacy Privacy?' 376 Philosophical transactions of the
Royal Society A 2128.
[185] Nicole Moreham, 'Unpacking the reasonable expectation of privacy test', [2018] 134 Law Quarterly Review, 651, 652.

The flexibility of the doctrine of reasonable expectations has been welcomed by some scholars, Helen Nissenbaum (2010)[186], for example, suggests that it allows the court to consider the different social contexts in which those reasonable expectations might arise. Rebecca Pure (2013)[187] supports this view; but she suggests that the courts should look to data from the social sciences, to identify the privacy norms which engender those expectations. Even with such knowledge, however, there is a danger that the courts could be looking for normative consensus where none exists due to the novelty of the problem, or the technical knowledge required to understand the intrusion. The association of privacy with social norms has also attracted criticism, however. Some scholars suggest that a normative conception of privacy (rather than a technical conception) complicates the technical task of building privacy controls into the online environment (Kobbi Nissim and Alexandra Wood 2018[188]). Some scholars have suggested that the whole basis of privacy as a binary concept, which rests on the duality of the intruder and the person experiencing the intrusion, is inappropriate in the online environment (Andrew Selbst 2013[189]), which is not neutral, but can actively influence the activities which occur within it (see also: Ella Lillqvist and Anu Harju, 2018[190]; Lilian Edwards and Lachlan Urquhart 2016[191]). Critics also point out that the language of ethical social behaviour has no meaning to the machine processes of intelligent algorithms, the very purpose of which may be to gather data.

Criticism of the Framework in Campbell

Other features of privacy may be implicit in the text of *Campbell*, and the case law which followed *Campbell* has developed and added to these. Unembellished, however, the action of 'misuse of confidential information' and its threshold test of 'reasonable expectations of privacy' presents an incomplete model of privacy. There are some notable absences in the HoL conception of privacy, for example,

[186] Helen Nissenbaum, Privacy in Context (no 47) [115].
[187] Rebecca Pure, 'Privacy Expectations in Online Contexts' (PhD Thesis, University of California 2013).
[188] Kobbi Nissim and Alexandra Wood, 'Is Privacy Privacy?' (no 174).
[189] Andrew Selbst, 'Contextual Expectations of Privacy' [2013] 35 Cardozo Law Review, 643.
[190] Ella Lillqvist and Anu Harju, 'Discourse of Enticement: How Facebook Solicits Users' (91).
[191] Lilian Edwards and Lachlan Urquhart, 'Privacy in Public Spaces' (no 88).

there is no agreement amongst the presiding judges in *Campbell* over the wider social functions of privacy (such as preservation of dignity). The presiding judges preferred to concentrate on the specific nature of the injuries caused to Naomi Campbell. A related issue is that the HoL neglected to clearly identify the 'harms' caused by privacy loss. It has been suggested that the absence of clarity over these matters has led to ambiguity over the basis of the remedies for loss of privacy in contexts where no information of commercial value has been lost. This has led some critics to advocate the creation of a separate tort to protect physical privacy (Nicole Moreham, 2014[192], 2005[193]; Jojo Mo, 2013[194]; Arye Schreiber, 2006[195]), with a clear threshold test, and with damages based on psychological trauma caused by the intrusions.

The HoL focus on the individual experience of privacy loss reflects the approach to privacy in the United States, where the reasonable expectations test was introduced in 1960 by *Katz*[196]. Critics of the principle have blamed it for a perceived failure by the US courts to define privacy in terms which protect ordinary citizens against privacy breaches by large corporations or the state (Julie Cohen, 2019[197]; Paul Schwartz, 2008[198]). The adoption by the domestic courts of the principle of 'reasonable expectations' has also attracted criticism in the UK, where scholars have pointed to the concept's incoherence (Eric Barendt, 2016a[199]) and its vagueness (Jojo Mo 2017[200]). Eric Barendt (2016[201]) suggests that the principle presents a barrier to preservation of privacy rights, since it places an unnecessary burden on Applicants to prove their expectations are reasonable in circumstances where in many cases the burden should be with the alleged intruder to prove they acted reasonably.

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[192] Nicole Moreham, 'Beyond Information: Physical Privacy in English Law' (no 174).
[193] Nicole Moreham, 'Privacy in the Common Law: A Doctrinal and Theoretical Analysis' [2005] 121 The Law Quarterly Review 628.
[194] Jojo Mo, 'Misuse of Private Information As A Tort' (no 173) [92].
[195] Arye Schreiber, 'Confidence Crisis, 'Privacy Phobia: Why Invasion of Privacy Should Be Independently Recognised in English Law' [2006] 2 Intellectual Property Quarterly 160.
[196] Katz v. United States, 389 U.S. 347 (1967).
[197] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[198] Paul Schwartz, 'Reviving Telecommunications Surveillance Law' (no 62).
[199] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept? (no 177).
[200] Jojo Mo, 'Misuse of Private Information As A Tort: The Implications Of Google v Judith Vidal-Hall' (no 173).
[201] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (no 176).

vi. Conclusions

This chapter has outlined some of the issues relating to the implementation of the provisions of Article 8 into domestic law, and the framework set out by the HoL. The issue of privacy is inherently problematic, the meanings of privacy and the conceptual frameworks which inform them are unclear and multi-faceted. This lack of clarity around the meanings of privacy is exacerbated by changes in cultural attitudes in relation to the growth of monitoring and tracking technologies. Some scholars describe the emergence of cultural values, of surveillance and control, which directly challenge privacy values. Through the development of the 'reasonable expectations' test the HoL has committed itself to a normative conception of privacy based not on a division of 'public' and 'private' but on the subjective 'expectations' of the individual, tempered by their objective 'reasonableness'. However, in adopting one approach to privacy the courts have excluded other approaches which they could have been taken, each of which has its advocates, for example: an outcomes based approach aimed at threats to privacy (Daniel Solove 2006[202]), an approach that is focused on the 'private' nature of particular types of information rather than the act of intrusion (Eric Barendt 2016[203], 2016a[204]), an approach which is focused on calculation of loss and compensation, (including psychological damage[205]) rather than abstract privacy values and expectations (Normann Witzleb, 2009[206]), or an approach which is consciously directed at preservation of the social values of privacy (Julie Cohen, 2019[207]; Amitai Etzioni, 1999[208]).

There is a risk that the models of privacy adopted by the courts might fail to capture the range of meanings of privacy and the diversity of privacy threats, such as those relating to the growth of the Internet and tracking and monitoring technologies, promoting a conception of privacy which has little meaning in wider

[202] Daniel Solove, 'A Taxonomy of Privacy' (no 42).
[203] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (no 176).
[204] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept? (no 177).
[205] Nicole Moreham, 'Beyond Information: Physical Privacy In English Law' (no 174).
[206] Normann Witzleb, 'Justifying Gain-Based Remedies for Invasions of Privacy' (no 67)
[207] Julie Cohen, 'Turning Privacy Inside Out' (no 26).
[208] Amitai Etzioni, The Limits of Privacy (no 55).

society. One of the practical problems with a normative model of privacy is that it requires the court to find a consensus in privacy norms, where the very nature of judicial processes could develop privacy norms in a direction unlikely to be relevant to most citizens. The concept of 'reasonable expectations' has been developed by the Court in relation to individual privacy disputes raised by litigants. However, due to the expense of civil litigation, those litigants are likely to be disproportionately drawn from the wealthier sectors of society, raising the risk that the experience of privacy threats embodied in privacy case law are a reflection of the interests and experience of a narrower demographic range, and a poor reflection of the interests and experiences of the majority of people. This risk is further complicated by the narrow socio-economic demographic from which the judiciary itself is disproportionately drawn.

Whilst privacy is commonly regarded as an individual right, the court's task in adjudicating on individual privacy disputes impacts upon the whole of society. On that basis, it can be suggested that the judiciaryhas a socio-cultural responsibility as well as a judicial responsibility. Since court rulings are expressed in language it has been proposed that the courts also have a 'linguistic' responsibility to develop an adequate 'conceptual vocabulary' and 'institutional grammar' (Julie Cohen[209]) of privacy which represents its social value and meets privacy threats. Should the Court fail to properly frame privacy in a manner which protects the rights of all individuals the impact of this could extend beyond individual injustices and damage the delicate mechanisms which maintain democracy.

Chapter 4 reviews developments in privacy case law from Campbell to present. The next Chapter (Chapter 3) considers the study methods and interpretive models, which allow consideration of the relationship between the legal field, society, and the language of privacy.

[209] Julie Cohen, 'Turning Privacy Inside Out' (no 26) [1].

Chapter 3
Research Approach

Introduction

The previous chapter considers the problematic nature of privacy, and privacy law making. It is suggested that privacy occupies a space where the individual encounters society and therefore privacy, and privacy values, are subject to the vicissitudes of an ever-changing social environment. It is suggested that legal processes do not occur within a social vacuum. They are social activities and are therefore subject to cultural influences; both internally in relation to the law (and previous legal rulings) and the internal dynamics of the legal sector, and externally in relation to wider cultural attitudes, beliefs and values.

This Chapter seeks to understand legal privacy rulings in this wider context of social, historical and cultural influences, which it is anticipated will be indicated in the lexical choices taken by presiding judges and tribunal panels. Linguistic methods will be applied to law reports to capture idiosyncratic patterns and regularities which are revealing of recurrent narrative themes and meanings. It is anticipated that these methods will also highlight the wider principles and logics of judicial reasoning, including ontological frameworks and cultural influences.

The nature of the proposed research is such that, not merely judicial decisions, but the Courts' approach, and judicial processes, are under review. Further, since the study considers the relationship between 'judicially' defined privacy and 'lay' notions of privacy, it is considered that the research perspective should be a 'holistic' perspective, which incorporates each part of the process of production, transmission and reception, of privacy rulings. Accordingly, the study data obtained from the application of these linguistic methods to law reports will be critically analysed through an interpretive framework derived from the writings of the French sociologist, Pierre Bourdieu. It is considered that Bourdieu's model of social organisation, based on the relatedness of 'habitus', 'field', and 'capital', allows judicially defined privacy norms (recorded in the law reports), the social context in which they are found, the social processes behind those findings, and the relatedness of those norms to wider society, to be considered together, as a single, connected, social process.

This Chapter considers in further detail the proposed study methods and study approach. The structure of this chapter will be as follows:-

i. Overview and discussion of corpus linguistic methods;

ii. Overview and discussion of proposed research perspective;

iii. Reflexive analysis and ontological assumptions;

iv. Conclusion and general comments.

i. Overview and discussion of corpus linguistic methods

Overview of Corpus Linguistic Methods

To examine the language of privacy in 'legal' and 'non-legal' texts the Author intends to apply a set of linguistic methods termed 'corpus linguistics'. These methods, whilst not unknown in the fields of legal and socio-legal research, represent a significant departure from traditional, 'black-letterist' approaches to the analysis of legal text. Corpus linguistic analysis combines the application of a quantitative, statistics-led analysis of a text, with a qualitative interpretive analysis of semantically rich or unusual text samples. The application of these methods through specialised, 'concordancing' software, allows large text samples to be analysed simultaneously, increasing the size of the study sample and thereby improving the reliability of the data obtained. The application of statistically based methods to a sufficiently large sample may also allow rarer (but statistically significant) linguistic patterns, otherwise naked to the eye, to be revealed. Corpus linguistic methods are becoming increasingly popular in social research, including socio-legal research, and the application of these methods to issues of law and society will be discussed later in this chapter. However, it is first necessary to describe what is meant by 'corpus linguistic' methods. Although corpus methodological practices are not 'uniform'[211], with differing emphasis placed on particular techniques, a computer-assisted corpus analysis will typically consist of

[211] Tony McEnery and Costas Gabrielatos, 'English Corpus Linguistics' in Bas Aarts and April McMahon (eds) The Handbook of English Linguistics (Blackwell 2006).

all, or some of, the following processes: construction of a corpus, keyword analysis, collocate analysis, concordance analysis (Francesca Bianchi, 2012[212]; see also Paul Baker et al[213] for an example of a study in which each of these processes is applied to a corpus composed of newspaper cuttings). Each of these processes is discussed, in turn.

a. Construction of a Corpus

A corpus is a collection of machine-readable texts which has been consciously prepared (Tony McEnery & Andrew Wilson 2001[214]), the text samples have been put together solely for the purpose of study (distinguishing corpora from archives and databases), and it is: 'the specific purpose of the [study] design [that] determines the selection of the texts' (Susan Hunston 2002)[215]. The texts will therefore be selected because they share a common characteristic, or 'theme', such as: a common genre, author, historical period, etc., which the researcher has compiled in order to consider common narrative themes and stylistic peculiarities within those text samples (Alison Sealey and Chris Pak (2018)[216]. The corpus is usually intended to be a representative sample of the 'entire population of texts' (Tony McEnery and Andrew Wilson, 2001)[217] within a specific genre or theme and the researcher analyses the corpus with the aim of drawing wider extrapolations about the structure and content of the whole body of that class of text[218] and the social and cognitive structures behind production of those texts[219]. Michael Stubbs advises caution, however, when drawing general conclusions from the

[212] Francesca Bianch, 'Corpora and corpus Linguistics' in Francesca Bianchi (ed) *Culture, Corpora and Semantics* (University of Solento 2012).
[213] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony Mcenery and Ruth Wodak, 'A Useful Methodological Synergy? Combining Critical Discourse Analysis and Corpus Linguistics to Examine Discourses of Refugees And Asylum Seekers In The UK Press' (2008) 19 Discourse and Society 3, 273.
[214] Tony McEnery and Andrew Wilson (eds), *Corpus Linguistics: An Introduction* (2nd ed, Edinburgh University Press 2001) 29.
[215] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge University Press 2002) 2.
[216] Alison Sealey and Chris Pak, '"First Catch Your Corpus" Methodological Challenges In Constructing A Thematic Corpus' (2018) 13 Corpora 2018 2, 230.
[217] Tony McEnery and Andrew Wilson (eds), *Corpus Linguistics: An Introduction* (no 212) [29].
[218] Ibid, at 32.
[219] Susan Hunston, *Corpora in Applied Linguistics* (no 213) [99]. For an example of the use of corpus methods to derive wider conclusions about the social forces surrounding the production of texts see: Norman Fairclough *New Labour New Language?* (Routledge 2000). Fairclough's analysis of a corpus composed of speeches by Tony Blair, allowed him to consider structural changes within the Labour Party under Blair's leadership.

corpus, reminding scholars that the corpus is: 'one or two levels of abstraction from real language events' (Michael Stubbs 2012[219a]).

In order to ensure the accuracy of the researcher's findings, the study corpus must be as representative of the class of texts characterised by the corpus as is practically possible (Tony McEnery and Andrew Hardie 2012[220]; Susan Hunston, 2002[221]). Typically, this means that the corpus should be as large as is practicable. However, size is no guarantor of the corpus' representativeness of the linguistic genre it is intended to capture, and consideration should be given to variations of style, narrative, etc. within that field (María José Marin, 2017[222]) to ensure that the full variety of texts within the class represented by the corpus are present in the corpus.

Large 'banks' of text are available on the internet, including corpora which are intended to be representative of languages as a whole. The British National Corpus[223] (or 'BNC') is a large collection of samples of written British English, taken from a variety of sources. It is intended to be relatively free from linguistic bias towards a particular group or interest within society, and accordingly the text samples in the BNC are collected from a range of forms and genres of written English, including academic studies, fiction, and newspaper articles. Large, online corpora like the BNC can be used as 'text banks' to construct smaller, specialised, corpora, or in their entirety, as a comparator corpus against which to analyse 'bespoke' corpora compiled by the researcher.

Howsoever the corpus is constructed, the act of compiling the corpus inevitably involves exercising a series of decisions regarding inclusion/exclusion of texts within the study corpus, which will, to a degree, bias the outcome of the study (Alison Sealey and Chris Pak, 2018[224]). It is vital, therefore that the researcher

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[219a] Michael Stubbs 'Corpora and Texts: Lexis and Text Structure' In Joybrato Mukherjee and Magnus Huber (eds) *Corpus Linguistics and Variation in English* (Rodopi 2012)
[220] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge University Press 2012) 14.
[221] Susan Hunston, Corpora in Applied Linguistics (no 213) 28.
[222] María José Marín, 'Legalese as Seen Through the Lens of Corpus Linguistics' (no 17).
[223] The BNC Consortium, The British National Corpus (Version 2 2001) <http://www.natcorp.ox.ac.uk/> accessed 3rd August 2022.
[224] Alison Sealey and Chris Pak,"First Catch Your Corpus" (no 214).

makes those decisions mindfully, so that the impact of inclusion/exclusion criteria on the content of the text (and likely outcome on the study) can be anticipated. Within the legal field, law reports provide a complete written record of all of the types of document which might comprise the total population of written legal documents. They not only reference (directly quoting from) each other but they also directly quote statute, legal documents such as contracts, wills, and other relevant sources. Law reports are therefore a repository for all legal texts and are therefore a good source of text reflecting the entire legal linguistic environment (María José Marín [225]).

b. Keyword analysis

Once the corpus has been constructed, the first stage of the corpus analysis process described by Paul Baker et al (2012[226]), is the identification and analysis of 'keywords' within the corpus. The concept of 'cultural keywords' has its origins in the field of cultural studies and was used by the Marxian critic, Raymond Williams (1983[227]), to describe words (including the word 'culture') which hold a notable, cultural, resonance within a society. Williams identified keywords by 'intuitive' means (Sara Laviosa, Adriana Pagano, Hannu Kemppanen and Meng Ji, 2017)[228] . However, the development of word analysis software has allowed researchers to use statistical analysis of large text corpora to identify keywords. There is no guarantee, of course, that a word's statistical significance is a reflection of its cultural significance, and careful analysis may be required to distinguish the lexical 'wheat' from the 'chaff' (John Sinclair, 1991)[229] but the identification of statistically unusual lexical choices within a corpus can: 'capture important social and political events about a community' (Susan Hunston 2002)[230]. In this manner keywords can be viewed as cultural or ideological 'markers' within a text, which

[225] María José Marín, 'Legalese as Seen Through the Lens of Corpus Linguistics' (no 17) [22].
[226] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A Useful Methodological Synergy? (no 211).
[227] Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (2nd ed, Flamingo 1983).
[228] Sara Laviosa, Adriana Pagano, Hannu Kemppanen and Meng Ji, *Textual and Contextual Analysis in Empirical Translation Studies* (Springer 2017) 30.
[229] John Sinclair, *Corpus, Concordance, Collocation* (Oxford University Press 1991) 99.
[230] Susan Hunston, *Corpora in Applied Linguistics* (no 213).117.

relate the text back to the social conditions under which it was produced (Michael Stubbs, 2001)[230].

Keywords may indicate 'language ideologies' embedded into language choices within a particular field, or genre, of text production, such as those identified in Rachelle Vessey's 2017[232] study of the representation of French speakers in Canadian newspapers, and Diana Eades' (2012)[233] study of the use of Aborigine dialect in Australian courtroom discourse, or within language use generally (such as Paul Baker's 2010 comparative study of the use of gendered pronouns[234]). Some keywords have a strong association with a particular 'discursive field' and are more likely to be found within texts relating to that field. Texts associated with discourses around immigration frequently contain keywords associated with uncontrolled bodies of water such as: 'flood'; 'deluge' (Paul Baker et al 2008[235]; Costa Gabrielatos and Paul Baker 2008[236]). Keywords can therefore assist with 'mapping' the discursive field represented by the corpus. They can point to some interesting features within that field deserving of closer analysis, such as the influence of other texts ('intertextuality'[237]), or the 'layering' of the primary theme of the text with other discursive themes ('interdiscursivity'[238]). However, keywords are merely indicative, and not probative of these discursive features. Keywords are unlikely, by themselves, to provide much more than a rough outline of the discursive field represented within a corpus (Paul Baker 2004[239]) and in

[230] Michael Stubbs, *Words and Phrases: Corpus Studies of Lexical Semantics* (Wiley-Blackwell 2001) 188.
[232] Rachelle Vessey, 'Corpus Approaches to Language Ideology' 38 Applied Linguistics 3, 277.
[233] Diana Eades 'The social consequences of language ideologies in courtroom cross-examination,' 41 Language in Society 4, 471.
[234] Paul Baker, 'Will Ms Ever Be as Frequent as Mr? A Corpus-Based Comparison of Gendered Terms Across Four Diachronic Corpora of British English' (2010) 4 Gender and Language 1, 125.
[235] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A Useful Methodological Synergy? (no. 211).
[236] Costa Gabrielatos and Paul Baker, 'Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996 – 2005' (2008) 36 Journal of English Linguistics 1, 5.
[237] Norman Fairclough, 'Critical Discourse Analysis as A Method in Social Scientific Research' in Ruth Wodak and Michael Meyer (eds) Methods of Critical Discourse Analysis (Sage 2001) 4.
[238] Ibid.
[239] Paul Baker, 'Querying Keywords: Questions of Difference, Frequency and Sense in Keywords Analysis' (2004) 32 Journal of English Linguistics 4, 346.

most corpus-based studies the further techniques of collocate analysis and concordance analysis (both described below) are applied to obtain a more detailed and accurate picture of the various lines of discourse captured by a corpus.

c. Collocate analysis

The concept of collocates is described in John McHardie Sinclair's seminal book: *Corpus, Concordance, Collocation* (1991)[240]. In that book Sinclair describes the 'idiom principle', suggesting that speech, rather than being based on individual word choices, is based upon the jigsaw-like, piecing together of groups of words ('idioms') which commonly occur together, and have a collective semiosis as a unit of words (Sinclair 1991)[241]. Sinclair's method of text analysis was therefore to identify 'collocates', words which tended to be spatially associated (within a span of 5 words or less with each other), and which can therefore be assumed to exert a semantic influence on one another. The onerous process described by Sinclair, reviewing large texts 'by eye' to locate collocated words and phrases within a corpus, has been greatly simplified by concordancing software packages such as Antconc[242], and the package being deployed in this study, #LancsBox[243], which automate the process of cross analysing a corpus with a comparator base corpus, and apply a range of statistical measures, to identify groups of words which share an unusual, and statistically significant, relationship within the study corpus.

A strong statistical relationship between words, however, is not always revealing of significant intertextual or interdiscursive references within a text. The semantic relationship between collocated words might be mundane in nature such as the relationship of the phrase 'a cup of' with a word representing a hot drink (Costas Gabrielatos and Paul Baker 2008[244]). John Sinclair anticipates this himself, and he advises: 'the vast majority [of collocated words within a text] can be safely discarded when their statistical contribution to the concordance as a whole has

[240] John Sinclair, *Corpus, Concordance, Collocation* (no 228).
[241] Ibid, at 115.
[242] Laurence Anthony, 'AntConc'(Version 3.5.8) [Computer Software Waseda University 2019] <https://www.laurenceanthony.net/software>Accessed 16th April 2022.
[243] Vaclav Brezina, Pierre Weill-Tessier and Tony McEnery, '#Lancsbox' (Version 5.x) [Computer Software 2020] <http://corpora.lancs.ac.uk/lancsbox> accessed 12th October 2022.
[244] Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding'' (No 213) [12].

been recorded (Sinclair, 1991[245])'. In order to distinguish between those collocated phrases, which convey mundane semiosis and those which have a more interesting, discursive, significance, it is helpful to consider the distinction drawn by Tony McEnery and Andrew Hardie (2012[246]) between 'semantic preference'; and 'semantic prosody' or 'discourse prosody' (Michael Stubbs 2001[247]). A semantic preference is a routine, lexical, relationship between 2 or more words, such as the relationship between the word 'sill' and the word 'window', whereas a semantic (or discourse) prosody: 'links the node to some expression of attitude or evaluation which may not be a single word, but may be given in the wider context (Tony McEnery and Andrew Hardie (2012[248])'.

This 'expression of attitude' contained in collocated words can convey subtle ideological, culturally significant, or interdiscursive influences within the text. An example of this might be the collocation of the word 'immigrant' with words commonly associated with bodies of water, such as 'waves', creating an association of drowning in the mind of the reader (Teun van Dijk 2018[249]). These 'significant' collocations may be comparatively rare, and careful examination of a large number of collocated groups of words required before such patterns become evident. The analysis of collocates within the corpus, however, may assist with triangulating data obtained from keyword analysis and, once the two datasets (keywords and collocates) have been processed, it should be possible to identify some of the narrative and stylistic themes emergent from the text, which can be tested and developed in the final stage of the proposed corpus linguistics process, concordance analysis.

d. Concordance analysis

[245] John Sinclair, *Corpus, Concordance, Collocation* (no 269) [99].
[246] Tony McEnery and Andrew Hardie*, Corpus Linguistics: Method, Theory and Practice* (no 236) [130].
[247] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' (2001) 21 Text 3, 449.
[248] Tony McEnery and Andrew Hardie, Corpus Linguistics: Method, Theory and Practice (no 236) [138].
[249] Teun van Dijk, 'Critical Discourse Analysis', in Deborah Tannen, Heidi Hamilton and Deborah Schiffrin (eds) *The Handbook of Discourse Analysis* (2nd edn, Wiley Blackwell 2018) 473.

A concordance line is a text sample of a fixed number of words (usually up to 5 words) on either side of a collocated group of words, which assists in establishing the context and meaning of those collocated words (John Sinclair, 1991[251]). The selection and analysis of concordance lines assists with distinguishing the more interesting collocates (those which suggest a semantic/discourse prosody) from the mundane collocates (those which merely suggest a semantic preference between the collocated words). The analysis of larger blocks of text also assists with establishing some of the broader lexical and stylistic features in the text, including subtle linguistic cues ('semantic schemas') which engage the reader's (and convey the speaker's) 'mental representations of social norms' (Michael Stubbs, 2012[252]). Paul Baker et al have described the process of selection and analysis of concordance lines, as the more 'qualitative' stage of corpus analysis (Paul Baker et al, 2008[253]), since statistical measures are of less relevance than with keyword and collocate analysis.

Whilst the keywords identified at the earliest stage of the process assist with sketching the discursive field covered by the corpus, and the technique of collocate analysis provides some insights into the presentation of the particular discursive themes captured by the text corpus, it is only at the stage of reviewing these words in context that it is possible to determine their intended meaning out of a range of possible meanings that the individual words in the lexical unit might hold. Michael Stubbs (2001[254]) illustrates this point by considering the different ways in which the word 'little' can be used in a negative or pejorative manner: the word takes a different 'connotational meaning' when used in the context of the patronising appellation: 'little, old, lady'; to the implied allegation of cliquishness in the phrase: 'cosy little relationship'. It is only through observing the keyword 'little' in the context of the wider phrase in which it occurs that the nuanced semantic differences can be seen.

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[251] John Sinclair*, Corpus, Concordance, Collocation* (Oxford University Press 1991) 42.
[252] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' (no 247) [443].
[253] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A Useful Methodological Synergy? (no. 211) [279].
[254] Michael Stubbs, *Words and phrases: Corpus Studies of Lexical Semantics* (Oxford 2001) 105.

Concordance analysis can be the most problematic stage of the Corpus Linguistics process since, unless the study corpus is quite small (which would raise questions about its representativeness) there will be a multitude of collocated groups of words. The researcher must exercise judgement at the stages of choosing which of these groups of words will form the basis of concordance analysis; and at the stage of selecting particular examples of these lexical units from which to take concordance lines. This usually requires the application of more subjective selection criteria by the researcher (Michael Stubbs 2001[255], 106) and since the more interesting lexical groupings tend to be the rarest (John Sinclair 1991[256]), statistical measures are of limited assistance in guiding this process of selection of concordance lines. The application of subjective selection criteria brings with it a risk that potentially rich data is overlooked, and that undue emphasis is given to particular word choices due to personal biases. Even with the exercise of the researcher's utmost care it is possible to misinterpret a text by concentrating on smaller lexical units, when the meaning of a text may be conveyed through larger lexical units, spread across a much larger portion of text than that captured in a concordance line (Michael Stubbs 2001[257]). In order to properly understand the semiosis of collocated units of words in a text, therefore, it is necessary to develop a deeper understanding of the social (and possibly the historical, economic, or political) context in which the texts captured by the corpus were produced (Michael Stubbs 2001[258]).

Discussion of Corpus Linguistics Methods

One of the attractive features of corpus linguistics is the flexibility of the methods, which can be widely modified to meet the subject of research. Corpus linguistics methods have their origins in the field of linguistic pedagogy, but they have been developed for use in a range of academic studies which focus on the understanding of language and text. The methods have been used, for example, in social-historical studies in language use (Tony McEnery, 2005[259]), in sociological and cultural studies focusing on media representations of social phenomena (For example the studies

[255] Ibid, at 106.
[256] John Sinclair, *Corpus, Concordance, Collocation* (no 251) [99].
[257] Michael Stubbs, *Words and Phrases* (no 254) [110].
[258] Ibid, at 117.
[259] Tony McEnery, *Swearing in English Bad: Language, Purity and Power from 1586 to the Present* (Routledge 2005).

of Rachelle Vessey, 2015[260] and, Costa Gabrielatos and Paul Baker, 2010[261]) in anthropological studies focussing on the coded messages of online activists (Michael Loadenthal, 2012[262]), ethnographic field studies (M. Insa Nolte, Clyde Ancarno and Rebecca Jones, 2018[263]) and in critical studies of ideologically weighted keywords embedded into political speeches (Norman Fairclough, 2000[264]). Corpus methods are eclectic and 'politically neutral' (Thomas Lee and Stephen Mouritsen 2018[265]). Corpus methods have also been applied to corpora constructed from a range of text sources including from official documentation from legislative or administrative sources, such as official EU policy documents (Basil Germond, Tony McEnery and Anna Marchi, 2016[266]) and Hansard (Ingo Bachmann, 2012[267]). As Stanisław Goźdź-Roszkowki (a legal scholars who has deployed corpus methods in a range of studies) notes[268] there are few corpus studies which focus on the legal text. However, there is growing recognition of the utility of linguistic methods, including corpus methods, in socio-legal research. Magdalena Szczyrbak, 2018[269]; Maria Marin, 2017[270]; Rebecca Moosavian, 2015[271]; Tatiana Tkačuková 2015[272]; Michele Sala 2014[273]; Stanisław Goźdź-Roszkowki and

[260] Rachelle Vessey, 'Corpus Approaches to Language Ideology' (no 232).
[261] Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding'' (No 213).
[262] Michael Loadenthal, 'Interpreting Insurrectionary Corpora Qualitative-Quantitative Analysis of Clandestine Communiqués' (2016)10 Journal for the Study of Radicalism 2, 79.
[263] M. Insa Nolte, Clyde Ancarno and Rebecca Jones. Inter-Religious Relations in Yorubaland, Nigeria: Corpus Methods and Anthropological Survey Data (2018) 13 Corpora Volume 1, 27.
[264] Norman Fairclough, *New Labour New Language?* (Routledge 2000).
[265] Thomas Lee and Stephen Mouritsen, 'Judging Ordinary Meaning' (2018) 127 Yale Law Journal 4, 876.
[266] Basil Germond, Tony McEnery and Anna Marchi, 'The EU's Comprehensive Approach as The Dominant Discourse: A Corpus-Linguistics Analysis of the EU's Counter-Piracy Narrative' (2016) 21 European Foreign Affairs Review 1, 137.
[267] Ingo Bachmann, 'Civil Partnership – "Gay Marriage in all But Name"' 6 Corpora 1, 77.
[268] Stanisław Goźdź-Roszkowski, 'Recurrent Word Combinations in Judicial Argumentation. A Corpus-Based Study' in Danuta Bartol, Anna Duszak, Hubert Izdebski and Jean-Marie Pierrel (eds) Language, Law, Society (Nancy 2006), 139.
[269] Magdalena Szczyrbak, 'Diminutivity and Evaluation in Courtroom Interaction: Patterns With
Little' (2018) 135 Studia Linguistica Universitatis Iagellonicae Cracoviensis. 1, 69.
[270] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics (no 250).
[271] Rebecca Moosavian, 'A just balance or just imbalance? The role of metaphor in misuse of private information' (2015) 7 Journal of Media Law 2, 196.
[272] Tatiana Tkačuková, 'A Corpus-Assisted Study of the Discourse Marker Well as an Indicator of Judges' Institutional Roles in Court Cases with Litigants in Person' (2015) 10 Corpora 2, 156.
[273] Michelle Sala, 'Plain Language in Legal Studies: A Corpus Based Study' [2014] 16 European Journal of Law Reform 651.

Gianluca Pontrandolfo, 2013[274], Stanisław Goźdź-Roszkowki 2012[275], 2010[276], 2006[277]; Ruth Breeze, 2011[278]; Janet Cotterill 2004[279] have all used linguistic techniques to examine legal issues. There are signs of growing acceptance of the methods in legal practice. In the USA, corpus methods have been recognised by some state appellate courts as an aid to judicial interpretation of 'the ordinary meaning of a word or phrase' (John Ramer, 2017[280]), prompting calls for wider use of linguistic methods in legal research (Friedemann Vogel, Hanjo Hamann and and Isabelle Gauer 2018[281]). Within legal scholarship linguistic methods have also been applied to corpora constructed of law reports in studies which focus on the relationship between the law, or legal practice, and language. Some of these studies have used a corpus of law reports as a means of testing hypotheses, such as Maria Marin's (2017) study of the use of 'legalese'[282], whereas others have been driven by the corpus of law reports as a means of discovering new social 'facts' such as Stanisław Goźdź-Roszkowski and Gianluca Pontrandolfo's comparative study of court reports from Italy and the USA[283]. The flexibility of corpus methods allows studies to focus on particular word or linguistic features (such as Tatiana Tkačuková's 2015 study on the use of the word 'well' by judges to reinforce social roles in the courtroom[284]; or Magdalena Szczyrbak's 2015 study of the social function of 'diminutives' (such as 'little') in courtroom discourse[285]) or to review the

[274] Stanisław Goźdź-Roszkowki and Gianluca Pontrandolfo , 'Evaluative Patterns in Judicial Discourse. A Corpus-based Phraseological Perspective on American and Italian Criminal Judgments' (2013) 3 International Journal of Law, Language and Discourse 2, 9.
[275] Stanisław Goźdź-Roszkowki, 'Discovering Patterns and Meanings. Corpus Perspectives on Phraseology in Legal Discourse' (2012) 60 Roczniki Humanistyczne 8, 47.
[276] Stanisław Goźdź-Roszkowki, 'Responsibility and Welfare: Keywords and Semantic Categories in Legal Academic Journals' in Davide Simone Gianone and Celina Frade (eds) *Researching Language and the Law* (Peter Lang 2010).
[277] Stanislaw Goźdź-Roszkowski, 'Recurrent Word Combinations in Judicial Argumentation' (no 276).
[278] Breeze Ruth Disciplinary Values in Legal Discourse: a Corpus Study Iberica 21 (2011) 93-116
[279] Janet Cotterill, 'Collocation, Connotation, and Courtroom Semantics: Lawyer's Control of Witness Testimony Through Lexical Negotiation' (2004) 25 Applied Linguistics 4, 513.
[280] John Ramer, 'Corpus Linguistics: Misfire or More Ammo for the Ordinary-Meaning Canon?' [2017] 116 Michigan Law Review 303.
[281] Friedemann Vogel, Hanjo Hamann and and Isabelle Gauer, 'Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies' (2018) 43 Law and Social Inquiry 4, 1340.
[282] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics (no 250).
[283] Stanisław Goźdź-Roszkowki and Gianluca Pontrandolfo , 'Evaluative Patterns in Judicial Discourse' (no 274).
[284] Tatiana Tkačuková, 'A Corpus-Assisted Study of the Discourse Marker Well' (no 272).
[285] Magdalena Szczyrbak, 'Diminutivity and Evaluation in Courtroom Interaction' (no 269).

corpus as a whole, in order to understand broader patterns in the text (such as Stanisław Goźdź-Roszkowski's (2010) comparative study of academic and practitioner legal texts[286] and Alison Johnson's (2015) discourse analysis of judicial 'summings up' in criminal trials[287]).

Corpus methods combine a quantitative statistics-led approach, with a qualitative, interpretive element, and when the methods are used together (keyword analysis, collocate analysis, and concordance analysis), the results from each stage of analysis can be used to triangulate, and verify the results from the other stages. The findings from the quantitative stages of the text analysis can also be used to highlight the most semantically rich phrases in the corpus for detailed qualitative analysis (Paul Baker warns against using keyword analysis alone[288]).
Concordancing software typically applies a range of statistical measures to measure different lexical patterns within the text, for example there are measures of absolute frequency, frequency relative to a base text, distribution, etc. This lends an objective, empirically demonstrable, element to the analysis, and reduces the risk of bias in data selection, although Ulrike Tabbert, 2015[289] warns that the degree of objectivity in corpus methods may be less than it appears, with subjective elements entering the study at the point of construction of the corpus data analysis and interpretation. Some concordancing packages also allow the results of this statistical analysis to be displayed graphically for example as a scatter graph for visualisation and ease of analysis. The use of concordancing software allows many court reports to be analysed simultaneously. This increases the prospect that subtler, more nuanced, patterns within the text will be identified, and reduces the risk that significant themes and patterns will be missed.

[286] Stanisław Goźdź-Roszkowski, 'Responsibility and Welfare: Keywords and Semantic Categories in Legal Academic Journals' (no 276).
[287] Alison Johnson, 'Dr Shipman told you that…' The organising and synthesising power of quotation in judicial summing-up' [2014] 36 Language and Communication, 53.
[288] Paul Baker, 'Querying Keywords' (no 239).
[289] Ulrike Tabbert, Ulrike, 'Crime Through a Corpus: The Linguistic Construction of Offenders, Victims And Crimes In The German And UK Press' (PhD Thesis, University of Huddersfield 2013).

The use of corpora for linguistic research has also attracted some criticism. The American linguist Noam Chomsky was particularly critical of corpus methods. In an interview in 2004, he is recorded as saying:

> Corpus linguistics doesn't mean anything. It's like saying suppose a physicist decides, suppose physics and chemistry decide that instead of relying on experiments, what they're going to do is take videotapes of things happening in the world and they'll collect huge videotapes of everything that's happening and from that maybe they'll come up with some generalizations or insights. Well, you know, sciences don't do this[290].

Noam Chomsky's criticisms are based on the nature of the corpus itself, that it is a record of linguistic performance (which can vary according to a range of psycho-social factors, including illness or drunkenness) when the object of study should be linguistic competence, 'which both explains and characterises a speaker's knowledge of a language' (Tony McEnery and Andrew Wilson, 2001[291]). This criticism seems to apply, in particular, to the use of corpus linguistics in linguistic pedagogy (and the production of dictionaries and grammars), which is one of the earlier applications of corpus linguistics[292]. In the case of this particular study, the distinction being made between linguistic performance and linguistic competency is less pertinent, since the text of law reports has a particular status within the legal canon. The presiding judges, mindful that their words will be recorded and added to that canon can be expected to choose their words carefully. Furthermore, as Pierre Bourdieu (who was a critic of the concept of 'linguistic competence') notes it is the *use* of language, rather than abstract notions of competence which is of particular interest[293]. Another related, criticism Noam Chomsky has levelled at corpus linguistics (which is highlighted in the preceding quotation) is that he considers that the basis of corpus methods is flawed, since the corpus is a finite sample of a potentially infinite linguistic array. This criticism is reasonable, since corpora are, indeed, finite (Tony McEnery and Andrew Wilson 2001[294]). As Susan Hunston observes, a corpus 'can show nothing more than its

[290] József Andor, 'The Master and His Performance: An Interview with Noam Chomsky' (2004) 1 Intercultural Pragmatics 1, 93.
[291] Tony McEnery and Andrew Wilson, *Corpus Linguistics: An Introduction* (no 238) [6].
[292] Susan Hunston, *Corpora in Applied Linguistics* (no 213) [96].
[293] Pierre Bourdieu, 'The Economics of Linguistic Exchanges' (1977) 16 Social Science Information 646.
[294] Tony McEnery and Andrew Wilson, Corpus Linguistics: An Introduction (no 238) [10]

contents', and any insights derived from corpora are extrapolations (Susan Hunston 2002[295]). However, improved computer processing power and the development of specialised software has made it possible to process larger amounts of corpus data, facilitating greater accuracy of any 'extrapolations' derived from a corpus.

The British linguist Henry Widdowson has also criticised the basis of corpus linguistics. Henry Widdowson acknowledges that: 'corpus analysis reveals textual facts, fascinating profiles of produced language, and its concordances are always springing surprises' (Henry Widdowson, 2000[296]). However, he criticises the basis of corpus methods, due to the 'rather obvious limitations' that words are decontextualized, and present a 'third person perspective,' and the dynamic 'ethnographic' process of meaning generation replaced with a 'static abstraction'[297]. Michael Stubbs (2001a) has responded to Henry Widdowson's criticism, by suggesting that the use of statistical methods as an aid to the interpretation of text has revealed some nuanced patterns which may otherwise have been overlooked[298]. He also suggests that Widdowson exaggerates the scope for misinterpretation of a word or phrase (and, emphasised that meaning can be verified through concordance analysis). He points out that meaning in text often arises through repetition of a word or phrase, something that is more easily captured through corpus processes[299].

Noam Chomsky's and Henry Widdowson's criticisms, however, point to a limitation within the corpus approach. That is that the corpus is a sample (or collection of samples) of a particular type of text; it is not the whole population of that text type. Furthermore, the act of compiling the corpus inevitably involves exercising a series of decisions regarding inclusion/exclusion of texts within the study corpus, which will, to a degree, introduce bias into the corpus (Alison Sealey and Chris Pak, 2018[300]). Additionally, the text samples which have been selected,

[295] Susan Hunston, Corpora in Applied Linguistics (no 213) [22].
[296] Widdowson, 'On the Limitations of Linguistics Applied' (2000) 21 Applied Linguistics 1, 6.
[297] Ibid, at 7.
[298] Michael Stubbs, Texts, Corpora and Problems of Interpretation: A Response to Widdowson (2001) 22 Applied Linguistics 2, 149.
[299] Ibid, at 56.
[300] Alison Sealey and Chris Pak, 'First Catch Your Corpus' (no 216).

have been decontextualized, and processed through a device, a piece of concordancing software. This means that the corpus sample is not once, but twice removed from its original textual context (Michael Stubbs, 2012[301]). The corpus therefore is a model, or representation of a text type that can provide evidence about patterns in the text type that it represents but cannot provide information about it (Susan Hunston, 2002[302]), or as (Charlotte Taylor and Anna Marchi, 2018[303]) warn: 'the map is not the territory'. It is vital, therefore, that when compiling a corpus, decisions about inclusion and exclusion of texts are made mindfully, so that the likely impact on the content of the corpus (and therefore the likely impact on the study data) can be anticipated (Alison Sealey and Chris Pak 2018; Francesca Bianchi, 2012[304]). Some scholars suggest that the sample should also be as large as is practicable, to reduce the impact of any sample bias, although this provides no guarantee that the corpus will be representative[305]. However large the sample is, research findings are necessarily limited to that sample (Susan Hunston 2002[306]), and care should therefore be taken making wider generalisations based on those findings. A related point is that meaning might be spread across a larger area than the blocks of text selected for concordance analysis, or that concordance lines might miss semantically rich sections of text. These risks can be reduced by ensuring that a sufficient concordance lines are selected for qualitative analysis. Corpus linguistics practitioners should also exercise their skills of reflexivity and intuitiveness to check their understanding and interpretation of the study text.

Corpus Methods and Legal Scholarship

Corpus methods are appropriate to studies which concentrate on issues of language and meanings. It is perhaps surprising therefore that these methods

[301] Michael Stubbs, 'Corpora and texts: lexis and text structure' In Joybrato Mukherjee and Magnus Huber (eds) *Corpus Linguistics and Variation in English* (Rodopi 2012) 223.
[302] Susan Hunston, *Corpora in Applied Linguistics* (no 213) [23].
[303] Charlotte Taylor and Anna Marchi, 'Blind Spots and Dusty Corners: (Self) Reflections on Partiality on Corpus and Discourse Studies' (Corpora and Discourse International Conference, Lancaster, 24th June 2018) < https://www.academia.edu/36926179/Blind_Spots_and_Dusty_Corners_self_reflections_on_partiality_in_corpus_and_discourse_studies.> accessed 29th October 2022.
[304] Francesca Bianchi, *Culture Corpora and Semantics* (no 246) 35.
[305] Ibid.
[306] Susan Hunston, Corpora in Applied Linguistics (no 213) [22].

have not gained greater acceptance within legal scholarship since the law is expressed through language. As Timothy Endicott advises:

> law is typically made by linguistic utterances. Lawyers do not just use language like biochemists; law is made by means of language. Without understanding how language works, we cannot understand the nature of law (Timothy Endicott 2004[307]).

Traditional legal scholarship typically focuses on the interpretation of legal texts (Ronan Kennedy, 2016[308]; Shane Kilcommins 2016[309]; Andrew Goodman, 2005[310]). The traditional, 'black letterist' or doctrinal, approach to legal scholarship 'employs an epistemologically internal way of knowing' (Shane Kilcommins, 2016[311]), with legal texts being the primary source (and often the sole source) of new legal facts. A doctrinal scholar might review a single case, or a group of related cases together, to extrapolate wider legal principles, which can then be used to support legal arguments. The strength of this approach is that legal scholarship and legal practice are mutually supportive. Doctrinal scholarship assumes coherence in the body of case law that the courts generate, and, through its practice, it lends that coherence to the body of case law (Shane Kilcommins, 2016[312]). This close relationship between legal scholarship and juridical practice may be one of the reasons for the predominance of the doctrinal approach in legal scholarship. The doctrinal scholar adopts similar methods to the courts and the research findings are therefore more easily assimilated into judicial processes, and more likely to persuade the Courts, and other agencies which apply the law (such as the Police) (Ronan Kennedy, 2016[312]).

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[307] Timothy Endicott, 'Law and Language' in Jules Coleman, Kenneth Himma, and Scott Shapiro (eds)*The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2004).
[308] Ronan Kennedy, 'Doctrinal Analysis: The Real "Law in Action"' in Laura Cahillane and Jennifer Schweppe (eds) *Legal Research Methods: Principles and Practicalities* (Clarius Press 2016) 23.
[309] Shane Kilcommins, 'Doctrinal Legal Method (black-Letterism): Assumptions, Commitments and Shortcomings' (no 19).
[310] Andrew Goodman, *How Judges Decide Cases*
[311] Shane Kilcommins, 'Doctrinal Legal Method (black-Letterism): Assumptions, Commitments and Shortcomings' (no 19) [10].
[312] Ibid, at 13.
[312] Ronan Kennedy, 'Doctrinal Analysis: The Real "Law in Action"' (no 308) [27].

The limitations of the doctrinal approach, however, become apparent if the scope of the study is extended beyond the text of the law and seeks to understand the social context in which laws are made, or are understood. There is increasing interest in 'law and society' studies in which the law is conceived: 'as being a component of the wider social and political structure' (Darren O'Donovan 2016[313]). These studies may 'import' empirical methods from other branches of the social sciences to catch data relating to those wider structures (Denis Galligan, 2010[314]; Laura Neilson, 2010[315]), and they may 'import' epistemological perspectives from other branches of the social sciences which allow that empirical data to be interpreted. Corpus methods are capable of capturing data relating to wider social structures, but if applied to a corpus of law reports they can retain the 'epistemologically inward looking' qualities of the doctrinal approach. This means that corpus methods could be combined with a traditional doctrinal approach to legal scholarship. However, corpus methods are eclectic in nature and can be combined with a range of interpretive paradigms. This has led some scholars to suggest that corpus linguistics methods could provide a shared platform between legal scholarship and scholars from other academic fields in areas of shared interest such as international relations (Urska Sadl and Henrik Olsen, 2017[316]).

Corpus methods may capture data relating to the law and the wider structures. However, in order to understand this data, it is necessary to use an interpretive perspective which relates the law to those structures, and which is sufficiently flexible to transcend the differences between academic disciplines. Pierre Bourdieu (1987[317]; and with Loïc Waquant, 1992[318]) have described a framework

[313] Darren O'Donovan, 'Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls' in in Laura Cahillane and Jennifer Schweppe (eds) Legal Research Methods: Principles and Practicalities (Clarius Press 2016) 109.
[314] Denis Galligan, 'Legal theory and empirical research' in Peter Cane and Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 4.
[315] Laura Neilson, 'The Need for Multi-Method Approaches in Empirical Legal Research' in Peter Cane and Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)
[316] Urska Sadl and Henrik Olsen, 'Can Quantitative Methods Complement Doctrinal Legal Studies?' (no 128).
[317] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23).
[318] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford University Press 1992) 117.

which places the legal text, the legal processes, and wider social structures in which laws are produced, to be considered within a continuous social process.

ii. The Research Perspective: Overview and Discussion

The research perspective and interpretive approach is based on a model suggested by Bourdieu in his work Outline of a Theory of Practice (1977a[319]) and developed in subsequent works, including the collaborative work with Loïc Wacquant: An Invitation to Reflexive Sociology (1992). In these works Bourdieu suggests a complex, relational, model of social organisation, which is capable of accommodating, simultaneously, accounts of social activity based on structural, macro-cosmic, social events, and interpretivist accounts of social activity based on micro-cosmic social exchanges. Bourdieu's model draws on concepts for which there is no agreed language, and he has developed a substantial vocabulary to describe the processes by which individuals and groups, make sense of and interact with their environment (including other people and groups). Pierre Bourdieu developed his model and the vocabulary that supports it, during a long academic career exploring a diverse range of philosophical, political and social issues. However, this study will adopt a simplified Bourdieusian model based on 3 elements which exist in a relation to one another, which Bourdieu names: 'capital', 'field' and 'habitus'. Each of these elements is discussed, in turn:-

a. Capital

One of Bourdieu's innovations was to develop Marx's concept of a society organised around economic forces through expanding the notion of 'capital' beyond its physical manifestations of wealth, property, etc. ('economic capital'), to include abstract 'commodities' such as 'cultural capital' (Pierre Bourdieu, 1977a[320]) and 'social capital' (Pierre Bourdieu, 1977a[321]; with Loïc Wacquant, 1992[322]), and 'sub-species' of these broader types including 'linguistic capital' (Pierre Bourdieu, 1977b[323]) and 'juridical capital' (Pierre Bourdieu 1987[324]; with

[319] Pierre Bourdieu, *Outline of a Theory of Practice* (no 31).
[320] Ibid, at 187.
[321] Ibid, at 184.
[322] Pierre Bourdieu and Loïc Wacquant, An Invitation to Reflexive Sociology (no 318) [119].
[323] Pierre Bourdieu, 'The Economics of Linguistic Exchanges' (no 21).
[324] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23).

Loïc Wacquant, 1992). For Pierre Bourdieu social activities were organised around the accumulation and display of capital, according to a series of social rules, conventions and rituals.

b. Field

The rules and regularities which guide the actors' relationship to capital are maintained within a semi-autonomous social environment, which is referred to by Bourdieu as the 'field'. The notion of field refers to the social space occupied by a particular interest or group in society which is arranged around production of a particular manifestation of capital (Pierre Bourdieu and Loïc Wacquant, 1992[325]). The word ingeniously combines the notions of a venue for competition (such as a sports field, or battlefield) in which the 'players' position themselves, socially, in relation to one another; the zone of influence of an organising force such as a magnetic field, or gravitational field; and, whilst not explicitly alluded to by Pierre Bourdieu, the term suggests also the site of productivity and industrial activity, such as a coalfield or oilfield. Bourdieu describes the properties of several fields in his works, including the site of legal processes, the 'juridical field' (Pierre Bourdieu, 1987[326]). The juridical field is the field around which activities concerned with the production of juridical capital are organised. Accordingly, it is the social space in which lawyers compete for control of the right to produce (or interpret), record, cite and apply laws.

c. Habitus

The third main element in the dynamic process described by Bourdieu, is the 'habitus'. Pierre Bourdieu describes the habitus as embodied 'dispositions' (Pierre Bourdieu and Loïc Wacquant 1992[327]), impressions on actors' psyche and physical body, sustained from their interaction with their environment. These dispositions operate primarily at an unconscious level, guiding the actor's cognition and behaviour[328] in relation to the regularities of the field, and competition for resources ('capital'). The beliefs and behaviours sustained by an actor's habitus, underlie the formulation of strategies for acquisition of capital. These processes

[325] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (no 318) [16].
[326] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23).
[327] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (no 318) [13].
[328] Pierre Bourdieu, *Outline of a Theory of Practice* (no 31) [18]

(and the strategies) are rarely consciously articulated, but when they harmonise with the rules and regularities sustained by a particular field the actor gains a sense that those beliefs and activities 'feel right' (Pierre Bourdieu and Loïc Wacquant, 1992[329]). In this manner, the habitus acts as a bridge between the internal, cognitive, environment of the actor, and the external, social, environment of the field, or: 'the collective individuated through embodiment or the biological individual 'collectivized' by socialization' (Pierre Bourdieu and Loïc Wacquant[330]). The habitus may be embodied, and 'durable' (Pierre Bourdieu, 1977a[331]), but it is also 'transposable'[332] and capable of adapting in relation to the actor's environment, and through conscious processes of self-analysis ('reflexivity') by the actor (Pierre Bourdieu and Loïc Wacquant, 1992[331]).

Discussion of Research Perspective

Through this model, Pierre Bourdieu encapsulates both the small scale interactions of 'players' within the field, and the wider influences of the field on those players and on wider society. For Bourdieu, social activity consists of the enactment of 'strategies', relating to a dynamic of actors' own internal cognition (habitus), interacting with the social environment (field) in competition for the accumulation of things which are valued within that environment: peer recognition, status, wealth, etc (i.e. capital). Bourdieu describes a complex system of exchanges which occur within that triple dynamic of capital, field and habitus, which has a feedback effect on each of those 3 elements, influencing the way in which each is shaped in relation to one another, and the way in which the whole relates to wider society. In 'The Economics of Linguistic Exchanges'[332], for example, Bourdieu describes the exchanges of linguistic capital, in the artistic field, including the exchange mechanisms which allow one species of capital to be converted into another form, according to the rules of the field in which the exchange occurs. In that essay he describes how an artist may shun a lucrative advertising commission (economic capital) which she considers compromises the integrity of her art. In this manner the artist displays the bourgeois refinement of

[329] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (no 318) [130].
[330] Ibid, at 18.
[331] Pierre Bourdieu, Outline of a Theory of Practice (no 31) [72].
[332] Ibid.
[331] Pierre Bourdieu and Loïc Wacquant, An Invitation to Reflexive Sociology (no 318) [36].
[332] Pierre Bourdieu, 'The Economics of Linguistic Exchanges' (no 21).

her sense of taste (a manifestation of cultural capital), and thereby increases the respect of fellow artists within the artistic field (accumulating her social capital), for her refusal to 'sell out', preserving the status of the artist as an 'authentic voice' outside the artistic field. In 'The Force of Law'[333] Pierre Bourdieu turns his attentions to the juridical field. He outlines the various processes undertaken within the juridical field, as a case moves towards adjudication. Once a dispute enters the juridical field it is subjected to the processes of that field, following specialised linguistic conventions, and rules of disputation, which are only understood by legal professionals. Those processes, whilst ostensibly aimed at the disposal of a case, have the effect of fostering universal conformity to the legal texts (and therefore the status of the legal field), and maintaining the status of the legal professionals concerned in the processing of that dispute (displaying their accumulated juridical capital).

Pierre Bourdieu's model provides a key to understanding the processes undertaken by the Court in constructing privacy norms; and in evaluating the relatedness of the Courts' approach to privacy questions to lay approaches. His interest in the use of the structure and content of language as a means of generating 'social capital' and 'linguistic capital' is invaluable in understanding the manner in which the language of the Court influences debate on privacy issues. Bourdieu's model also assists with understanding the dynamics underlying 'language production' within the juridical field, and the relationship between this and understandings of privacy in wider society. Pierre Bourdieu locates the legal texts at the centre of juridical processes observing that they provide a 'bank' of juridical authority[334] for lawyers. Additionally, he suggests that law reports provide a historical record of power relations and ideological conflicts at a societal level. In doing so they legitimise and maintain power relations outside the juridical field. As an example, he comments that the growing influence of the Unions in the USA, in the 20th century is reflected and embodied in the American law reports[335]. Pierre Bourdieu's model provides an epistemological bridge between the legal texts, judicial processes, and wider society (with its enveloping social, political and cultural influences).

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[333] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23).
[334] Ibid, at 823.
[335] Ibid, at 818.

Pierre Bourdieu's model is based on the 'relatedness' of things. This holistic perspective lends his model a flexibility that allows it to be applied (as Bourdieu himself applied it) to a wide range of study topics. The flexibility of the Bourdieusian model has allowed it to be developed to discuss social phenomena which have arisen after his death in 2002, such as social media (Gabe Ignatow and Laura Robinson, 2017[336]; Evelien D'heer and Pieter Verdegem, 2014[337]; Zizi Papacharissi and Emily Easton, 2013[338]). Studies of online behaviour and internet subcultures frequently invoke Bourdieusian concepts such as 'social capital' (for example Andrea M. Matwyshyn 2013[339]), linguistic capital (Ruth Page, 2012[340]), habitus (Zizi Papacharissi and Emily Easton [341]), and field (Evelien D'heer and Pieter Verdegem, 2014[342]; Gwen Bouvier, 2015[343]). Some of these studies have extended Bourdieu's framework to describe novel social forces such as 'digital capital' (Gabe Ignatow and Laura Robinson, 2017[344]). Bourdieu would likely approve of this development of his ideas, since he was an advocate of eclecticism and was critical of abstract theories which had no practical application (Pierre Bourdieu and Loïc Wacquant 1992[345]).

Bourdieu was an advocate of practice-led methods, and the Bourdieusian model accommodates a range of methods which capture different types of data. His model relates internal cognitive processes and mental schemata (the habitus) to the social structures in which those schemata are enacted (the field), and to the focus of activities within that field (the canon of legal texts). The model holds these separate elements together within a single framework, allowing

[336] Gabe Ignatow and Laura Robinson, 'Pierre Bourdieu: theorizing the digital' [2017] 20 Information, Communication and Society 950.
[337] Evelien D'heer and Pieter Verdegem, 'Conversations About the Elections on Twitter: Towards a Structural Understanding of Twitter's Relation with the Political and the Media Field' (2014) 29 European Journal of Communication 6, 720.
[338] Zizi Papacharissi and Emily Easton, 'In the Habitus of the New' (no 86).
[339] Andrea Matwyshyn, 'Privacy the Hacker Way' (2013) 87 Southern California Law Review 1, 1.
[340] Ruth Page, 'The Linguistics of Self-Branding and Micro-Celebrity in Twitter: The Role Of Hashtags' (2012) 6 Discourse and Communication 2, 181.
[341] Zizi Papacharissi and Emily Easton, 'In the Habitus of the New' (no 86).
[342] [342] Evelien D'heer and Pieter Verdegem, 'Conversations About the Elections on Twitter' (no 337).
[343] Gwen Bouvier, 'What is a discourse approach to Twitter, Facebook, Youtube and other social media: connecting with other Academic fields?' (2015) 10 Journal of Multicultural Discourses 2, 149.
[344] Gabe Ignatow and Laura Robinson, 'Pierre Bourdieu: theorizing the digital' (no 336).
[345] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (no 318) [31].

connections between them to be explored. The Bourdieusian model is particularly appropriate to the subject of privacy, since privacy is a multi-faceted, highly contextual (Helen Nissenbaum, 2010[346]), concept which operates at the threshold of internal cognitive processes, and society (Raymond Wacks, 2015[347]; Kirsty Hughes, 2012[348]; Ruth Gavison, 1980[349]).

Pierre Bourdieu's theories are gaining popularity in the field of digital sociology, including studies on digital privacy. However, his theories have not been universally accepted. His concept of a quasi-independent 'juridical field', driven by its own internal logics and divisions, challenges conceptions of the law and legal institutions which assume that legal institutions fulfil an essential function within an integrated state. The model of law and legal institutions outlined by Albert Dicey[350], which draws upon fundamental concepts such as the rule of law and the separation of powers, continues to be influential in legal scholarship and legal practice. It is anticipated that there would be resistance to other paradigms, and the insights which rest upon other models of social and political organisation. Further, Pierre Bourdieu's critique of the legal institutions was originally penned over 40 years ago, and in his native French (the French original was published in 1977 and Bourdieu did not translate this work himself). However, despite those potential criticisms of Bourdieu's model the alienating effects he describes of the 'rationalisation' processes of litigation (as a case is reconstructed into a form which allows it to be processed by the Court), appear to be reflected in studies on users of legal services. See, for example, James Campbell's account of mixed experiences of detained mental health patients using legal and advice services[351], Jacqueline Wheatcroft, Graham Wagstaff and Annmarie Moran's study of experiences of reporters of sexual offences at Court (2009[352]), the study by Nicole Busby and Morag McDermont on users' experiences of industrial tribunals

[346] Helen Nissenbaum, *Privacy in Context* (no 44).
[347] Raymond Wacks, *Privacy: A Very Short Introduction* (no 32) [44].
[348] Kirsty Hughes, 'A Behavioural Understanding of Privacy' (no 138).
[349] Ruth Gavison, 'Privacy and the Limits of Law' (no 39).
[350] Introduction to the Study of the Law of Constitution (Originally published 8th edn 1915, Liberty Classics 1982).
[351] James Campbell, 'Stakeholders' Views of Legal and Advice Services For People Admitted to Psychiatric Hospital' (2008) 30 Journal of Social Welfare and Family Law 3, 219.
[352] Jacqueline Wheatcroft, Graham Wagstaff and Annmarie Moran, 'Revictimizing the Victim? How Rape Victims Experience the UK Legal System' (2009) 4 Victims and Offenders 3, 265.

(2012[353]); or Lisa Vanhala's study of environmental pressure groups who have engaged in litigation to support their aims- cynically, using the Court system to highlight its inherent weaknesses (2012[354])).

Other social theories could have been used to model the effects of loss of privacy. Michel Foucault's model has been discussed in the preceding chapter (Chapter 1). It is considered that the panopticon is useful as a means of understanding the cognitive effects of surveillance and understanding the processes by which surveillance activities can influence broader social changes. However, Foucault's model fails to sufficiently describe the social structures which underlie these surveillance activities (including the role of the courts and legal services in protecting privacy rights), and it is therefore less useful than Bourdieu's model as an analytical tool for considering changes to those structures which might assist with the task of preserving privacy rights. Further, Pierre Bourdieu's theories are rooted in research practice, and they can therefore be more easily connected to the research methods.

Richard Posner, who served as a federal appellate judge in the USA from 1981-2017, offers a model of law and society which is rooted in the experience of legal practice. In *The Economics of Justice*[571] he sets out an epistemological framework, positioning legal systems within society based on the application of economic principles. Richard Posner's framework is centred on the premise that people are 'rational maximisers' and the principle of 'wealth maximisation'[572] underpins a large body of writings on various legal topics including rights to privacy. Regarding privacy, he traces the development of privacy rights (and codified laws generally), as necessary to the historical progression of society, as it becomes more complex and technologically advanced. One of Richard Posner's earlier works, *The Right to Privacy*[573] sets out his proposed framework for privacy law reforms. He identifies 'privacy' with 'information' and considers reforms to US privacy law based on an

[353] Nicole Busby and Morag McDermont, 'Workers, Marginalised Voices and the Employment Tribunal System: Some Preliminary Findings' (2012) 41 Industrial Law Journal 2, 166.
[354] Lisa Vanhala, 'Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK' (2012) 46 Law and Society Review 3, 523.
[571] Richard Posner, *The Economics of Justice* (Harvard 1981).
[572] Ibid, at 60.
[573] Richard Posner, 'The Right to Privacy' (1978) 12 Georgia Law Review 3, 393

analysis of the relative costs of protecting valuable information (and the value of the information, itself) against the cost of 'prying', a concept (and activity) which he seeks to strip of its negative connotations. Richard Posner suggests that 'Legal right[s] of privacy based on economic efficiency' [574] should rest on 3 factors:

1. Protection of business secrets.

2. No general right of privacy by individuals

3. Protection from intrusive surveillance except where necessary for crime prevention purposes.

One of Richard Posner's more contentious conclusions in his analysis is that the press should be given greater freedom in the reporting of celebrity gossip. He considers that this is 'genuinely informational'[575], and reflects a normative, aspirational, interest in the affairs of wealthier sectors of society. Regarding the matter of personal privacy, Richard Posner is critical of the concept developed by Samuel Warren and Louis Brandeis of the 'right to be let alone'[576], suggesting that: 'very few people want to be let alone. They want to manipulate the world around them by selective disclosure of facts about themselves'[577].

He considers privacy issues in the 'digital age' in a later work, *Privacy Surveillance and the Law*[578]. Here, he distinguishes between 'pure' privacy rights (concerning the disclosure of information) and 'instrumental' privacy rights (concerning fears of that information being used against oneself). Expressing criticism of legal developments in the matter of 'pure' personal privacy rights he seeks to balance those rights against the interests of commerce and governance. He observes that voluntary disclosures of personal information routinely occur, and are a precondition of many commercial activities, such as disclosures that are necessary

[574] Ibid, at 414.
[575] Ibid, at 396.
[576] Samuel Warren and Louis Brandeis, 'The Right to Privacy' (1890) 4 The Harvard Law Review 192.
[577] Richard Posner, 'The Right to Privacy' (1978) 12 Georgia Law Review 3, 400.
[578] Richard Posner, 'Privacy, Surveillance, and Law' (2008) 75 University of Chicago Law Review 245.

to an insurance agreement, or students seeking an employer's reference. On the matter of governance Richard Posner points to the advantages of mass surveillance in the management of the risk of terrorism and crime. Further, he argues that transparency in government should be tempered with a level of privacy which facilitates the frank discussions that are required for 'legitimate deliberative activity'[579].

There are some features of Richard Posner's model which render it pertinent to the study discussed in this thesis. The model is based on universal economic principles, which connect an analysis of the law with a conception of motivation and social activity. Further, Richard Posner has clearly located the matter of privacy within his model, providing a platform from which legal developments in privacy can be understood and critiqued. However, his framework rests on some contentious, broad, assumptions regarding motivating factors for social behaviours. This has attracted criticism in his native USA. Matthew Kramer[580] for example identifies some contentious assumptions in Posner's work, about biological causes for some social behaviours[581]. Matthew Kramer also notes a broad brush approach in the manner in which Richard Posner applies 'a few economic principles to entire bodies of law'[582] identifying an 'epistemological tension' between this and Posner's call for a pragmatic approach to the judicial task. Richard Posner also makes some broad assumptions regarding cultural attitudes to support his position on privacy, which appear to be culturally specific to the USA. For example, he supports his views on the role of the press with an observation that: 'few people are interested in the lives of the poor' save as a 'cautionary function'[583]. This statement fails to accommodate the popularity of some successful TV series in the UK which focus largely on the lives of less affluent characters, such as the soap operas, East Enders and Coronation Street, or 'Reality TV' programmes, such as Geordie Shore and The Only Way is Essex. In another broad statement Richard Posner supports his scepticism of the notion of personal privacy by describing travellers on public transport routinely discussing their

[579] Ibid, at 246.
[580] Matthew Kramer, 'The Philosopher-Judge: Some Friendly Criticisms of Richard Posner's Jurisprudence' (1996) 59 The Modern Law Review 3, 465.
[581] Ibid, at 470.
[582] Ibid, at 446.
[583] Richard Posner, 'The Right to Privacy' (1978) 12 Georgia Law Review 3, 396

personal matters with each other, commenting that: 'Americans are not known for reticence or personal modesty'[584]. This observation does not sit easily with cultural stereotypes relating to the UK, which might indeed suggest a widespread 'reticence or personal modesty'.

Richard Posner's views on privacy draw upon assumptions regarding cultural attitudes, which are particular to the USA. He focuses, also, on legal institutions which are particular to the US, such as the US Constitution, and he discusses case law developments which are specific to the US. Accordingly, his analysis cannot easily be applied to an analysis of law and society in the UK. Richard Posner is himself familiar with legal traditions and structures in the UK, and he advises caution when seeking to apply the experience of one jurisdiction, on a piecemeal basis, to another. He suggests that legal systems operate as a:

> set of interrelated, interracting parts, each of which has a function in making the system work. The system itself, moreover, has a function. So system and function are related concepts'[585]

This description of 'systems' suggests some underlying ontological assumptions in Richard Posner's work. Like his broad statements on social attitudes, this assumption, that 'system and function are related concepts', seems to implicitly rest on an assumption of social integration, and widely held values, which he fails to fully explain. This could relate to his position as a senior member of the US legal establishment, which as US jurist Jed Rubenfeld[586] has noted is 'incongruous' with his role as legal critic; and may be a difficult position from which to criticise societal and legal structures (rather than particular developments in the law).

Pierre Bourdieu's framework does not draw on broad assumptions of particular cultural attitudes. Neither does it rest on the analysis of particular legal developments. Pierre Bourdieu's analysis makes no assumptions of an integration of 'system' and 'function'. Richard Posner, quoted in the preceding paragraph,

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[584] Richard Posner, 'Privacy, Surveillance, and Law' (2008) 75 University of Chicago Law Review 249.
[585] Richard Posner,*Law and Legal Theory in the UK and USA* (OUP 1997).
[586] Jed Rubenfeld, 'A Reply to Posner' (2002) 54 Stanford Law Review 4, 753.

suggests that 'system and function are related concepts'. In Pierre Bourdieu's framework there is no assumption that systems necessarily *have* a defined function beyond reproduction of themselves. For Bourdieu, systems operate according to their own principles, derived from the activities of actors within them, as well as their positioning towards other systems. Further, Pierre Bourdieu's conception of society is not centred on laws and legal structures, which form but one of many competing interests within society, albeit a powerful one. Since Pierre Bourdieu's framework is not centred on legal institutions, it is considered that it is better placed to locate legal institutions within their wider, societal, context.

The work of Anthony Giddens, in contrast, is rooted in sociological research practice based in the UK. In his formative work *The Constitution of Society*[587], Anthony Giddens sets out the principles of *structuration theory*. In that work he draws on an eclectic range of influences, including Karl Marx, Sigmond Freud, Harold Garfinkel, and the Swedish geographer Torsten Hägerstrand. Anthony Giddens shares Pierre Bourdieu's interest in developing a model of social organisation which consolidates notions of 'agency' with notions of 'structure'. Also, in common with Pierre Bourdieu, he develops a substantial vocabulary to describe complex psycho-social processes. Discussing the properties of societal 'structures' Anthony Giddens seeks to avoid what he considers the deterministic presentation of the concept in the works of Émile Durkheim and Talcott Parsons, as something that operates as an external, constraining, force. He challenges this with a dualistic conception of 'structure' as: 'rule-resource sets involved in the institutional articulation of social systems'[588]. Accordingly, structures have, at the same time, a 'constraining' influence (as 'rule sets'), and an 'enabling' influence (as 'resource sets')[589]. These 'enabling' properties of structure are found in all structures, even within 'structures of domination', wherein the 'dialectic of control' provides 'a facility for subordinates to influence the activities of their superiors'[590]. For Anthony Giddens structures exist as a 'virtual order of relations,

[587] Anthony Giddens, *The Constitution of Society: Outline of a Theory of Structuration* (Polity Press 1984).
[588] Ibid, at 185.
[589] Ibid, at 162.
[590] Ibid, at 16.

out of time and space'[591], and they are 'instantiated' through interactions. Agents apply their knowledge of the 'rule-resource sets' in the course of the 'routinized occurrence of encounters'[592]) that characterise day-to-day life, and in doing so reproduce those structures. Anthony Giddens' conception of society is, therefore, rooted in social interactions, which actuate abstract rule sets into a definite time and space. All actors have an awareness of these rule sets. However, the rights and obligations associated with them are not fully internalised, but they are (through reflexive processes) monitored against the actions of the self and the other parties to interactions[593]. The routinised enactment of rule sets in the course of interactions reproduces them, but the observance of those routines (which are known to all parties to an interaction) also promotes a mutual sense of ontological security or 'trust'[594]. This sense of ontological security can be threatened if social rules, and the routines that manifest them, are not correctly observed. Accordingly, they can be enforced through the effective application of normative sanctions, when they are breached. Sanctions are a manifestation of the constraining properties of power. They therefore attach to all social identities which express 'structural asymmetries of domination'[595] and can be applied in the course of interactions in which these 'structural asymmetries' are manifested. The task of 'norm enforcement' is not restricted to legal structures. Indeed, Antony Giddens suggests that the 'structuring' effects of sanctions applied informally in the course of routine interactions can be greater than that of some laws, due to the greater frequency with which those routine rules and sanctions are reproduced [596].

The position of legal structures within this model requires some analysis. Within Antony Giddens's framework all structures are reproduced through contextualised interactions. Structures are 'aggregations of microexperiences'[597] and legal structures are therefore merely 'aggregations' of specialised interactions. He illustrates the nature of these specialised interactions by

[591] Ibid, at 304.
[592] Ibid, at 86.
[593] Ibid, at 29.
[594] Ibid, at 141.
[595] Ibid, at 30.
[596] Ibid, at 26.
[597] Ibid, at 141.

considering an extract from a courtroom interaction between a judge and a prosecutor during a sentencing hearing [598]. The seemingly banal nature of the dialogue conceals the application of a complex set of rules in which is it mutually recognised that the judge occupies a dominant position, allowing him to control the pace and direction of the interaction. Within that dialogue the rules which structure the hearing are rarely explicitly identified, but they are referred to tacitly. In this manner each party demonstrates 'trust' in the other's knowledge of those rules, mutually reproducing both the rules and the agents' relative positions. Legal structures within Anthony Giddens's model are subject to the same processes as other structures, albeit the rules being applied/reproduced are particular to legal interactions. However, Giddens explicitly ascribes to legal structures a position of prominence within capitalist formulations of society as 'structures of legitimation'. Anthony Gidden's conception of structures has attracted some criticism, which is considered later. First, however, it is necessary to consider further the position of lawyers and legal structures in Gidden's model of structuration. In one of his later works, *The Consequences of Modernity*[599], Anthony Giddens examines the role of 'experts' in modern formulations of capitalist society. He describes the historical development of 'expert systems' (including legal systems) as 'disembodied mechanisms' which 'remove social relations from the immediacy of context'[600]. These systems are contingent on the trust of the layperson, since the layperson has no means of verifying the authenticity of those systems.

Anthony Giddens explicitly locates surveillance activities within his model of society. In The Consequences of Modernity[601], Anthony Giddens also develops some themes discussed in the Constitution of Society[602] concerning the historical development of society and the emergence of capitalism. For Anthony Giddens 'the control of information and social supervision is built into the institutional dimensions of modernity'[603]. This builds upon an observation in The Constitution

[598] Ibid, at 332.
[599] Anthony Giddens, The Consequences of Modernity (Polity Press 1990).
[600] Anthony Giddens, The Constitution of Society: Outline of a Theory of Structuration (Polity Press 1984)
[601] Anthony Giddens, The Consequences of Modernity (Polity Press 1990), 59.
[602] Anthony Giddens, The Constitution of Society: Outline of a Theory of Structuration (Polity Press 1984), 127.
[603] Ibid, at 129.

of Society that, 'the collation of information used to co-ordinate social activities of subordinates, and the direct supervision of the conduct of those subordinates' is an essential process in the reproduction of the capitalist formulation of society, being a replication of the surveillance activities which routinely occur in the workplace[604]. Conversely, regarding the matter of privacy, Anthony Giddens locates 'at least one connotation of privacy' in the 'back room' activities which are not subject to these processes of surveillance in which individuals enjoy 'regional isolation... from the ordinary demands of the monitoring of action and gesture'[605].

There are some features of Anthony Gidden's theory of structuration which make it attractive as a methodological model for this current study. Anthony Giddens research is based in the UK, and his theories can be applied to the structures of British society. His model is not centred on legal structures but places those legal structures into a wider context of structuration processes. The operation of legal processes is, likewise, placed into a wider context of 'expert systems'. Further, his analysis of an extract of courtroom dialogue demonstrates a process by which that text can be analysed to reveal some of the rules that are invoked in the course of that interaction.

However, there are some features of Anthony Giddens's model, which render it less attractive as a methodology for this study. Whilst Anthony Giddens describes some of the features of legal structures, the position of laws and legal structures within his overall conception of society is unclear. As has been previously noted, for Anthony Giddens legal structures are manifested in a similar manner to other structures, through processes of specialised interactions. However, Anthony Giddens ascribes to legal structures, expressed as 'structures of legitimation', particular qualities that allow them to be 'mobilized' with 'structures of domination' (which express resource allocation) and 'structures of signification' (which are expressed as modes of discourse)[606]. The mobilizing forces behind these structures, and the identity of the 'sectional interests' that these structures promote/reproduce are not fully identified, however. Anthony Giddens is also unclear regarding the processes by which the constraining effects of these distinct

[604] Ibid, at 127.
[605] Ibid, at 129.
[606] Ibid, at 32,

structures are manipulated and co-ordinated to promote those sectional interests. There is within this analysis a suggestion of stability and homogeneity within the 'sectional interests', and the forces that promote them, which does not sit easily with the notion that the structures that shape these interests are instantiated through interaction. This ambiguity is compounded with Gidden's conception of 'expert systems' in The *Consequences of Modernity*[607], which suggest legal structures which have an external validity outside of interactions. The perceived weakness within Anthony Giddens's conception of the structuring effects of class (or 'sectional interests'), has attracted criticism. Brian O'Boyle[608] argues that Anthony Giddens's reliance on interactive processes as a structuring dynamic fails to explain the dynamic between 'structures of control' and ownership of 'allocative resources' in the constitution of class[609]. Further, he suggests that, since all processes are located in the instant, the historical development of structures is inadequately explained. He concludes that Giddens's dualism is 'merely semantic', and, in its practical application, structuration theory is wholly centred on notions of agency[610]. Wafa Kort and Jamel Gharb[611] point to similar weaknesses within Anthony Giddens's model, suggesting that he insufficiently distinguishes between the concepts of 'structure' and 'agency' and at times appears to conflate these different concepts[612]. They also question the adequacy of the concept of 'ontological security' as a motivating factor, suggesting that Anthony Giddens's model assumes a collaborative interactive processes, which insufficiently accounts for self-interest as a motivating factor.

Where the position of legal structures within Anthony Giddens's work is at times unclear, the proposed model, derived from the writings of Pierre Bourdieu, clearly places legal structures within society, identifying within those structures a dynamic based on mutual competition, in relation to the acquisition and display of valued 'commodities' (capital), the forces that operate within those structures (field) and the actor's embodied dispositions (habitus) that are brought to those

[607] Anthony Giddens, The Consequences of Modernity (Polity Press 1990).
[608] Brian O'Boyle, 'Reproducing the social structure: A Marxist critique of Anthony Giddens's Structuration Methodology' (2013) 37 Cambridge Journal of Economics 5, 1019.
[609] Ibid, at 1026.
[610] Ibid, at 1022
[611] Wafa Kort and Jamel Eddine Gharb, 'Structuration Theory Amid Negative and Positive Criticism (2013) 3 International Journal of Business and Social Research 5, 92.
[612] Ibid, at 94.

structures. Pierre Bourdieu writes extensively about the properties of legal structures and (unlike Giddens) locates law reports within those structures, identifying them as a resource which fuels the internal dynamics of legal systems, and (connecting legal structures with wider society) as a historical record of the political, sectional, struggles that underlie legal disputes. It has been noted that Anthony Gidden's provides an example of the application of his structuration theory in an analysis of a courtroom interactions, but despite this it is not considered that this theory would provide a useful model for the current textual analysis of law reports, which focuses not on the interactions at the court, but on the presentation of privacy within law reports. Law reports, in any event, cannot be relied upon to faithfully reproduce the minutiae of courtroom interactions; but are a record of the judicial deliberations, the facts, and the principles, which support the judicial findings[613]. There are other models of text analysis which could have been applied in this research to understand the processes behind the production of meaning from text. The various models applied in the field of Critical Discourse Analysis ('CDA') includes the discursive, neo-Marxist, approach taken by Norman Fairclough (1989[355]) and the discursive-cognitive approaches of Teun van Dijk (2018[356]). The techniques of Critical Discourse Analysis ['CDA'] also share some similarities with corpus linguistics methods and there have been some studies in which corpus methods have been combined with CDA methods and paradigms (for example, Basil Germond, Tony McEnery and Anna Marchi, 2016[357]; Paul Baker et al 2008[358]; Norman Fairclough 2000[359]). However, whilst CDA methods have been deployed within a range of perspectives and disciplines the methods assume a particular stance towards the text. Ruth Wodak defines the approach of CDA: 'CDA aims to investigate critically social inequality as it is expressed, signalled, constituted, legitimised and so on by language use' (Ruth

[613] Andrew Goodman, *How Judges Decide Cases* (XPL Law 2005)
[355] Norman Fairclough, *Language and Power* (Longman 1989).
[356] Teun van Dijk, *Discourse as Structure and Process: Discourse Studies: A Multidisciplinary Introduction* (Sage 1997).
[357] Basil Germond, Tony McEnery and Anna Marchi, 'The EU's Comprehensive Approach as The Dominant Discourse' (no 266).
[358] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A Useful Methodological Synergy? (no 211).
[359] Norman Fairclough, *New Labour New Language?* (Routledge 2000).

Wodak 2001[360]). In contrast, corpus linguistics methods might reveal language structures within text which express or legitimise social inequality, but those structures are not assumed at the outset . In this respect the practitioner of corpus methods takes (initially, at least) a neutral stance towards the text. This neutral stance is reinforced by the application of statistical measures to reveal significant words or phrases within the text at the earlier stages of text analysis. It is only at the later, qualitative stages of corpus linguistic analysis that the methods might resemble the CDA approach.

Corpus methods therefore provide a neutral framework which allow them to be combined with a wide range of interpretive perspectives. The main, if not the only, assumption that underlies corpus methods, has been identified by John Sinclair (1991[361]) which he describes as 'the idiom principle'. This principle is the assumption that meaning is generated by blocks of text ('idioms'), rather than individual words, and that language consists of the piecing together of these idioms, rather than the selection of individual words. This central assumption, that meaning comes from a groups of associated (collocated) words does not conflict with the Bourdieusian approach and can be consolidated with Bourdieu's conception of the 'embodied dispositions' which constitute the habitus.

Conclusions

Pierre Bourdieu's framework is eclectic, holistic, practice led, and can be combined with a range of methods including corpus linguistics methods. Pierre Bourdieu's perspective is a relational perspective in which all knowledge is considered to be socially constructed and therefore all knowledge is partial. Accordingly, Bourdieu stresses the importance of reflexivity, not as a means of ensuring objectivity, since objectivity is impossible, but as an essential part of the research process, which is capable of revealing new social 'facts' (Pierre Bourdieu and Loïc Wacquant 1992[362]). A possible weakness in Pierre Bourdieu's approach is that presents human cognitive processes as dry, analytical and geared towards

[360] Ruth Wodak, 'What CDA is About – a Summary of its History, Important Concepts and Its Developments' in Ruth Wodak and Michael Meyer (eds) *Methods of Critical Discourse Analysis* (Sage 2001) 3.
[361] John Sinclair, *Corpus, Concordance, Collocatio*n (no 251) [110].
[362] Pierre Bourdieu and Loïc Wacquant, An Invitation to Reflexive Sociology (no 318) [31].

extrinsic goals such as social capital and cultural capital, which are accumulated through social activities. There appears to be insufficient consideration of intrinsic goals, which might rest purely on internal factors such as feelings of emotional and spiritual wellbeing. It is possible that emotional and spiritual factors have a significant influence on the construction of an actor's world view and can be a powerful driver of social activity. The absence of these factors within Bourdieu's model is, therefore, a significant limitation. However, Bourdieu's flexible model can be adapted to meet this limitation, and consideration will be given to 'intrinsic' motivational forces such as a person's 'spiritual capital', should this seem to be a significant factor.

iii. Reflexive analysis and Ontological Assumptions.

Reflexive Analysis

Bourdieu, whose early research experience included anthropological field studies of the Kabyle tribes of Algeria, was aware of the influence of the scholar's own dispositions (habitus) on the study material and the way in which it is understood. He therefore recommends conscious 'social analysis' or reflexivity at key stages in the research process as a means of identifying biases and as a means of identifying new knowledge, since knowledge acquisition is regarded as a social process.

As Loïc Wacquant, in *An Invitation to Reflexive Sociology* (1992[363]) observes, Pierre Bourdieu identifies 3 areas of bias (P39):

i. The social class and 'coordinates' (gender, age, ethnicity etc) of the sociologist. This picked up by other social researchers.

ii. The position occupied by the analyst within the academic field.

iii. Intellectualism which causes us to look at social behaviour as spectacle ('significations to be interpreted') rather than practical problems requiring a solution.

[363] Ibid, at 39.

Since this, the discussion of the corpus linguistic methodology, and the research approach can be regarded as a significant stage in the study process, consideration will be given to the 'social analysis' of the researcher. Following Loïc Wacquant's guidelines, quoted in the preceding paragraph, the relevant biographical details, liable to influence the researcher's habitus, have been identified:

Legally trained, middle-aged, caucasian, heterosexual, male, who is no longer in legal practice. Has worked in both the private and state sector. Politically identifies as 'centre left'. Grew up in small rural community but now lives in a central location in a medium sized city. Studied History to graduate level, Law and Society to Masters' level.

Ontological Assumptions

This research rests on the following ontological assumptions:

1. That meaning/knowledge generation from language is not a static activity but a dynamic social process, which is subject to the application of various social rules and regularities including power structures and context-specific rules. Accordingly, the meaning of a word or phrase cannot be considered in isolation from the social context in which it expressed; or received.

2. Whilst words may take particular meanings in the context of the exercise of legal processes, there is a mutual influence between the courts and wider society in relation to language and meaning generation, albeit the properties and extent of this mutual influence may not be known.

3. Because meaning/knowledge generation is a social act, subject to social rules and regularities, close examination of a text (and the language choices contained within it) may provide insights into the social conditions influencing the production of that text.

4. Meaning in a text is not evenly distributed across the words in that text, but certain words ('keywords') are particularly important in the process of meaning generation across the text as a whole. Meaning is also generated by particular combinations of words and by the close association of particular words ('collocates'). Consequently, an exploration of the text to identify these semiotically significant words is valuable as a means of understanding the meaning of a text.

5. Written court reports on privacy disputes from the domestic higher courts and tribunals provide a reliable account of the full range of meanings that the law has given to privacy.

iv. Conclusion

This Chapter has considered the research methodology (corpus linguistics) research methods (reflexivity, keyword analysis, collocate analysis and concordance analysis) and research perspective, or approach (a model based on Bourdieu's works). It has considered some of the strengths and limitations of the corpus linguistics approach and some of the potential pitfalls in applying them. The Chapter has considered the three elements of habitus, capital and field, and the flexibility of this model in describing the relationship between internal cognitive processes and wider social forces. It was proposed that this makes Pierre Bourdieu's model particularly suited to research on the matter of privacy, which is incorporated in a range of social practices, but rests, as the HoL confirmed in *Campbell*, on the threshold of socially agreed standards ('reasonable) and internal cognitive processes (i.e. 'expectations of privacy'). The chapter has considered some of the strengths and limitations of Pierre Bourdieu's approach and concluded with a reflexive analysis of the research perspective, the researcher, and the ontological assumptions which underpin this study.

The next Chapter (Chapter 4) considers case law developments of the law of privacy and identify common themes and principles.

Chapter 4
Case Law Review

Introduction

In the preceding chapters this thesis considers the socio-cultural background to developments in domestic privacy law.

Chapter 2 considers the problem of privacy. It reviews changes in the way that privacy (and threats to privacy) has been perceived. Chapter 2 discusses challenges to the status of privacy brought about by technical innovation, changing models of privacy, the role of digital media, changing attitudes towards printed media, and intrusive journalistic methods. Chapter 2 also considers changes within the legal field itself, for example in relation to the enactment of the Human Rights Act 1998, and the influence of Strasbourg in relation to Article 8 rights. It is suggested that some of these disparate influences in privacy discourse coalesced in the case of *Campbell*, which cemented into domestic law the two principles of 'reasonable expectations of privacy', and 'misuse of private information' ['MOPI'].

Chapter 3 considers research methods which could capture data relating to judicial conceptions of privacy as well revealing some of the of the social forces behind them. There follows a discussion of the chosen research methods: corpus linguistics, with a critical review of studies in which these linguistic methods have been applied in relation to social-legal issues, and in social studies generally. Chapter 3 also considers a wholistic interpretive model, derived from the writings of the French social scientist, Pierre Bourdieu, which could hold and contextualise these different kinds of data.

This Chapter (Chapter 4) reviews some of the case law which has followed the rulings in *Campbell*. It considers the ambit of judicially defined privacy, and its position in relation to adjacent areas of law, such as defamation and other Article 8 rights enacted by the HRA. This Chapter considers broad patterns and recurrent themes within privacy case law, as well as apparent inconsistencies and ambiguities. There follows a general discussion of privacy law developments, considering whether any patterns or regularities can be discerned from the canon of privacy case law as a whole. There will be a discussion of some of the criticisms raised by legal scholars regarding developments in privacy case law.

The Many Faces of Privacy

The term 'privacy' can refer to a "family" of related, but qualitatively different, phenomena which emphasise different meanings, manifestations, and conceptualisations of the term. This multifarious quality of privacy is reflected in the text of the HRA, where Article 8 rights are defined broadly. Schedule 1 of the Act asserts that: 'everyone has the right to respect for his private and family life, his home and his correspondence'. The very wording of the HRA therefore integrates (or conflates) some qualitatively different discursive themes: notions of a private life, the family, the home environment, and the contents of correspondences. These disparate themes have been developed in case law in relation to the legal precepts defined in *Campbell* of 'reasonable expectations' and 'misuse of private information'. Nicole Moreham, writing a year after the HoL decision in *Campbell*, refers to other tests discussed in that case which have not been developed to the same extent, if at all, as 'reasonable expectations' and 'misuse of private Information'. These include, 'the obviously private test' and the 'highly offensive test' (Nicole Moreham 2005[365]) Case law, subsequent to the ruling in *Campbell* has also introduced additional legal concepts to privacy discourse, such as 'people of standing' (Kirsty Hughes, 2019[366]) and the media-termed 'super-injunction'. Progressively, the Courts have defined the scope of privacy protection in respect of a wide variety of social environments, for example, disclosures made in social media[367], blogs and websites[368], and in relation to state activities such as the activities of the police[369], and the criminal

[365] Nicole Moreham, 'Privacy in the common law: a doctrinal and theoretical analysis' [2005] 121 Law Quarterly Review 628.

[366] Kirsty Hughes, 'The Public Figure Doctrine and The Right to Privacy' (2019) 78 The Cambridge Law Journal 1, 70.

[367] For example, in relation to disclosures made in Facebook: *CG v Facebook Ireland Ltd* [2015] NIQB 11 [publication on social media of details of the offences of a child murderer due to be released on license]; *JQL v NTP* [2020] EWHC 1349 (QB) [disclosure of details of the Applicant's mental illness to other family members in a Facebook post].

[368] For example, *BVC v EWF* (No. 2) [2019] EWHC 2506 (QB) [summary judgement awarded against author of a website disclosing details of a relationship with the Applicant]; *Author of a Blog v Times Newspaper* [2009] EWHC, [2009] EMLR 22 [disclosure of the identity of a Police officer who was author of a 'whistleblowing' blog].

[369] For example: *JR 27's Application for Judicial Review* (No. 2) [2010] NIQB 143 [retention of DNS samples, finger prints and photographs, following arrest]; *R (Catt) v ACPO* [2015] UKSC 9 [retention by the police, of photographs and documents relating to a 'serial demonstrator']; *ERY v Associated Newspapers Ltd* [2016] EWHC 2760 (QB) [media reporting of the details of the investigation of an entrepreneur for financial offences, where

justice system[370]. As the boundaries of privacy law have been progressively established, there has been a development of legal precepts which establish the oppositional boundaries of other rights, such as the principles of: 'open justice'[371] freedom of the press[614], and the notion of 'public interest'[372]. The scope of privacy has also been defined in relation to other fields of law such as defamation[373], personal injuries[374], data protection[375] and criminal law[376]. Within the ambit of these boundaries, privacy law cases have developed a growing canon of legal precedent, and particular themes have developed within that canon as cases cluster around related issues. The discursive structure of cases is necessarily complex: a case is rarely focused on a single precept or narrative, but it draws together a number of themes. Accordingly, any attempt to characterise a particular case as representative of a particular theme or narrative is inevitably artificial and influenced by subjective and intuitive factors. However, it is necessary to establish loose groupings within the legal canon in order to examine them further, albeit those categories should not be considered to be definitive since a case can crystalise several different concepts or narratives simultaneously. Chapter 4 therefore considers, in turn, some emergent themes in privacy law.

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there was no subsequent prosecution]; Re Trinity Mirror (A Intervening) [2008] QB 770 [media reporting of details of child of a prominent paedophile].

[370] For example: *ERY v Associated Newspapers Ltd* [2016] EWHC 2760 (QB) [media reporting of the details of the investigation of an entrepreneur for financial offences, where there was no subsequent prosecution]; *Re Trinity Mirror* (A Intervening) [2008] QB 770 [media reporting of details of child of a notorious paedophile].

[371] Established in Article 6 which includes the right "to a fair and public hearing" and discussed in, for example, *Re S* [2015] EWHC 4159 (Fam) [reporting of details of a young adult accused of terrorist offences], and reaffirmed in *AAA v Rakoff* [2019] EWHC 2525 (QB) [anonymity of dancers videoed in the course of the investigation of a strip club].

[614] Established in the Article 10 right to freedom of expression and discussed, for example, in relation to the "freedom to criticise", expressed in *LNS v Persons Unknown* [2010] UKSC 26.

[372] Discussed in various cases in differing, contexts, often by the media in support of their Article 10 rights, against competing Article 8 rights. The Mirror Group claimed, for example, a public interest in publication of the details of Naomi Campbell's drug use in support of the article which gave rise to her claim against them.

[373] Which are considered, for example, in the combined misuse of private information-defamation case of *Applause Store Productions Ltd v Grant Raphael* [2008] EWHC 1781 (QB), and the combined defamation-data protection case of *Galloway v Frazer* [2016] NIQB 7.

[374] The case of *Rhodes v OPO* [2015] UKSC 32, for example, considered the risk of psychological harm arising to his children, from the defendant's publication of a semi-biographical book providing details of his traumatic childhood.

[375] For example, in the case of *NT1 v Google* [2018] EWHC 799 (QB); [2018] [the 'right to be forgotten'].

[376] Considered, for example, in privacy cases where there is an element of blackmail and fraud, such as *OBQ v BJM* [2011] EWHC 1059 (QB); and, A v Aziz [2007] EWHC 91 (QB).

i. Article 8, the Court's Powers and the Administration of Justice

a. Anonymity and Reporting Restrictions

A large body of case law has developed in which the Court has been required to impose measures to preserve the anonymity of persons, or to suppress publication of the details of a case, in the interests of the administration of justice. Regarding the management of a claim the Court has extensive case management powers, to facilitate the just processing of those proceedings. This includes:

i. Reporting restrictions orders

ii. Anonymity of legal proceedings

iii. Private/Closed hearings

iv. Expedited proceedings

The Court is, itself, a manifestation of the state and its own activities are therefore bound by the provisions of the HRA. In particular the Court is bound by the provisions of Article 6, the right to a fair hearing. Accordingly, there are circumstances in which the Court has imposed reporting restrictions on legal disputes, permitted claimants to claim under an alias (the parties are named in court papers using initials), or ordered a hearing to be conducted in private, to protect the integrity of a hearing.

The process of taking an alleged abuse of privacy to tribunal presents a paradox, however. As Matthew Weait[615] suggests, the judicial processes by which an individual's private rights are evaluated can cause that privacy to be lost. Courts and tribunals, perhaps mindful of this paradox, have shown themselves willing to allow anonymisation of proceedings, and have issued restriction orders in favour

[615] Matthew Weait, 'Harm, Consent and the Limits of Privacy' [2005] 13 Feminist Legal Studies 97.

of claimants where the details are of a sufficiently personal nature to raise the risk of blackmail, (for example, in the 'revenge porn' case of *AMM v HXW*[377]). In *SOJ v JAO*[378], which concerned alleged breaches of the GDPR and blackmail, the tribunal concluded that the allegations of blackmail alone warranted a private hearing[379]. Similarly, in the case of *DFT v TFD*[380], whilst the risk of publication was low, the possibility that this could result in blackmail was sufficient to persuade the High Court to grant an anonymity order. In *BVG v LAR* (No 2)[381] the Defendant, an escort, had secretly filmed the Claimant participating in a bondage session, and was threatening to publish the recording. Lord Nichol, noting the continuing harm likely caused to the claimant by proceeding to oral hearing, and the failure by the defendant to disclose a viable defence, was willing to enter summary judgment in favour of the claimant[382].

The activities of Tribunals, like the Courts, are bound by the provisions of the HRA, and they have also been required to consider measures to preserve the privacy of parties in the administration of justice. In *A police officer Re*[383] the Northern Irish High Court was willing to grant anonymity in proceedings to an applicant to a Judicial Review, testing a point of law, the knowledge of which could prejudice a forthcoming disciplinary hearing for failure to submit a drugs test. In the case of *BUQ v HRE*[384] a High Court hearing was suspended pending determination of allegations of sexual harassment at Employment Tribunal. *Ben Adams Ltd v Q*[385] establishes, however, that there must be a good reason for an Employment Tribunal to impose reporting restrictions.

The risk of blackmail to witnesses arising from disclosure was considered in the

[377] [2010] EWHC 2457 (QB). See also *Contostavlos v Mendahun* [2012] EWHC 850 (QB) ['Contstavlos'], where the defendant was constrained from publishing a sex video of the claimant (a famous singer) based on the absence of a positive reason in favour of publication.
[378] [2019] EWHC 2569 (QB).
[379] See also DMK v Newsgroup Ltd [2016] EWHC 1646 (QB); A v Aziz [2007] EWHC 91 (QB).
[380] [2010] EWHC 2335 (QB).
[381] [2020] EWHC 931 (QB).
[382] See also *Aven v Orbis Business Intelligence Ltd* [2020] EWHC 1812 (QB) in which summary judgement was awarded to a Claimant in respect of personal details published in the Defendant's website.
[383] [2012] NIQB 3.
[384] [2012] EWHC 774 (QB).
[385] [2019] UKEAT 0042_19_0606.

Scottish criminal appeal case of *HM Advocate v Murtagh*[386]. Based on that risk the Supreme Court rejected, as disproportionate, the Applicant's request for full copy of the prosecution witnesses' criminal records. The case of *Re AL M*[387] has confirmed in the High Court (of England and Wales) that witnesses to proceedings can be accorded the same rights to anonymity, as the parties.

b. The Use of The Court's Powers for Prevention of Crime or Tort

The Courts have imposed reporting restrictions where it is necessary for the administration of justice. There is also a cluster of cases where the Court has been required to provide protection to claimants against the risk of commission of a criminal offence or a tort. The claimant in *AMP v Persons Unknown*[389] was granted an anonymity Order and interim injunction against publication of personal data held in a stolen mobile telephone. In the case of *Contostavlos* the High Court continued a non-disclosure order in respect of a sex video featuring the singer-songwriter, Tulisa Contostavlos in the absence of the defendant disclosing a legal basis for it to be lifted. In the case of *Goldsmith v BCD and Khan*[390] the High Court was willing to grant injunctive relief to the Claimant in respect of personal emails intercepted by a hacker, even though she had not complied with Civil Procedure Rules in her application. The risk of crime, harassment and infringement of Article 8 rights to private and family life were also considered in the case of *Wife and Children of Omar Othman*[391], in which the High Court imposed an order banning demonstrations within 500 metres of the alleged jihadist's family home.

Risk of crime, or 'vigilante' reprisals, has informed the Courts' approach to reporting restrictions in the case of perpetrators of well-publicised crimes. Reporting restrictions in the cases of the 'James Bulger killers', Jon Venebles and Robert Thompson, first imposed in 2001 by Dame Butler Schoss, were challenged by News Group Papers Ltd and Associated Newspapers Limited with Ralph and James Bulger in 2019[392]. The restrictions were challenged on the basis that Venebles' and Thompsons' details were available on the Internet and that

[386] [2009] UKPC 36.
[387] [2020] EWHC 702 (Fam).
[389] [2011] EWHC 3454 (TCC).
[390] [2011] EWHC 674 (QB).
[391] [2013] EWHC 1421 (QB).
[392] [2019] EWHC 494.

Venebles, who had received a further conviction for paedophile offences, posed an ongoing risk to the public. The High Court restated the restrictions, with the proviso that it permitted reporting of Venebles' second offence. The High Court also imposed reporting restrictions following the release from prison of Maxine Carr[393], who had provided a false alibi for the child killer, Ian Huntley. The case of *Callaghan*[394] considered the privacy risks posed by social media to released convicts. The Claimant was a child killer, undergoing preparation for release under license, who had been included in a Facebook page which listed serious offenders. The Northern Irish High Court acknowledged that the details published in the Facebook site had largely already been published in local newspapers at the time of his conviction but granted Callaghan the requested Order on the basis that the format of the Facebook page invited reprisals. The Northern Irish Court's approach in *Callaghan* pre-empted the High Court's ruling in *NT2 v Google*[395], perhaps an early expression in domestic law of the developing 'right to be forgotten' (now incorporated into the GDPR 2018).

It is self-evident that Courts and Tribunals, as public institutions and administrators of justice, should be concerned with the fair and efficient process of justice, and with protecting citizens against commission of crime and tort (including protecting released offenders against reprisals). The clusters of privacy case law around anonymity and reporting restrictions reflect the importance that is attached to those issues. It is perhaps therefore more revealing of the Court's approach to the issue of privacy to examine some cases in which the Court has refused applications for anonymity or reporting restrictions under Article 8, even though the nature of the material is of a highly personal nature and the likely harm from circulation of the material is clearly evident.

c. When Reporting Restrictions Orders are not Upheld

[393] *Carr v News Group Newspapers Ltd*, 24 February 2005, WL 401741, unreported
[394] *Callaghan v Independent News and Media Ltd* QBNI 7 Jan 2009.
[395] See also *CG v Facebook Ireland* [2015] NIQB 11 ["CG"], in which the Claimant, a released child killer, was listed in a Facebook site called "Keeping our kids safe from predators". *CG v Facebook Ireland*; *Callaghan*; and *NT2 v Google* appear to indicate a progressive recognition by the Court of the relationship between privacy and informational contextual integrity, expressed eloquently by the American Jurist Helen Nissenbaum in her book, *Privacy in Context* (Stanford 2010) 127: 'a right to privacy is neither a right to secrecy nor a right to control but a right to *appropriate* flow of personal information'.

Article 8 applications have been used to protect the identity of claimants and witnesses in hearings and to prevent the commission of crime when the private material is of a sensitive or personal nature. However, it is not sufficient merely to show that the material that is the subject of an Article 8 application is of a serious nature and that the harm from its disclosure is clear. It is necessary to establish that the Article 8 claim is greater than any competing claims, arising from common law principles (such as the principle of open justice) and from other Convention rights. This includes Article 10 rights to freedom of expression, and common law principles, such as the 'freedom to criticise'[396] (see also, *Fortescue Metals Group v Argus*[397]*; Hutcheson v Newsgroup Newspapers*[398]), and 'public interest' grounds (for example in *Guardian News and Media Ltd, Re*[399] (lifting reporting restrictions and anonymity orders in the case of suspected terrorists)). These are matters which must be carefully weighed by the Court in the course of a hearing. However, many claims under Article 8 are made at the point at which publication of personal material has already occurred, or is imminent. Accordingly, in many cases the injunctive relief sought, is sought as a matter of urgency, as an interim measure. The House of Lords' ruling in *Banerjee*[400] confirmed that for claims for interim relief under Article 8 it is necessary for Claimants to show that the prospects of success of the claim, at final resolution, are more likely than not to succeed. In *CWD v Newitt*[401], the High Court refused an Order forbidding publication of details of a rape allegation, by the alleged perpetrator of the offence, following Police confirmation that they would not be proceeding on those allegations. The case of *Banerjee*, concerned a claim to suppress publication of papers, allegedly proving that financial irregularities had occurred, taken by his accountant. Mr Banerjee failed to establish likely prospects of success at final hearing and the interim injunction was accordingly discharged by the House of Lords (and the information subsequently used for an article in the

[396] *Cream Holdings v Banerjee* [2004] UKHL 44 ["Banerjee"]
[397] [2020] EWHC 1304 (Ch).
[398] [2011] EWCA Civ 808.
[399] [2010] UKSC 1 ["Banerjee"].
[400] Ibid. The Banerjee test has been criticised by defamation lawyers for creating a lower threshold for interim relief than the rule in Bonnard v Perryman, which is applied in defamation claims. See, for example, Godwin, B and McCafferty, P (2010).
[401] [2020] EWHC 1289 (QB).

Liverpool Echo[402]). However, where the Claimant fails to demonstrate likely prospects of success at final hearing and therefore does not obtain an interim injunction to prevent the publication of a document, the Court may still order restrictions on the scope of publication to protect the privacy of the claimant and children (see *Ambrosiadou v Coward*[403]). Further, where prospects of success may be shown, injunctive relief may still be refused if the Court considers it unnecessary, or disproportionate. In *AAA v Rakoff*[404], the Claimants were dancers at a branch of the club, Spearmint Rhinos, which was under investigation. In the course of the investigation some videos of the Claimants were confiscated. The Claimants applied for an expedited trial, and anonymisation of proceedings, but no wider restrictions regarding, for example, reporting of their names, which the Court considered inconsistent. The High Court refused the application on both counts, finding that the measures sought were disproportionate.

d. The Article 8 Rights of People Accused of Criminal Offences

The Court has imposed restrictions on the reporting of information concerning witnesses and claimants to sensitive legal disputes and taken steps to protect the details of convicted offenders, on release, such as Maxine Carr, and Jon Venebles. The Court's approach in cases where individuals are merely accused of a serious offence is less clear. In the Supreme Court hearing of *Richard v BBC*[405] it was suggested that the general rule should be that: 'a person has a reasonable expectation of privacy in relation to a police investigation' (at paragraph 248). However, there is a group of cases in which applications for Article 8 relief by persons accused of serious criminal offences have been refused by the courts. The matter of privacy in relation to criminal allegations therefore appears to be more equivocal than the ruling in *Richard* suggests. In the case of *Re British Broadcasting Corporation*[406], for example, the Court was prepared to allow DNA evidence used in a rape trial for which the defendant had been acquitted, to be discussed in a television programme. In the case of *Khuja v Times Newspapers Ltd*

[402] Published as: Andrew Edwards, 'Cream cheats who hid £1m' *The Liverpool Echo* (Liverpool, 9 May 2013) < https://www.liverpoolecho.co.uk/news/liverpool-news/cream-cheats-who-hid-1m-3538961> accessed 5th May 2021.
[403] [2010] EWHC 1794 (QB).
[404] [2019] EWHC 2525 (QB).
[405] [2018] EWHC 1837 (Ch) ['*Richard*'].
[406] Attorney General's Reference (No 3 of 1999) [2010] 1 AC 145.

[407] the Supreme Court ruled that the Claimant had no reasonable expectations of privacy in respect of the details of his arrest in the course of 'Operation Bullfinch' (a well-publicised police operation against a suspected paedophile ring). He had been subsequently released without charge and the Police agreed that his arrest had been based on mistaken identity. In the case of *ERY v Associated Newspapers*[408], the High Court found that the claimant had no reasonable expectation of privacy in respect of having been interviewed, under caution, for alleged financial crimes, even though he was not charged. In *Guardian News and Media Ltd, Re*[409] a guideline case on matters of public interest, reporting restrictions regarding an alleged terrorist were lifted in the interests of open justice, despite this placing his family at risk of reprisals. In the 2020 case of *CWD v Nevitt & Ors*[410], the Claimant had already been granted an anonymity order in respect of his primary claim for defamation but sought further reporting restrictions in respect of 2 defendants' counter-allegations of sexual assault. The High court refused those further restrictions (allowing the counter-allegations to be reported) and allowed the defendants' own anonymity orders to be lifted. However, in the case of *Alaedeen Sicri v Associated Newspapers Limited*[411] the High Court found that the MailOnline had breached Mr Sicri's reasonable expectations of privacy by reporting (correctly) that he had been arrested in connection with the Manchester Arena bombing of 2017. Mr Sicri was awarded £83,000 compensation. The Court of Appeal in *ZXC v Bloomberg*[412] failed to clarify the issue of whether there are reasonable expectations of privacy in respect of criminal allegations, although it does help to clarify the difference between MOPI and breach of confidence. The case concerned information appertaining to criminal investigations into the claimant's business affairs. The defendant, the publisher of a financial journal, had obtained copy of a letter from the claimant requesting legal assistance in those investigations. The claimant's claim for reporting restrictions succeeded (the interim application for relief had failed due to public interest in the matter). The Court of Appeal in explaining its ruling drew a distinction between the letter, which was inherently confidential in nature, and

[407] [2017] UKSC 49 ["Khuja"].
[408] [2016] EWHC 2760 (QB).
[409] [2010] UKSC 1.
[410] [2020] EWHC 1289 (QB).
[411] [2020] EWHC 3541 (QB).
[412] [2020] EWCA Civ 611.

its contents which were not essentially 'private'. The claimant's claim for breach of confidence had succeeded (based on the status of the letter), but not his claim for misuse of private information (based on the contents of that letter).

If the Court's approach in respect of alleged misconduct is ambiguous, it appears that the EAT, may be more inclined to follow *Richard* than *Khuja*. In *A & B v X & Y and Times Newspapers Ltd*[413], for example, the Employment Appeals Tribunal [the 'EAT'], granted the Claimant (an unnamed public figure) permanent anonymity in respect of a discontinued Employment Tribunal in which he was accused of sexual offences. This was an apparent departure from the ruling in *Khuja*, which was one of the cases considered by the appellate panel in that case.

e. Article 8 and Allegations of Misconduct

Notwithstanding the ruling in *Richard* there remains some ambiguity on the matter of whether those accused of an offence have reasonable expectations of privacy in respect of the details of the allegations. This ambiguity is reflected also in the Court's response to claims for restraint of publication of details of conduct which may be the subject of civil or social sanctions. In the case of *Avb v TDD*[414], the High Court allowed publication by a sex worker of allegations of a solicitor's failure to pay his fees, but she was restrained from publishing details of the activities themselves. However, in *Axon v Ministry of Defence*[415] the Claimant was unsuccessful in persuading the Court to constrain publication of details of his removal from a senior position within the Royal Navy, on the basis that it was a public office and the termination of his employment a 'public fact'. In the case of *Browne v Associated Newspapers Ltd*[416] the Court allowed the details of a company director of a publicly listed company to be published in relation to allegations of preferential treatment of a (male) member of staff with whom he was alleged to have an affair. As a counter point to the ruling in *Browne*, in *Goodwin v Newsgroup*[417] the Court was willing to restrain publication of the details of the Chief Executive of a bank who was allegedly engaged in a

[413] UKEAT/0113/18/JOJ.
[414] [2014] EWHC 1442 (QB).
[415] [2016] EWHC 787 (QB).
[416] [2007] EWHC 202 (QB) ["Browne"]
[417] [2011] EWHC 1437 (QB).

(heterosexual) relationship with a female employee. The High Court in *Goodwin* agreed that the claimant had no reasonable expectations of privacy in relation to the details of the affair, but it agreed to supress publication of the identity of the parties due to the likely harm publication would cause to the claimant's family. In *Birmingham City Council v Riaz*[418] the claimant applied unsuccessfully to restrict reporting of an Antisocial Behaviour Order imposed for alleged paedophile activities, although no criminal trial had taken place and it was argued that publication of the details placed the claimant at significant risk of reprisals.

f. Criminal Allegations and Innocent Relations

The Court has also refused Article 8 applications for reporting restrictions by 'innocent' relations of persons accused of serious crimes, for example, in *Arthurs v News Group Newspaper*s[419] the Northern Irish Court of Appeal refused to impose reporting restrictions in favour of the Claimant, the son of an alleged IRA terrorist who was the subject of a newspaper article. In *Re Trinity Mirror*[420], the High Court lifted reporting restrictions in respect of the details of an infant daughter of a convicted paedophile on the basis that the story was of public interest.

ii. Children and Young People

a. Children and Criminal Allegations

The High Court's decision to allow publication of *Trinity Mirror's* details belies perhaps a more nuanced approach to the Article 8 rights of minors compared to the Courts' approach to Article 8 rights of adults (Eric Barendt, 2016[421]), due to their position as innocent victims of adults' activities. The approach taken by the Supreme Court in *Re JR38*[422] was to treat the reasonable expectations test as merely one of a range of factors to apply in consideration of the young person's Article 8 rights. In the case of *re S (A child)*[423] The House of Lords imposed an

[418] [2014] EWHC 4247 (Fam).
[419] [2017] NICA 70.
[420] (A Intervening) [2008] QB 770 ['Trinity Mirror'].
[421] Eric Barendt: 'Problems with the "reasonable expectation of privacy" Test' 8 Journal of Media Law (2016) 2, 129.
[422] [2015] UKSC 42.
[423] [2004] UKHL 47.

injunction restraining both the reporting of the victim and the defendant to a murder trial, due to the likely damage caused to a third party infant (which was greater than the public interest in publishing their names). However, the Court is unwilling to assume that the mere act of publication will necessarily cause harm to the child. In the case of *London Borough of Waltham Forest v AD*[424], the High Court rejected an application for reporting restrictions in the case of a three years' old daughter of a defendant in a murder trial. The decision was made on the basis that the likely harm from publication had not been established, and there were clear public interest grounds supporting publication of the story.

With respect to cases where the child is accused of a criminal offence the Court has appeared more willing to impose reporting restrictions. The Court maintained reporting restrictions, for example, in the case of *S, Re* (teen radical Muslim)[425]. However, in *Surrey Council v ME*[426], the court allowed reporting of the identity of a young person accused of killing his stepfather, after he had entered a guilty plea to manslaughter. In *Re JR 38*[427], the juvenile applicant for Judicial Review sought to prevent a broadcaster handing video footage and photographs, allegedly showing him participating in a riot, to the Police. While the application was rejected, the Supreme Court acknowledged that there were circumstances in which children who have been convicted of offences may retain a reasonable expectation of privacy over details of their criminal activities. It was suggested that the Court should consider a range of factors when considering the Article 8 rights of minors. In the case of J*R 27's Application for Judicial Review* (No. 2)[428], the High Court ruled that the retention of the juvenile applicant's fingerprints and photographs, obtained in the course of a criminal investigation, was incompatible with the ECHR. This appears to contradict rulings made in respect of similar applications by adults, for example, the House of Lords ruling in *R (S) v Chief Constable of the South Yorkshire Police*[429] This apparent contradiction may be explained by the minority of the Applicant in *Re JR27*. However, if there is a difference in the Court's approach in the case of minors, this is tempered by the

[424] [2014] EWHC 1985 (Fam).
[425] [2015] EWHC 4159 (Fam).
[426] [2014] EWHC 489 (Fam).
[427] [2015] UKSC 42.
[428] [2010] NIQB 143.
[429] [2004] UKHL 39.

more recent (2018) case of *R (CL) v Chief Constable of Greater Manchester & Secretary of State for the Home Department*[430]. In that case the High Court disallowed an application from an 18 years' old applicant to strike out records relating to allegations of 'sex texting' whilst 14-15 years old. It also appears that the Court is more willing to find that there is a public interest in the reporting of allegations of criminal behaviour where the young person is an established sports star (and famous in their own right). In *Spelman v Express Newspapers* (No. 2)[431], the court refused to maintain reporting restrictions in relation to allegations that the 17 years' old rugby star was using illicit steroids.

b. Childrens' rights and guardians' rights

Children and young people ostensibly enjoy the same entitlement to Article 8 protection as applicants over the age of majority. In all cases the Court is required to balance the Article 8 rights of the applicant against any countervailing Article 10 rights. It appears, however, that in respect of young people who are accused of criminal offences the Court takes a wider view of the child's Article 8 rights.

The court may be required to take a balanced approach in respect of minor's Article 8 rights when they become the innocent victim of responsible adults' conduct. However, there may be situations where the child's interests may not align with those of their guardians, or where there is a disagreement between a public body's views and the child's family's views on the issue of what is in the child's best interests[432]. Perhaps one of the more emotive and complex contexts in which the parents and the state may come into direct conflict is over the question of the provision (or withdrawal) of life-preserving treatment to the child. In these circumstances the Court is required to consider the child's interests independently and listen to arguments from both parties. In *Portsmouth Hospitals NHS Trust v Wyatt and another*[433] the Court of Appeal approved the views of the President of the Family Division in the earlier case of *Re A (Male Sterilisation)*[434]

[430] [2018] EWHC 3333 (Admin).
[431] [2012] EWHC 355 (QB).
[432] See Re C (Baby: Withdrawal of Medical Treatment) [2015] EWHC 2920 (Fam) in which it was found that the Court had to balance the views of the parents, the medical advisors and the child him/herself.
[433] [2005] EWCA Civ 1181 (para. 53).
[434] [2000] 1 FLR 549.

that: “best interests encompass medical, emotional and all other welfare issues”. The 2006 case of *An NHS Trust v MB*[435] confirms that the views of the medical practitioner regarding a child’s quality of life should not always outweigh those of the parents or guardians. Interestingly the NHS trust concerned is not referenced in the case title, confirming that the court powers to ‘anonymise’ cases can be applied in the case of corporate parties to privacy claims. Notwithstanding these cases, however, in practice the Court is reluctant to order medics to continue treatment where they have taken the professional view that it is no longer clinically justified. In both *MB (A Child) and Wyatt*, and in the well-publicised cases of *Charlie Gard*[436], *Alfie Evans*[437], and *Re C*[437], the child’s family was unsuccessful in their challenge of medical decisions to discontinue treatment. In the case of *Abbasi & Another v Newcastle upon Tyne Hospitals NHS FoundationTrust*[438] the young woman’s father, though a practicing doctor himself, was unable to persuade the court to order continued treatment[439]. Signalling an unwillingness to hear further similar cases the Supreme Court refused to hear the case of Pippa Knight (a 5 years’ old girl with serious brain injuries) on the basis that her mother’s challenge to a decision by Guy's and St Thomas' Children's NHS Foundation Trust[440] disclosed: “no arguable point of law”.

Such cases can be extremely complex, involving representations on behalf of several parties: the child, the state (in the form of the medical authority, or council), and the guardians. In *HK (Serious Medical Treatment) No 3*[441] for example, the Court was required to consider medical decisions to withhold treatment from a child with brain injuries, whilst considering representations

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[435] [2006] EWHC 507 (Fam).
[436] *Yates and Another v Great Ormond Street Hospital for Children NHS Foundation Trust and Another* [2017] EWCA Civ 410, [2017] 2 FLR 739 [“Gard”].
[437] *Alder Hey Children’s NHS Foundation Trust v Alfie Evans* (A Child by his Guardian CAFCASS Legal) [2018] EWHC 308 (Fam) (“Evans”).
[437] *Re C* (Baby: Withdrawal of Medical Treatment) [2015] EWHC 2920 (Fam).
[438] [2021] EWHC 1699 (Admin)
[439] See also the case of *Hasstrup v King’s College Hospital NHS Foundation Trust* [2018] EWHC 127 (Fam) The parents of an 11 years’ old child who had suffered catastrophic brain damage as a result of a birth trauma unsuccessfully challenged the Hospital’s decision to discontinue life-saving treatment, notwithstanding that it was alleged (and subsequently accepted that the same hospital were alleged the injuries were exacerbated through the negligence of its staff.
[440] *Pippa Knight* (By an officer of Cafcass and her Children's Guardian) v Guy's and St Thomas' Children's NHS Foundation Trust [2021] EWHC 25 (Fam).
[441] [2017] EWHC 2991 (Fam).

from his mother, and also from the Police, who were investigating the mother for child abuse and were concerned with preserving evidence. These cases can also involve the collision of a range of different legal rights. Article 8 rights can be engaged in the form of rights to privacy in various different manifestations. Parties to such disputes can also invoke other Article rights such as Article 2 rights to life and Article 5 rights to liberty and security (these Article rights were cited by Charlie Gard's family), and Article 3 rights to freedom from torture and degrading treatment (raised in the immigration/medical treatment case *GS* (*India*) *and Others*[442]). Furthermore, cases such as *Gard* and *Evans* can be framed by the press as 'David and Goliath' struggles between loving parents and an interfering state over the child's best interests and can raise strong public interest grounds in favour of Article 10 rights to freedom of expression. The complexity of such cases, which require the Court to consider and balance a multiplicity of article rights, cited by various parties, demonstrates that the issue of privacy cannot be considered in isolation from other Article rights and other areas of law. Further, the fact that a child's family's claim to Article 8 rights to 'private family life', can cause the subject of that claim to become the centre of national media attention; far removed from what is conventionally considered to be a state of privacy; illustrates that 'privacy' even within legal discourse, is a semantically rich concept.

c. Young people and Consent

The cases of *Gard*, *Evans* and *GS(India)* concern disputes between guardians and state institutions where the guardians have sought to obtain, or continue, life preserving medical treatment for their child. There are, however, some cases in which young people are themselves in dispute with their family, or with the State. In such cases the Court applies the "Gillick competence test", derived from the case *Gillick v Norfolk and Wisbech AHA*[443], to establish the young person's level of maturity and knowledge, and thereby assesses their ability to consent to a course of action. The *Gillick* case, itself, was concerned with the subject of young people receiving medical advice regarding contraception without the knowledge of their parents or guardians. The House of Lords found that young people are capable of having the capacity to consent to receiving medical treatment before reaching the

[442] [2015] EWCA Civ 40 ["GS (India)"].
[443] [1985] UKHL 7.

age of majority, but that their level of competence must be established on the facts. In the case of *Authority X v Hi*[444], the High court considered (and granted) an application on behalf of a teenage applicant, who was in foster care, for information shared in confidence with professionals, to be excluded from a social services report that would be shown to his family. In the case of *PD v SD*[445], the High Court granted an application by a 16 years old looked after child, who had been seeking medical advice over gender reassignment surgery, to keep the details of those discussions from his adoptive parents. In *Re Roddy (A Minor)*[446] the young applicant, who had been in local authority care, had discussed her experiences with the press and sought publication of her story. In this case it was the local authority who had argued her Article 8 rights to privacy in the face of the young person's assertion of her Article 10 rights to freedom of expression. She was found to be *Gillick* competent, and the article was published. In the case of *Rhodes v OPG*[447], an application had been taken on behalf of a young person to restrain publication, by his father of details relating to his own life. The father (an author) had included autobiographical details concerning his own abuse as a child in one of his works. The Supreme Court found the risk of harm insufficient, and too remote, to justify infringement of the author's Article 10 rights. The case of *Axon*[448], was a direct challenge to the scope of *Gillic*k. The Applicant, Sue Axon, cited Article 8 rights to private and family life to challenge the Department of the Secretary of State's advice[449] that medical professionals could provide advice and treatment to young people on matters of sexual health without the knowledge of their parents. Ms Axon the mother of 2 daughters sought review of this advice as a 'matter of principle'. The Court of Appeal, rejecting her arguments, restated the *Gillick* test as the correct approach to take on such matters.

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[444] [2016] EWHC 1123 (Fam).
[445] [2015] EWHC 4103 (Fam).
[446] [2003] EWHC 2927 (Fam).
[447] [2015] UKSC 32.
[448] *R On The Application Of Sue Axon v The Secretary Of State For Health (The Family Planning*
Association: intervening) [2006] EWCA 37 (Admin)].
[449] In the practice document: 'Best Practice Guidance for Doctors and other Health Professionals on the Provision of Advice and Treatment to Young People under Sixteen on Contraception, Sexual and Reproductive Health' (the 2004 Guidance).

In these cases, the young Claimants were merely seeking to assert rights over their private information. However, the Courts have also been required to consider cases where young people are seeking to assert their right to refuse life-preserving treatment, due to, for example, religious grounds. In such cases case law suggests a reluctance by the Court to find young people to be *Gillick* competent. In the case of *Re: E (A Minor)*[450], for example, the Court refused to find a 15 years' old Jehovah's Witness *Gillick* competent to refuse a blood transfusion and in *Re W (a minor) (Medical Treatment: Courts jurisdiction)*[451] the Court declined to find a 16 years' old sufferer from anorexia nervosa, *Gillick* competent to refuse admission to a treatment centre. Both these cases pre-date the HRA 1998, but the 2020 case of *Bell v Tavistock*[452] asserts that it remains extremely difficult for young people (particularly those under the age of 16) to establish *Gillick* competence in relation to healthcare decisions which might have long term implications on their health and development. In that case the applicant had received puberty blockers since the age of 16, but had ceased treatment. It was argued that the hormones had caused permanent physiological changes, such as sterility. The High Court restated the *Gillick* test as the correct approach for the Courts to take but described an onerous framework of considerations that must be taken in establishing *Gillick* competence, with regard to treatments that may have lasting effects[453].

Cases concerning the refusal of medical treatment by broadly healthy persons will continue to attract interest from the press. Equally controversial are cases which raise debates around assisted dying. The case of *R (on the application of Pretty) v Director of Public Prosecutions*[454] concerned an application from a 42 years' old sufferer of motor neurone disease to obtain an undertaking from the DPP to not prosecute her husband for assisting in her suicide. Diane Pretty cited Convention Articles 2, 3, 8, 9 and 14 in support of her Application. The House of Lords was

[450] [1993] 1 FLR 386.
[451] [1993] Fam 64 ["Re W"]
[452] [2020] EWHC 3274 (Admin)
[453] Establishing Gillick competence is not impossible, however, in the case of Teaching Hospitals NHS Trust v DV (A Child) [2021] EWHC 1037, the High Court was willing to approve a treatment plan in which a 17 years' old Jehovah's witness received an operation without being given blood products.
[454] [2001] UKHL 61.

unwilling to allow Diane Pretty's Application[455]. However, in *R (on the application of Purdy) v the Director of Public Prosecutions*[456] the House of Lords was prepared to Order the DPP to declare their criteria for prosecuting in cases of assisted dying. Whilst this may appear to qualify the ruling in *Pretty*, in a combined hearing by 3 applicants, heard by a panel of 9 Lords Justice, the Supreme Court confirmed that it was for Parliament to change the law on assisted suicide, effectively closing legal debate on that matter.

There are also a few cases which have attracted media attention in which guardians have sought redress against local authorities in respect of information regarding their child, which has been withheld from them. In these cases, like the refusal of medical treatment cases, the Court appears to be reluctant to find against the authority. In the case of *London Borough of Brent v Mr and Mrs N*[457], the High Court found that the local authority had no duty to inform the father of a girl who was in foster care, of the HIV positive status of her foster father. In *A v Essex County Council*[458] the Court of Appeal found no duty by the local authority to inform prospective adoptive parents of a young person's psychiatric diagnosis. In the case of *Newman v Southampton City Council*[459], there appeared to be clear grounds of public interest supporting the applicant's claim for details pertaining to the local authority's decision to put a child into care. The mother had successfully challenged the local authority's decision, at considerable personal expense. The applicant was a journalist who was investigating the local authority's conduct, with the support of the child's mother. The Court ordered only a very limited disclosure, mostly relating to the child's mother. This apparent reluctance of the Court to fetter the work of local authorities is reflected also in the decisions in *JD v East Berkshire Community Health NHS Trust and Others* [459] , which found that there was no liability towards the parents by the trust, arising from an honest, but mistaken, investigation for alleged child abuse, and *Lawrence v Pembrokeshire County Council*[460] which found no duty of care arises from local authorities for

[455] A subsequent ruling before the ECtHR found that the UK's blanket law on assisted suicide did not breach the Applicants Article 8 Rights.
[456] [2009] UKHL 44 ["Purdy"]
[457] [2005] EWHC 1676 (Fam).
[458] [2003] EWCA Civ 1848.
[459] [2020] EWHC 2103 (Fam).
[459] [2005] 2 AC 373.
[460] [2007] EWCA Civ 446.

psychological damage caused to parents or guardians by such investigations. However, in *R (on the application of TT) v The Registrar General for England and Wales*[461], a case that perhaps turns on its own facts, the Court was willing to allow the reporting of the details of a baby who was born to a transgender man, who through artificial insemination had become pregnant. There was an application for a reporting restrictions order on behalf of the parent (who wished to be entered into the birth certificate as the child's father), and on behalf of the child. The High Court found that the unusual circumstances of the child's conception, which had become the subject of a documentary film, supported strong Article 10 grounds for freedom of expression based on public interest. The unusual circumstances of the case (as well as the documentary film) also rendered it highly unlikely that the details of the child's parentage could be kept from the child, regardless of any psychological harm that the discovery might cause.

iii. Article 8 and 'Public Figures'

The issue of Article 8 rights of children is an important theme within the privacy law canon, and it arises in various contexts. These include situations where the rights of children must be weighed against the wishes of their guardians, or decisions by state bodies such as the NHS and local authorities, or when young people attract the media's attention due to being at the centre of controversy, or criminal allegations levelled at themselves or their family. Another theme concerning the issue of young people and Article 8 is the position of the children of celebrities. However, in order to consider that issue further, it is necessary to consider first the position occupied by celebrities (and by extension the families of celebrities) within the privacy canon. The issue is complex and controversial. It has generated a body of well-publicised cases and legal developments that have led some scholars to recognise the emergence of a 'public figure doctrine' (Kirsty Hughes, 2019[467a]).

[461] [2019] EWHC 1823 (Fam). In the case of T v BBC [2007] EWHC 1683 (QB), however, the Claimant who was the subject of a BBC programme about adoption, successfully obtained an order constraining publication of her name.

[467a] Kirsty Hughes, 'The Public Figure Doctrine and the Right to Privacy' (2019) 78 The Cambridge Law Journal 1, 70.

a. Celebrities and a 'right to image'

The framework adopted by the House of Lords in *Campbell* is discussed at pages 27-30 of this thesis, where it is suggested that that case entrenched the precepts of MOPI and 'reasonable expectations of privacy' into domestic common law. The model Naomi Campbell was photographed by 'paparazzi' whilst ostensibly going about her daily routine. The photographs, showing her leaving the venue of a Narcotics Anonymous meeting, were subsequently used by the Mirror Group Newspapers in articles concerning her alleged use of cocaine. The House of Lords allowed the Mirror Group to publish the facts of Naomi Campbell's addiction and that she was obtaining treatment through Narcotics Anonymous, as a correction of her "public lies" on the matter of her drug use (*Campbell*, at para. 24). However, the HoL disallowed the photographs which appertained to the details of the treatment itself (in part, because this impinged upon the privacy rights of fellow NA attendees).

The issues of the vulnerability of celebrities to the unwelcome attentions of the press, and the economic value of celebrities' image had already been considered by the High Court in the case of *Douglas and Others v Hello!*[462]. In the *Douglas* case the actors Michael Douglas and Catherine Zeta Jones had sold exclusive rights of coverage of their wedding to the lifestyle magazine, OK. Photographers from the magazine Hello! had taken some photographs of the wedding without the couple's consent, which they subsequently published. The House of Lords found that Hello! had breached the provisions of the DPA 1998, and common law breach of confidence and approved an award of damages at £1,033,156 in favour of OK, based on lost revenue. In the preceding year (2003) the radio DJ and presenter, Sara Cox[463] had successfully obtained an injunction against the People newspaper constraining them from publishing photographs of her sunbathing on a private beach, taken from a passing boat using a camera with a high-powered zoom lens.

[462] [2001] QB 967; although the issues were reconsidered by the Court of Appeal [2005] EWCA Civ 595, and only finally decided by the House of Lords with the combined hearing of OBG v Allan [2007] UKHL 21.
[463] *Cox and Carter v MGN* [2006] EWHC 1235 (QB) ["Cox"].

The cases of *Cox* and *Douglas* concerned the publication of intrusive photographs, taken at private locations, without the subject's consent. *Campbell* took this emergent concept of protection from intrusion out of the contexts of private events, and private locations, and extended it into routine activities carried out in the 'public sphere'. The photographs taken of Naomi Campbell were taken in a public street. However, the Court recognised that for celebrities such as Naomi Campbell it is necessary to maintain a particular persona or image, even whilst in a 'public' environment, as Lord Hoffman observed (at para. 37):

> Naomi Campbell is a famous fashion model who lives by publicity. What she has to sell is herself: her personal appearance and her personality. She employs public relations agents to present her personal life to the media in the best possible light just as she employs professionals to advise her on dress and make-up. That is no criticism of her. It is a trade like any other. But it does mean that her relationship with the media is different from that of people who expose less of their private life to the public.

The Court was therefore required to consider the impact on that public persona if the celebrity is caught 'off-guard' by the press whilst engaged in their daily activities. There are some illuminating comments within *Campbell* that pre-empt later discussions over the limits of reasonable expectations of privacy and rights to freedom of expression. Lord Nicholls' comments on the effect of her "public lies" (at para. 24) on Naomi Campbell's reasonable expectations of privacy are quoted above. Baroness Hale at paragraph 14, comments that: "unlike France and Quebec, in this country we do not recognise a right to one's own image" and suggests a *de minimis* rule should apply to MOPI claims:

> the activity photographed must be private. If this had been, and had been presented as, a picture of Naomi Campbell going about her business in a public street, there could have been no complaint.

On the facts it was held that the photographs constituted misuse of private information, since they concerned essentially private matters (details of treatment) and a compensatory award was ordered in favour of Naomi Campbell to the sum of £3,500.

b. MOPI, the public environment, and the limits of reasonable expectations

Baroness Hale's obiter suggestion that no complaint arises, in circumstances where a celebrity is photographed "going about [their] business" was tested and approved in the case of *John v Associated Newspapers*[464]. In that case the singer was refused an interim injunction to constrain publication of photographs of him engaged in mundane activities in a public environment. It was noted by the High Court that there had been no element of harassment by the photographer, and the singer was not engaged in any activities which might be regarded as 'private' in nature. Some cases have followed this, however, which suggest that the Court is willing to consider Article 8 applications in circumstances where a celebrity is going about their business if they are accompanied by their family. In the case of *Murray v Express Newspapers PLC and Another*[465], the Author J K Rowlings was photographed with her husband and baby, whilst walking in a busy street in Edinburgh. The photographs were taken covertly, with the aid of a long-range camera lens, which focussed on the baby's features. The Murrays applied for an injunction constraining publication of the photographs based on breach of the DPA and MOPI. At first instance the High Court, following the ruling in *John* and noting the apparent innocuous nature of the photographs, found that no breach had occurred. The Court of Appeal, however, overturned the ruling on the basis that insufficient weight had been given to the baby's Article 8 rights, which had been breached.

The *Murray* ruling was extended in the case of *Weller v Associated Newspapers Ltd*[466], in which the singer Paul Weller was photographed in a café in Los Angeles, with his family. In that case the Court of Appeal was prepared to make awards of compensation to the Weller children for breach of their reasonable expectations of privacy, notwithstanding that the breach had occurred in the USA, where cultural expectations of privacy may differ from those in the UK. The Court considered each of the Weller children's MOPI claims in turn, on their own merits. For example, the Court considered the effect of their respective ages on the level of embarrassment caused by publication of the photographs, and the impact on

[464] [2006] EWHC 1611 ["John"].
[465] [2007] EWHC 1908 (Ch) ["Murray"].
[466] [2014] EWHC 1163 (QB) ["Weller"].

Dylan Weller's reasonable expectations of privacy arising from her own appearance on the cover of an issue of Teen Vogue. The Court's decision to uphold privacy rights of celebrity families in a public environment may have been inconsistent with obiter remarks made by Baroness Hale (at para. 154) in *Campbell* and with the decision in *John*, but was perhaps more consistent with Strasbourg case law, notably *Von Hannover* (No. 2)[467]. It is also noted that Baroness Hale's comments preceded the Supreme Court ruling in *Douglas.* Moreover, the involvement of celebrities' children in the cases of *Murray* and *Weller* could explain the Courts' apparent departure from *John*. Celebrities such as Naomi Campbell and Elton John are perhaps considered responsible for the media attention that they attract, whereas children of celebrities may be considered to be blameless victims of their parents' fame.

Murray and *Weller*, show that the Courts are willing to protect 'private', but mundane activities conducted in a public environment, by celebrities, if they are accompanied by their children. This does not mean, however, that traditional distinctions between the 'private' and 'public' sphere have lost their potency. These distinctions could instead be going through a process of transformation. In the case of *RocknRoll v Newsgroup Newspapers Ltd* [468]*,* for example*,* distinctions were drawn between the 'private' and the 'public' in both the online and physical environments. The case raises complex issues of ownership and consent. The case concerned the threatened publication, by Newsgroup Newspapers Ltd, of photographs taken at a private, family, party attended by Kate Winslet's family, which the photographer (a family friend) had circulated via Facebook. The friend had taken the photographs with the Winslets' permission. On request he withdrew the photographs from his Facebook page, but not before they had come into the hands of Newsgroup Newspapers who threatened to publish them. Mr RocknRoll (Kate Winslet's husband) sought to suppress publication of the photographs on behalf of his children on the basis that they would cause them embarrassment. In granting Mr RocknRoll interim injunctive relief, the Court noted the private venue of the Winslets' party[469] and the fact that circulation of

[467] (2012) 55 E.H.R.R. 15.
[468] [2013] EWHC 24 Ch ["RocknRoll"].
[469] Ibid at paragraph 9(1). The case also raised some interesting issues of 'ownership' over the images which had been published on Facebook, since Facebook, under its terms of

the photographs on social media had been restricted to 'friends', rather than being open to all viewers.

c. Public figures and their private lives

Murray and Weller concerned routine activities conducted by families of celebrities within the public sphere. The case of *RocknRoll*, concerned an intrusion into the domestic environment, an environment to which the Courts have accorded a special status since *Semayne's Case*. It is to these intrusions within the domestic environment, and the privacy of personal relationships that this discussion will now turn.

A large body of case law, concerns applications by celebrities to suppress publication of details of domestic events, which are enacted mainly or wholly within the 'private sphere', such as the details of a friendship[470], marriage[471], extra-marital affair[472], or an 'open' marital arrangement[473]. These stories inevitably attract the public's attention, and stories of celebrities' extra-marital affairs have a clear financial value to the newspapers and publishers who print them. However, the Court is required to balance the economic value of the story, and the public interest in publication, against the countervailing Article 8 interests of the celebrity and his/her family. Such decisions can rest upon a range of factors, including the nature of the relationship, the position, and the conduct of the claimant.

<u>The nature of the relationship</u>

Article 8 rights are a creature of statute. Prior to the passing of the HRA, the position at common law was that there was no general right to privacy. This was affirmed by the Court of Appeal in 1991 in the case of *Kaye v Robertson*[474], and by

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service claim proprietorial rights over images distributed through its platform. Facebook Ltd was not a party to proceedings, however, so these discussions were obiter.

[470] For example, the ruling in *McKennit v Ash* [2006] EWHC 2946 (Ch).

[471] For example*, HRH Prince Louis of Luxembourg v HRH Princess Tessy of Luxembourg* [2017] EWHC 3095 (Fam) (restraint of publication by the Respondent – a 'commoner' by birth- of the details of her divorce settlement, to refute media suggestions that she was a 'gold-digger').

[472] For example, *ETK v Newsgroup Newspapers Ltd* [2011] EWCA Civ 439.

[473] For example*, PJS v Newsg roup Newspapers Ltd* [2016] UKSC 26.

[474] [1991] FSR 62.

the House of Lords in 2003, in *Wainwright v The Home Office*[475]; although Lord Hoffman notes in the latter case that the events in *Wainwright* pre-date the passing of the Human Rights Act 1998. The law of confidence, however, has a longer heritage, and the Courts have recognised at least since the 1849 case of *Prince Albert v Strange*[475] that certain kinds of personal relationships (which are intrinsically built around trust and sharing of secrets) generate expectations of confidence. Intermittently, the courts have extended the range of relationships which it recognises generate obligations of confidence such as marriage (Duchess *of Argyll v Duke of Argyll* [1967] CH 302), and progressively extending the scope of those obligations to third parties through, for example the cases of (*Coco v A.N.Clark (Engineers)*[476], and *A-G v Guardian Newspapers Ltd* (No. 2) [477]).

Following the enactment of the HRA the law of confidence continued to develop under its own momentum. In the case of *Flitcroft v MGN*[478], for example, the Court of Appeal suggested (obiter) that long-standing relationships can generate similar obligations of confidence as a marriage[479]. However, the law of confidence has also developed in relation to the newer cause of action (first recognised by the House of Lords in *Campbell* in relation to the HRA) of MOPI. This newer claim of MOPI also gathered momentum and was formally recognised as a separate tort in the Court of Appeal ruling in *Vidal-Hall* in 2014[480]. Many Article 8 claims touch upon features of both 'traditional' breach of confidence and the newer concept of MOPI, since the two 'types' of privacy claim are conceptually very closely related[481]. In the case of *McKennit v Ash*[482], the Court of Appeal was required to consider both types of claim simultaneously. The case concerned the publication of a book about the Canadian musician Loreena McKennit by a former friend and employee, Niema Ash. The Court of Appeal, ruled that some of the material in the book, amounted to both a breach of confidence and a misuse of Loreena

[475] [2003] UKHL 53.
[475] ChD 8 Feb 1849.
[476] [1969] RPC 41.
[477] [1990] 1 AC 109 [the "Spycatcher" case].
[478] [2002] EWCA Civ 337.
[479] This obiter suggestion was confirmed in the case of *CC v AB* [2006] EWHC 3083.
[480] [2014] EWHC 13 (QB).
[481] The Court of Appeal considers the distinction between breach of confidence and MOPI in ZXC v Bloomberg [2020] EWCA Civ 611, this is discussed at the conclusion of this Chapter.
[482] [2006] EWHC 2946 (Ch) ['McKennit'].

McKennit's private information. The case raised various issues that were developed in later MOPI/breach of confidence cases, such as the issue of whether incorrect or disputed private information can generate reasonable expectations of privacy[483], how previous inconsistent statements may affect one's Article 8 rights, and how the Court should approach the issue of the freedom of expression rights of non-professionals (rather than the press and professional writers). The Court of Appeal, finding for McKennit, tacitly acknowledged that friendship can generate obligations of confidence. It also agreed in principle that there could be circumstances in which one's prior conduct may justify publication of counteractive materials, but the Court of Appeal found in that case that the former friend's allegations of hypocrisy (which stopped short of alleging criminal conduct on the part of the claimant) were insufficiently serious to justify publication.

Hypocrisy, drug use and the claimant's prior conduct

The Court of Appeal rejected Niema Ash's suggestion that publication of private information on Loreena McKennit was justified by her previous inconsistent statements. The cases of *A v B, C, D* (2005); *WER v REW* (2009) and *Terry* (2010) perhaps provide some clarification as to the kinds of behaviours that may justify publication of private information. In *A v B, C, and D* the Claimant sought to prevent publication by his former wife of details of his private life, including his previous drug use and rehabilitation. The High Court refused the requested injunction on the basis that it had been too widely drawn, and that the matters complained of had largely already been disclosed by the claimant, himself[484]. In *WER v REW*[485], the High Court lifted an interim injunction in favour of the Applicant, Christopher Hutcheson (the father-in-law and former business associate of TV chef Gordon Ramsey) and allowed the defendant to publish private materials, in response to the claimant's public criticisms of Gordon

[483] This was confirmed in Applause Store Productions v Raphael [2008] EWHC 1781 (QB) ["Raphael"] in which the High Court ordered removal of content from a website which made false allegations about the conduct of the claimant, and in P v Quigley [2008] EWHC 1051 (QB) ["Quigley"].

[484] Subsequent cases such as *Callaghan* and *PJS* suggest that there are circumstances in which the Court is willing to suppress information which has already been disclosed, albeit in those cases the disclosure was not by the claimant.

[485] [2009] EWHC 1029.

Ramsay. In the case of *LNS v Persons Unknown*[486] (concerning the footballer John Terry) the Supreme Court refused a permanent 'John Doe' injunction in favour of the (at the time) captain of the national football team, constraining publication of the details of an extra-marital affair. Despite Terry's assertion that the application was intended to protect his family, Lord Tugendhat noted that it lacked altruism and seemed motivated by a desire to protect his revenue. Lord Woolf commented on Terry's "very robust personality as might be expected of a leading professional sportsman" (at para. 95). The Court also refused to constrain publication of details of extra-marital affairs in the cases of *Ferdinand v MGN*[487] (also the captain of the national team at the time), *McLaren v Newsgroup Newspapers*[488]; and in *MJN v Newsgroup Newspapers*[489] the High Court permitted publication of the allegations but constrained publication of the identity of the persons concerned. The earlier (2002) case of *Flitcroft* established that extra-marital relationships may generate expectations of confidence, but in that case on the facts the High Court was unwilling to order a permanent injunction in favour of the Claimant. Lord Woolf's suggestion in *Flitcroft* that sports stars have particular responsibilities as role models may have influenced the Court's decision in these cases[490]. However, in *CTB v Newsgroup Newspapers*[491] the High Court, possibly sensing a blackmail element, refused to lift a super-injunction in favour of a famous footballer even though the identity of the claimant had already been widely published outside the jurisdiction of England and Wales. Following a private hearing, the High Court also ordered a 'super-injunction' in the case of an unnamed footballer (the name of whom was also widely circulated on the Internet), in the case *of TSE v Newsgroup Newspapers*[492]. In *MJN v Newsgroup Newspapers* [493] (another case concerning the publication of 'kiss and tell' allegations made against a footballer) the High court allowed details of the allegations, but it suppressed reporting of the footballer's name.

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[486] [2010] UKSC 26.
[487] [2011] EWHC 2454 (QB).
[488] [2012] EWHC2466 (QB) ["McLaren"].
[489] [2011] EWHC 1192 (QB).
[490] It is possible that Naomi Campbell's position as a role model may have also influenced the House of Lords to allow publication of the fact of her treatment for drug use.
[491] [2011] EWHC 1326 (QB).
[492] The Court of Appeal also upheld a super-injunction in favour of an unnamed footballer in the case of JIH v News Group Newspapers Ltd [2011] EWCA Civ 42.
[493] [2011] EWHC 1192 (QB).

iv. Sexual activity, and Article 8

Many of the cases referred to in the previous section concern the threatened publication of details relating to the sexual activities of famous sporting and media personalities. Such stories, relating to the private lives of celebrities, inevitably attract public attention and therefore have a clear financial value to the newspapers (including online newspapers) that report them.

a. 'The Freedom to Criticise'

The court considered the commercial value to the media of allegations of sexual infidelity of public figures in some of the earlier, domestic, Article 8 cases such as *Flitcroft*, in which the Court declined to suppress publication of both the story and the identity of the protagonist (a famous footballer). In subsequent cases relating to the footballers *Terry*, *Ferdinand,* and *McLaren*, the Court also refused to order enduring injunctions, allowing publication based on the doctrine of 'freedom to criticise', and the correction of previous inconsistent statements. The Court also refused an injunction suppressing the reporting of alleged marital infidelities of the radio DJ Jamie Theakston[494], although in that case the Court suppressed publication of the photographs which accompanied newspaper copy. These cases, however, appear to be exceptions to a general reluctance by the Court to find a public interest in the reporting of such matters where no other factors, such as the celebrity's prior conduct, apply.

b. No public interest where intrusions are: "merely prurience or a moral crusade"

In the case of *Mosley v News Group Newspapers*[495], the Claimant, Max Mosley, president of the Fédération Internationale de l'Automobile (and son of the late Sir Oswald Mosley, former head of the British Union of Fascists) was covertly filmed engaged in sado-masochistic activities with sex workers. The film was published online by MGN, accompanied by copy in the News of the World, which characterised this as a 'Nazi-themed' sex party. Mosley conceded that the film

[494] [2002] EWHC 137 (QB).
[495] [2008] EWHC 1777 (QB).

was genuine but disputed that the subject matter was 'Nazi-themed'. News Group Newspapers Ltd. (the Respondents) claimed that the article was justified by Mosley's denials that the party was Nazi-themed. The High Court ruled that it had not been established that the parties were Nazi-themed and on that basis, the Court found no public interest in disclosure of the video or related article. Max Mosley was awarded compensation at the sum of £60,000. Following the decision in Mosley an award of £15,000 was ordered by the High Court in the case of *AAA v Associated Newspapers*[496] in respect of photographs taken of a mother and baby and subsequently published in the Daily Mail. The High court ruled that there were no public interest grounds for publication of the photograph, notwithstanding that the child was allegedly the product of an extra-marital affair with a (unnamed) prominent politician. Confirming his disapproval of the approach taken by the News of the World, and signalling his general approach to future similar cases, Lord Eady commented that:

> It is not for the state or for the media to expose sexual conduct which does not involve any significant breach of the criminal law. That is so whether the motive for such intrusion is merely prurience or a moral crusade.[497]

c. Damages or injunction?

The approach in Mosley was confirmed in subsequent court rulings, for example, in the 2012 case of *WXY v Gewanter*[498], in which an award of £24,950 was made in respect of postings of the claimant's private information on a website. The High Court allowed proceedings to be anonymised, but declined to order an injunction restraining further postings, despite finding that the postings were harassing in nature, and made with the intention of causing distress to the claimant. However, there are some earlier rulings such as *Donald v Ntuli*[499] and *NEJ v BDZ* (Helen Wood)[500] in which famous applicants (the singer Howard Donald in *Donald*, and a 'famous actor' in *NEJ v BDZ*) have managed to obtain injunctions forbidding reporting of their activities by persons with whom they were in a casual sexual relationship.

[496] [2012] EWHC 2103.
[497] Ibid at para. 127.
[498] [2012] EWHC 496 (QB).
[499] [2010] EWCA Civ 1276.
[500] [2011] EWHC 1972 (QB).

In *PJS v Newsgroup Newspapers* (2016)[501], the Supreme Court confirmed the general stance which should be taken by the Court towards disclosure of information relating to a claimant's sexual activities. The case concerned an (anonymised) famous media figure who was alleged to participate in a triangular relationship with 2 other parties. The Supreme Court imposed widespread reporting restrictions in favour of the claimant, rather than making an award of compensation. The matter had been reported outside the jurisdiction of England and Wales (and the Claimant's name circulated on the Internet). However, in spite of this, the Supreme Court confirmed that[502]:

> The starting point is that:
>
> (i) there is not, without more, any public interest in a legal sense in the disclosure or publication of purely private sexual encounters, even though they involve adultery or more than one person at the same time,
>
> (ii) any such disclosure or publication will on the face of it constitute the tort of invasion of privacy,
>
> (iii) repetition of such a disclosure or publication on further occasions is capable of constituting a further tort of invasion of privacy, even in relation to persons to whom disclosure or publication was previously made - especially if it occurs in a different medium

The Supreme Court in *PJS* therefore established clear normative boundaries around the reporting of 'purely private sexual encounters', and it approved the use of injunctions as a means of enforcing those norms. The High Court applied this approach in 2019, in respect of publication of information by private individuals (on a website) in the case of *BVC v EWF* (No. 2)[503]. In that case the High Court was willing to enter summary judgement (and order an injunction) for the claimant. In the following year, in the case of in *BVG v LAR* (No 2)[504], the High Court granted summary judgement and an injunction in favour of a claimant.

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[501] [2016] UKSC 26.
[502] Lord Mance, in *PJS* (at para. 32).
[503] See also AXB v BXA [2018] EWHC 588 (QB) (defendant constrained from disclosing details to third parties of her sporadic trysts with a wealthy individual who had a young family) ["BVC"].
[504] [2020] EWHC 931 (QB).

This could signal a loosening by the domestic courts of their ties to Strasbourg case law, since the preferred remedy by the ECtHR for breach of Article 8 is a single award of damages. There may be inconsistencies concerning the basis for ordering injunction rather than compensation, however. Lord Mance in *PJS* suggests that the wealth of a claimant may be a relevant consideration when considering whether the court orders damages or an injunction[505].

v. Families and 'private family life'

The Supreme Court's approach to the reporting of 'purely private sexual encounters' in *PJS* tacitly approves the ruling in *Mosley*. However, the Supreme Court in *PJS* prefers injunctive relief as a remedy to prevent further disclosures, even after disclosures had occurred. In the years between the ruling in *Mosley* (2008) and *PJS* (2016) the courts considered a large volume of applications for orders to suppress the publication of 'purely private sexual encounters'. In many of the successful applications the judicial balance has been swayed by the likely harm of publication on 'innocent' family members and children. The courts have, for example, granted injunctive relief in relation to 'kiss and tell' publications to prevent harm to the claimant's children and families in the cases of *CDE v Mirror Group Newspapers*[506] and *Goodwin v News Group Newspapers*[507]. In *ETK v News Group Newspapers*[508] the Court of Appeal considered the risk of playground bullying of the claimant's child, as a result of press reporting of the father's affair. The courts have also provided some indication of the limits of Article 8 protection of private and family life. In the case of *King v Sunday Newspapers Ltd*[509] the Northern Irish Court of Appeal confirmed that a claimant's Article 8 rights can provide protection against publication of materials relating to his/her family members.

a. Article 8 and 'family secrets'

[505] In *PJS,* at para. 43.
[506] [2010] EWHC 3308 (QB).
[507] [2011] EWHC 1437 (QB).
[508] [2011] EWCA.
[509] [2011] NICA 8.

Most Article 8 applications to suppress disclosure of family secrets concern the sexual activities of family members. However, the courts have also shown themselves willing to intervene in respect of disclosures concerning other matters such as an individual's state of health, even suppressing disclosure of those secrets between family members. In the case of *JQL v NTP*[510] the Court was willing to act to prevent misuse of private information (the applicant's mental health history) within the context of an informal, family discussion on Facebook. However, in *Hutcheson v News Group Newspapers*[511] the Court of Appeal confirmed that there were no reasonable expectations of privacy in respect of the existence of a second family. This was confirmed in *Higinbotham v Teekhungam* [512], where the High Court declined to suppress disclosure of the existence of the claimant's second family by the defendant on social media.

b. Privacy, or private family life?

In *JQL*, *Hutcheson*, and *Higinbotham*, the connection between privacy and family life is clear. However, there are also some Article 8 cases relating to 'private family life', which may not at first sight appear to relate to privacy in its usual senses, but they are more concerned with the integrity of the family unit in relation to external forces applied by the state. Those cases in which the rights of families to determine the treatment of young people are balanced against medical institutions and local authorities, are discussed earlier in this Chapter.. However, there are some other cases in which Article 8 rights have arisen, which do not relate to privacy in its more conventional senses, but rather the integrity of the family unit. There are, for example, some important immigration law cases in which Article 8 rights to private and family life are raised. This includes the 'right to treatment' case of *GS (India)*. In *SXH v CPS* (2017)[513] the Supreme Court declined to find that the CPS had breached the claimant's Article 8 rights by prosecuting her for travelling with a false passport. The Claimant (a political immigrant from Sudan) argued that the CPS decision potentially undermined her application for political asylum (and was unlawful) but the Supreme Court ruled (with apparent circularity) that the CPS was, itself, bound by the HRA 1998, and its

[510] [2020] EWHC 1349 (QB).
[511] [2011] EWCA Civ 808.
[512] [2018] EWHC 1880 (QB) ["Higinbotham"]
[513] [2017] UKSC 30.

activities were therefore compliant with Convention rights. The unwillingness of the courts to overturn or interfere in decisions made by other state bodies is reflected also in the case of *F v M*[514]. In this case the Supreme Court upheld the first instance decision that a grant of asylum by the Secretary of State presents an absolute bar to any proceedings to have the child removed from the jurisdiction. This was despite the child's father, a Pakistani national, having received a written undertaking from the mother that the child would live in Pakistan.

Article 8 rights to respect for private and family life have also been raised in relation to some prominent 'right to reproduce' cases. The cases of *R. v Secretary of State for Home Department ex parte Mellor*[515] and *Dickson v Premier Prison Service Ltd and Secretary of State for the Home Department*[516], were brought by life prisoners who argued, unsuccessfully, that they had a right to receive IVF treatment. Article 8 rights were cited, also in the case of *Evans v Amicus*[517], concerning rights over frozen embryos, and in *Warren v Care Fertility (Northampton) Ltd*[518], concerning the ownership by the applicant, Beth Warren, of frozen semen which had been extracted from her late husband. Article 8 rights were claimed, also, in the surrogacy case of *Re C and D* (Children)[519].

c. Other manifestations of private family life

It would be impossible to cover in the course of a thesis, the entire range of contexts in which Article 8 rights to private and family life have been cited in legal disputes. Article 8 rights have also been raised, for example, in the case of *Wilkinson v Kitzinger*[520] (recognition of same sex marriage), although the passing of The Civil Partnerships Act (2004) has obviated the need for further similar case law[521]. Article 8 rights also arose in 2 differing forms in the adoption dispute *RY v Southend Borough Council*[522]. First, there was an anonymity Order in respect of

[514] [2017] EWHC 949 (Fam).
[515] (Unreported) CA 4 Apr 2001.
[516] [2004] EWCA Civ 1477.
[517] Evans v Amicus [2003] EWHC 2161 (Fam).
[518] Warren v Care Fertility (Northampton) Ltd and another [2014] EWHC 602 (Fam).
[519] [2015] All ER (D) 121 (Aug).
[520] [2006] EWHC 2022 (Fam) ["Wilkinson"].
[521] Wilkinson v Kitzinger was heard at the High Court after the Civil Partnerships Act had been passed but prior to the Act coming into force.
[522] [2015] EWHC 2509 (Fam).

the Child, 'SY', and her prospective adoptive parent 'RY'. The second sense in which Article 8 rights were invoked was in its manifestation of "family life". RY, the prospective adoptive parent, was SY's carer from whom Southend BC sought to take custody of SY. RY raised Article 8 rights to 'family life' in response to the Council's application. Haydon J, the presiding judge made some interesting observations regarding this manifestation of Article 8: [523]

> Family life within the expansive context of Art.8 is a very broad spectrum, regulating all kinds of relationships, many of which are not obviously associated with the conventional concept of the family.

The Council's application for custody of the child was successful, largely based on evidence that RY had been uncooperative and at times hostile towards themselves and medical advisors, and that she lacked the skills to care for the child as she grew older. However, Haydon's words illustrate the discursive richness of conceptions of 'the family' within legal discourse and this is explored further at the conclusion of this chapter.

vi. Privacy, the State, and the 'right to be let alone'

Article 8 rights to respect for private and family life have been raised by families in relation to the activities of state institutions such as the NHS, the CPS and the Home Office. In these cases, the State is often perceived as intruding on the integrity of the family unit; and it is the family, rather than one's personal 'privacy' in its conventional senses, that is threatened by the State. Indeed, in the *Gard* case Charlie Gard's 'privacy' in usual understandings of the word had been lost in the course of the media interest in the story. However, the case was not about Charlie Gard *per se*, who was too young to hold his own opinions, but about the differing views of his family and health practitioners concerning his 'best interests'. Perhaps, here, the concept of privacy arises, not in the sense of 'secrecy', 'seclusion', or 'anonymity' but more as a state of being 'free from interference', expressed as a legal precept by the American jurists Warren and Brandeis (1890[524]): 'the right to be let alone'.

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[523] Ibid at para. 39.
[524] Samuel Warren and Louis Brandeis, 'The Right to Privacy' (1890) 4 The Harvard Law Review 192

a. Article 8 and the actions of the Police

The notion of the 'right to be let alone' may arise in the context of families subjected to acts of state institutions, however there are also contexts in which individual freedoms are subject to restrictions or interference by the State. An important context in which individual Article 8 rights might arise in relation to the activities of the state is in the field of record keeping and data protection, particularly with regard to surveillance and records gathered in the course of Police investigations.

This thesis has already observed that the Court has shown itself unwilling to constrain or criticise other arms of government where breaches of Article 8 are alleged to have occurred as a consequence of acts of state institutions, such as the CPS[525], Local Authorities[526], or the NHS[527]. The case of *Wood v Commissioner of Police for the Metropolis*[528], however, confirms that the Court may be more willing to intervene where Article 8 rights are engaged in relation to the Police. In *Wood* the Court of Appeal confirmed that the mere act of photographing individuals in public engages Article 8, and the Police were ordered to destroy the photographs they had taken of the applicant, an arms protester attending the *AGM of Reed Elsevier PLC* (an analytics company and online publisher). The Supreme Court took a similar approach in the case of *R (on the application of Catt) v ACPO*[529], in which, reversing a first instance ruling, the Supreme Court ordered the destruction of a substantial dossier the Police had gathered on a frequent, but lawful, protester. In *Mengesha v Commissioner of Police of the Metropolis*[530] the High Court ruled as unlawful the practice of requiring suspects to consent to close photographic or video surveillance as a condition of being released, and it confirmed that materials obtained in this manner would be inadmissible as evidence in Court. The Court of Appeal disapproved the mass use of facial recognition software in *R (on the application of Bridges) v Chief Constable of South*

[525] For example, *SXH v CPS* [2017] UKSC 30.
[526] For example, *Warwickshire C.C. v Matalia* [2015] 2 WLUK 919.
[527] Such as *Gard*.
[528] [2009] EWCA Civ 414 ["Wood"].
[529] [2015] UKSC 9 ["Catt"].
[530] [2013] EWHC 1695 (Admin)

Wales Police & Information Commissioner[531], finding that the safeguards put in place by the South Wales police against discriminatory use of the technology were insufficient. It should be noted, however, that the Court of Appeal acknowledged that mass use of the technology by the Police could be lawful, with proper safeguards in place.

Whilst the Court has at times disapproved the methods by which the Police may gather evidence, it is less willing to fetter the discretion of law enforcement services, concerning its retention and use of data once it has been obtained. The House of Lords 2004 affirmed in *R (on the application of S) v Chief Constable of Yorkshire Police*[532] that the practise of retaining fingerprint photographic and DNA evidence from suspects does not engage Article 8, even where no charges are brought. This position was reiterated by the Supreme Court, rejecting the appeal in *Gaughran v Chief Constable of PSNI*[533]. In *Gaughran,* the Appellant (who had been convicted of drink driving 6 years previously) challenged the blanket practice of retaining indefinitely DNA, fingerprint, and photographic data of persons convicted of criminal offences, regardless of the seriousness of the offence. It is of interest to note that both of these cases were subsequently taken to Strasbourg; where the ECtHR confirmed that Article 8 rights had been engaged, and it made awards of compensation to the applicants. The ECtHR published its Decision in *Gaughran* in October 2020, so it may be too early to see how the domestic courts will accommodate its ruling.

2. Disclosure of criminal allegations

There are 2 factually similar, but divergent, cases which suggest that the Court takes an ambivalent stance concerning Police disclosures of details of criminal allegations where no conviction has occurred. The case of *R (on the application of J) v The Chief Constable of Devon & Cornwall*[534], concerned the Judicial Review, by a nurse, of a decision to include 4 allegations of 'heavy handedness' towards patients in an Enhanced Criminal Records Bureau ('ECRB') check. The High Court made a Declaration that the applicant's Article 8 rights had been breached, and

[531] [2020] EWCA Civ 1058.
[532] [2004] UKHL 39.
[533] [2016] AC 345; [2015] UKSC 29 {"Gaughran"]
[534] [2012] EWHC 2996 (Admin)

quashed any decisions made by State authorities subsequent to that. In the case of *R (on the application of B) v Chief Constable of Derbyshire Constabulary*[535], the applicant was a doctor, who also sought to challenge the decision by the Police, to include allegations of violence in an ECRB check. In this case it was a single allegation, but the alleged offence (stabbing an associate in the chest with a knife, with threats to kill) was more serious. The High Court upheld the decision to include the allegation in the ECRB return.

vii. Article 8, the Internet, and the new media

Tortfeasors who use electronic media to unlawfully publish private information are subject to the same principles as those using conventional media, for example in the cases of *Applause Stores v Raphael*[536] (award of compensation for a false defamatory profile published on Facebook), JQL v NTP[537] (injunction and compensatory award for disclosures on Facebook by the uncle of an aspiring lawyer, regarding her mental health state) and *BVC* (summary judgement where the Defendant published information regarding the Claimant's sexual activities on a website). It is interesting to note also that the Court has applied similar standards of 'reasonable expectations of privacy' in the new media as the printed media where facts are similar. For example, in *BVC*, the High Court followed the factually similar *WER v REW*[538] in finding that there are no reasonable expectations of privacy regarding the existence of a second family (regardless of whether the disclosure is made on social media, or printed media). *Price v Powell*[539] however, confirms that where information is unlawfully published online the Court is willing to presume that injury has occurred. This suggests that, whilst the Court may apply similar normative standards in respect of digital media, to printed media, its approach in enforcing those normative standards may differ.

[535] [2011] EWHC 2362 (Admin)
[536] [2008] EWHC 1781 (QB).
[537] [2020] EWHC 1349 (QB).
[538] [2009] EWHC 1029.
[539] [2012] EWHC 3527 (QB) ["Price"]. The High Court noted that it did not form part of the defence that the applicant had no reasonable grounds, nor was there an application for strike out of the claim, and on that basis proceeded on the basis that the threshold requirements for Article 8 HRA (1998) had been met.

a. The challenges of electronic media

Whilst the Court may seek to apply the same normative standards to disclosures made on the Internet to conventional media, the Court recognises that the immediacy of the Internet creates different challenges to traditional media, as *Price* illustrates. Electronic media are not merely a means of publishing information, but often incorporate an application interface that allows the user to conduct targeted searches through large volumes of data through, for example, setting the parameters to narrow the number of results of a search, or using keywords. The Northern Ireland High Court recognises this function of the social media, structuring and framing data rather than merely replicating it, in the cases of *Callaghan*, and *CG*. In these cases, it was found that the claimant's reasonable expectations of privacy had been breached by publication of details of their convictions for murder, regardless that those details could have been obtained through an Internet search. In the case of *CG*, the NI High Court was willing to find Facebook, itself, jointly liable for the breach and the social media site was ordered to remove the postings. In *J20 v Facebook Ireland*[540], the claimant sought to find the social media provider liable not merely for publication of allegations of sectarianism, but also for personal injuries from the psychological trauma arising from that publication. The applicant in *J20* failed to establish causation, however, and he was awarded only £3,000 for the breach of privacy, itself. In all these cases the Northern Ireland High Court accepted that there was a real risk of reprisals caused by the breaches.

The cases of *Callaghan*, *CG* and *J20* concerned claims against individuals who had published private details regarding the claimants on social media. In the latter 2 cases, the Court was willing to find the social media provider jointly liable for the publications, although not, in the case of *J20*, liable for personal injuries. In the case of *NT1 v Google LLC*[541] the domestic court extended this principle into a general 'right to be forgotten' finding Google LLC liable for details of the Claimant's historic business crimes, revealed by an Internet search conducted through its browser. The ruling in *NT1*, followed earlier rulings by the ECtHR such as the 2014 ruling in *Google Spain v González* [542]. The right to be forgotten has

[540] [2016] NIQB 98 ["J20"].
[541] [2018] EWHC 799 (QB) ["NT1"].
[542] Case C-131/12. The cases of *NT1* and *CG* were both referred to in the judgement.

now been incorporated in the General Data Protection Regulations 2018 [the 'GDPR'].

b. Contextualising new media within a traditional framework

The case of *Author of a Blog v The Times Newspaper*[543] illustrates some of the difficulties faced in locating new media within the established journalistic environment. In that case the Times sought to reveal the identity of the author of a blog, a serving policeman, writing under the pseudonym 'NightJack'. The blog, which was critical of police procedure and practice had won the George Orwell award for journalism in 2009. Notwithstanding this, Eady J was unwilling to extend journalistic privileges to Night Jack, who was subsequently revealed as Richard Horton, and dismissed by his employers.

viii. Article 8, MOPI and Other Areas of Law

Before considering some of the broad themes within Article 8 and MOPI it is necessary to consider some of the cases which contextualise this area of law within the legal canon as a whole.

a. Article 8 and Employment Law

This thesis has noted that Article 8 has been engaged in respect of a variety of contexts, particularly when it manifests as a right to "respect for …family life". As noted earlier in this Chapter, Article 8 applications have been made against emanations of the State, in a diverse range of contexts. The Court, whilst not necessarily agreeing those applications, has been willing to accept that these are the sorts of matters which could be covered by Article 8 rights. The Court does not accept however, that any unwelcome decision by a state authority necessarily impinges upon an individual's (or family's) 'private life'. In the case of R. (on the application of the *Countryside Alliance) v AG*[544] it was found by the House of Lords that the provisions of the Hunting Act 2004 did not engage Article 8. Several cases have established also that employment issues do not tend to engage Article 8 notwithstanding that the employer may be an arm of the state (and

[543] [2009] EWHC 1358 (QB) ["The Night Jack" case"].
[544] [2007] UKHL52.

notwithstanding the obvious effect of dismissal on one's 'private and family life'). These include the Court of Appeal decision in *Turner v East Midlands Trains Ltd*[545] *and the* EAT's decision in *Garamukanwa v Solent NHS Trust*[546]. The decision in *Garamukanwa* also affirms that the claimant, who had been dismissed for harassing statements found on his company mobile telephone, had no reasonable expectations of privacy regarding the contents of that telephone. This seems at odds with the Strasbourg decision in *Bărbulescu v Romania*[547], which establishes that the employee retains some Article 8 rights over the contents of personal emails at work. However, it is consistent with the High Court's ruling in *Abbey v Gilligan*[548], in which it found that a consultant had no reasonable expectations of privacy regarding some incriminating emails made in the course of his employment. In *Q v Secretary of State for Justice*[549] the EAT declined to rule that the probation service had breached the Applicant's Article 8 rights for dismissing its employer (a probation officer) for allegations of abuse of her own child, although in that case it was prepared to accept that Article 8 rights may have been engaged by the facts behind her dismissal.

b. Article 8 and Defamation

Legal discourse on privacy may overlap with discourses on employee rights in respect of communications made at the workplace, but the boundaries between privacy and defamation may rely upon more technical distinctions. The cases of *Quigley* and *Raphael* confirm that there is a reasonable expectation of privacy in respect of information which is not factually correct, which suggests there is some overlap with defamation law. This development in privacy law has attracted some criticism (Eric Berandt, 2016a[550]) since this creates an apparent disparity with actions under the Defamation Act 2013. Whereas Section 1 of that Act requires that 'significant harm' must have arisen from the defaming act, some privacy rulings (notably the case of *Price*) set a lower threshold. In MOPI claims it is only necessary to establish that *some* harm has occurred for the claim to succeed.

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[545] [2012] EWCA Civ 1470.
[546] UKEAT/0245/15/DA ["Garamukanwa"].
[547] [2017] EHCR 742.
[548] [2012] EWHC 3217 (QB) ["Gilligan"]
[549] UKEAT/0120/19.
[550] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept?' (no 177).

Furthermore, *Price* establishes that in MOPI claims the Court is willing to make a presumption that harm has occurred as a result of the breach.

However, notwithstanding the lower threshold for MOPI claims some notable claims have not succeeded. In *Trimmington v Associated Newspapers*[551] the High Court ruled that the description of the claimant by the defendant as a 'lesbian' was not harassing in nature. In *Ewing v Times Newspapers Ltd*[552] the Northern Ireland Court of Appeal disapproved the claimant's attempt to take advantage of the longer limitation period for MOPI claims (6 years) after the limitation period for libel claims (1 year) had passed. The risk of abuse of the less onerous privacy rules in MOPI claims was also noted by the High Court in the case of *Siddiqi v Aidiniantz* (Rev 1)[553], a case which concerned various statements made by former business partners who managed a privately run Sherlock Holmes museum. In *Galloway v Frazer*[554], however, the Northern Ireland High Court allowed George Galloway to serve papers out of jurisdiction for (simultaneously) MOPI, breach of data protection and defamation, for publication of videos on the video hosting site Youtube. The papers were served both on the publisher (the political activist, William Frederick Frazer) and the proprietor of Youtube, Google LLP. In the case of *Commissioner of the Police of the Metropolis v Times Newspapers Ltd*[554] the High Court was required to manage cross allegations of MOPI and defamation. The Times had obtained information from the Commissioner, and from SOCA, which formed the basis of a series of articles about a Mr Hunt, who it was alleged was an 'untouchable' underworld figure. The Articles became the subject of a claim for breach of confidence by the Commissioner and SOCA, and a claim for libel from Mr Hunt. The High Court assimilated the differing requirements of the 2 claims by making a preliminary ruling on the 'trustworthiness' of the journalistic source who was the source of the leaks before moving to the breach of confidence issues. The 2020 case of *Aven v Orbis Business Intelligence Ltd*[555] illustrates the difficulties faced by the Court when adjudicating simultaneous allegations of defamation and data protection. The case concerned allegations around the Claimant's business

[551] [2012] EWHC 1296 (QB) ["Trimmington"].
[552] [2013] NICA 74.
[553] [2019] EWHC 1321 (QB).
[554] [2016] NIQB 7.
[554] [2011] EWHC 2705 (QB).
[555] [2020] EWHC 1812 (QB) ["Aven"]

dealings with Putin's administration following publication of the 'Trump dossier'. Warby J took a methodical approach, considering each allegation in turn (which included criminal allegations of financial impropriety), and ruling whether each could constitute a breach of the Claimant's personal data, before ruling on the truth of those allegations. Sir Warby awarded the sum of £18,000 compensation to the claimant, without stipulating which part appertained to the data breach and which part appertained to defamation.

c. MOPI, or breach of confidence?

MOPI and breach of confidence are often pleaded together, and distinctions between these two types of claim are unclear and based on subjective criteria such as the quality of the relationship between the parties. However, the basis in law for the 2 claims is different (Normann Witzleb, 2007[556]) a breach of confidence relates to personal (*in personam*) obligations arising from a relationship based on trust, whereas MOPI relates to *in rem* obligations based on general normative standards ('reasonable expectations'). This highly technical, abstract, distinction was explored by the Court of Appeal in the case *of ZXC v Bloomberg*[557]. The case concerned an article by the Defendant about the Claimant's business dealings. The article was prompted by a letter written by the claimant, asking for legal advice in respect of potential criminal charges arising from his business conduct. The Court of Appeal, finding for the claimant, drew a distinction between the contents of the letter which it ruled did not amount to 'private information' and the letter, itself, which was inherently confidential in nature. The 2021 case concerning the interception of a letter from The Duchess of Sussex by the Daily Mail[558] considered both the Claimant's Article 8 rights over the letter and copyright over the contents of the letter. The High Court was willing to enter summary judgement in the Claimant's favour, based on the breach of copyright.

ix. Conclusion

[556] Normann Witzleb, 'Justifying Gain-Based Remedies for Invasions of Privacy'(no 67).
[557] [2020] EWCA Civ 611
[558] *Sussex v Associated Newspapers Ltd* [2021] EWHC 273 (Ch)

This Chapter is a case law review of Article 8 cases. It considers a large sample of cases, arising from claims to Article 8 rights, which have been settled in the domestic higher courts and tribunals of England and Wales, and Northern Ireland. The cases have been loosely grouped together under broad themes in order to identify some patterns, regularities and inconsistencies within the Court's approach towards privacy law. It is suggested that some themes and issues have emerged from this case law review which merit further discussion, and contextualisation. These are considered, in turn:

i. The ruling in *Richard* and the ruling in *Khuja*

In which circumstances are there reasonable expectations in relation to (false) allegations of criminal conduct? It is noteworthy that in *A & B v X & Y*, the EAT followed (and extended) the High Court's approach in *Richard*, in respect of a litigant who was (like Cliff Richard) a 'public figure'. The EAT issued a permanent anonymity order in respect of the litigant's identity. However, a group of cases including *Khuja*, which do not concern public figures, appear to directly contradict the ruling in *Richard.*

ii. The application of the powers of court: compensation or Injunction?

In the case of *Moseley* (2008) the court made an award of compensation. The award of damages is the preferred approach of the ECtHR and this approach has been followed in some earlier privacy cases such as *Raphael.* However, in some of the more recent cases concerning publication (or threatened publication) of the personal affairs of public figures, the court has been more willing to use its powers to suppress publication of that material. In *PJS* (2016) for example the court, issued a wide-ranging injunction. In the case of *JQL* (2020), a case concerning pending publication of details of a politician's illegitimate child, there was both award of compensation and injunction ordered. It is possible to discern from this a progressively rigorous approach by the court in relation to the enforcement of privacy rights.

iii. The privacy rights of children

In general terms the court's approach to the privacy rights of minors seems to be less dependent on principles such as 'reasonable expectations of privacy' and

more focussed on the particular facts of each case (Eric Barendt, 2016a[560]). However, some decisions involving minors such as the decision in *Spelman* to allow the reporting of allegations of illicit drug use and the decision in *Trinity Mirror*, to release the name of a daughter of a convicted paedophile can be difficult to explain without recourse to principles such as the 'freedom to criticise' (in *Spelman*), the 'public interest' and the 'principle of open justice' (in the case of *Trinity Mirror*). The application of such principles is problematic, however, and is discussed below.

iv. Actions against public authorities

In general terms, it seems that the court is unwilling to find other public authorities to be in breach of Article 8 rights. The higher courts have heard, and refused, a tranche of highly publicised claims against medical authorities challenging a decision to discontinue treatment. In the cases of *R (on the application of S)* and *Gaughran* the domestic courts rejected claims against the Police for retention of sensitive data, which were subsequently upheld in Strasbourg. In the case of *SXH*, the Court, applying an apparent circular argument, cited the CPS' own obligations under Article 8 as a basis for rejecting a claim for breach of Article 8 rights against them.

v. Misuse of Private Information v Defamation

It has been noted that there is some overlap between MOPI and claims arising from the Defamation Act 2013 concerning 'privacy rights' in relation to untrue information. This overlap of laws could also create issues regarding the administration of those rights, due to the more onerous threshold requirements under S1 Defamation Act (2013), then those under privacy common law rulings.

vi. 'More than merely prurient'

The ruling in *Moseley* suggests that for there to be a public interest in a private matter the interest needs to be 'more than merely prurient'. The Court was willing to find public interest in the reporting of the extra-marital activities of the footballers *Terry*, *Ferdinand*, and *McLaren.* These matters clearly included issues

[560] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept? (no 177).

which could be generally considered to be of a prurient nature, although overriding moral, principles such as hypocrisy were cited by the Court to justify the decision to allow publication in those cases.

Underlying Legal Principles

The apparent inconsistencies in the court's approach are justified/explained by wider principles. A variety of principles have been suggested by the higher courts since some of the earliest, post HRA 1998 rulings. The Lords in their deliberations in the case of *Campbell* itself, suggest several principles which could be applied to privacy cases such as the 'highly offensive test' and the 'obviously private' test (Nicole Moreham, 2005[561]). These principles, unlike MOPI and the principle of 'reasonable expectations of privacy', failed to be significantly developed in later privacy rulings.

Other principles which could apply to privacy rulings include the principle of 'role models'. This was explicitly cited by Lord Woolf in the ruling in *Flitcroft*. Whilst not explicitly expressed in those terms it is possible that this conception of role models informed the decision of the court in later rulings such as *Spelman* and *Terry*. Another principle which could have developed in privacy rulings is the notion of a 'right to image'. Lord Hale in in *Campbell* denies that this right is recognised in domestic common law, 'unlike France and Quebec'. However, it can be argued that cases such as *Douglas, de facto* create such a right. The development of a right to image could also be a factor in the Court's departure from the decision in *John*, in the later cases of *Murray* and *Weller*.

A key principle which arises within privacy law, however, is the concept of 'public interest' which is frequently cited to justify publication of otherwise private material. This is a flexible concept which appears to rest on some subjective criteria applied by the tribunal, including judgements regarding the claimant's moral conduct.

The court as 'norm-broker'

[561] Nicole Moreham, 'Privacy in the Common Law: A Doctrinal and Theoretical Analysis' [2005] 121 The Law Quarterly Review 628.

Without recourse to overriding legal principles such as the matters in the 'public interest' and the related 'right to criticise', which are cited in support of publication of personal matters) it is difficult to explain the differences in the Court's approach to some cases presenting ostensibly similar facts. The principles which justify these distinctions, however, can be subtle or technical in nature and they can therefore be incomprehensible to non-lawyers. Further, lay knowledge of rulings may come from a summarised and highly simplified report (in a newspaper or online source) which focuses on the facts of the decision, without providing a detailed account of the principles underlying that decision. Pierre Bourdieu, himself noting that the workings of the court can be incomprehensible to non-lawyers, suggests that this benefits the juridical field, creating an aura of mystique around its activities, which increases its prestige (Pierre Bourdieu, 1987[562]). It is suggested here, however, that if the principles which underlie the court's decision are unclear or misunderstood there is a risk that court rulings can appear haphazard, which could be damaging to juridical prestige.

The jurists Michael Hamilton and Antoine Buyse (2018[563]) suggest a judicial function in relation to human rights issues of 'norm-brokerage', that is the finding of universal principles underlying human rights rulings which account for the wider impact of individual court decisions. They argue that it is essential for courts to take a wider perspective in their management of human rights claims due to the potential impact of individual decisions on society as a whole. Based on this case law review, it is suggested that the domestic higher courts have applied themselves to the creation of universal principles in relation to privacy issues, but the principles themselves have the risk of appearing unclear, and the application of them could have wide ranging unintended consequences, exposing wider socio-economic divisions in relation to privacy norms.

Is there a single paradigm of privacy?

One of the problematic aspects of privacy, discussed at Chapter 2 is that privacy, rather than being a single concept, is a 'family' of related concepts. At the

[562] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law' (no 23) [830].
[563] Michael Hamilton and Antoine Buyse,'Human Rights Courts as Norm-Brokers' (2018) 18 Human Rights Law Review 2, 205.

Introduction to this chapter (Chapter 4) it is noted that Article 8, whilst expressed as a single right, is an amalgam of 4 separate rights, these are:

The right to respect of:

i. Private life;
ii. (private) Family life;
iii. (private) home life;
iv. (private) correspondence.

The very phrasing of the HRA 1998 has therefore built an inter-discursive structure into representations of privacy, which adds further layers of complexity to this already complex concept, within the context of legal discourse.

Domestic case law has developed each of these themes, locating these abstract concepts in a growing range of social situations. However, particularly problematic, is the conception of 'family' in the context of privacy law. The concept of 'family' like 'privacy' is an ideologically and culturally complex concept, which conveys a range of discursive associations. Both of these terms were considered to be significant British cultural-historical reference points ('Keywords') by the cultural critic, Raymond Williams and are discussed in his seminal work, *Keywords: A Vocabulary of Culture and Society* [564]. Perhaps it should not therefore be surprising that privacy rights, in their manifestation as rights to 'private family rights' should attract a wide diversity of claims including matters as diverse as: rights to refuse treatment, as well as challenging medical decisions to discontinue treatment, as a legal justification for same sex marriage, or for a prisoner to receive IVF treatment, or for challenges to decisions in respect of applications for immigration. Not all of these claims were successful. However, the Court has accepted jurisdiction over these disparate issues under the provisions of Article 8, confirming that it takes an expansive view of the ambit of these rights, extending the range of social contexts which come within the court's normative authority.

[564] Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (2nd edn, Fontana Press 1988).

The Judicial Habitus, the Juridical Field and Juridical Capital

It is suggested at Chapter 3 of this thesis that this study adopts a critical stance in relation to, not only privacy rulings, but the structures around privacy rulings generally. The purpose of this is to allow privacy rulings to be contextualised in relation to those wider social forces This stance, which is based on the dynamic interaction of the forces of habitus, field, and capital, allows an ontological lens to be cast, simultaneously, on the output of juridical field (i.e. its case law decisions, and construction of normative principles which justify them), and the forces which shape them (both within and outside the juridical field).

Taking this wider perspective in relation to this case law review it is possible to make some tentative observations regarding the wider consequences of judicial privacy rulings.

The 'juridical habitus'

The preceding review of case law has revealed a diverse range of approaches by the court in relation to privacy claims even where some of the key facts in divergent cases appear to be similar. This perhaps reflects the degree of discretion available to the tribunal in the management of privacy claims. The Court has given itself extensive powers in relation to its enforcement of privacy rights including the power to hold hearings in private, anonymisation and the power to issue wide-ranging 'super-injunctions' for which even the details of the injunction can be covered by the terms of that injunction This use of the powers of the court to suppress publication of the details of personal affairs of celebrities has attracted some controversy. An example of this is *CTB v News Group Newspapers Limited*[565], concerning the details of the footballer Ryan Gigg's relationship with reality TV star Imogen Thomas. In this case the details of the super-injunction were widely discussed in social media (in breach of the injunction), and the identity of the applicant (the footballer, Ryan Giggs) was finally confirmed by Liberal Democrat MP John Hemming in the House of Commons, using parliamentary privilege to avoid judicial sanctions for breaching the injunction. It was also revealed by Andrew Marr himself, allegedly following pressure from fellow journalist Ian

[565] 565 [2011] EWHC 1232 (QB)

Hislop, that he had obtained a super injunction in 2008, to prevent publication of details of an extra-marital affair.

The disposal of some of the claims in relation to the extra-marital affairs of persons in the 'public eye', in particular, can appear to be inconsistent. Whilst Ryan Giggs received the benefit of a super-injunction in relation to his affair with Imogen Thomas, some notable privacy actions concerning footballers have been rejected by the court. There is a suggestion of the application of some subjective value judgements on the part of the tribunal. In the case of *Terry*, for example, the court noted the footballers 'robust personality' (Lord Tugendhat, at para. 95). In *Flitcroft*, the applicant's status as a role model was noted. Paul Wragg (2019[567]) commenting on the subtle distinctions which resulted in the widely divergent rulings in *PJS* and *Terry*, suggests that the current case by case approach taken to MOPI claims: 'encourages, or otherwise allows, judges to make determinations based on personal taste'. It is suggested that expressions of 'personal taste' raise the risk of manifesting as the exercise of structural prejudices by judges in the management of claims.

The dynamics of the juridical field

The responses to the super-injunctions ordered in the case of Ryan Giggs and Andrew Marr, is perhaps revealing of wider social divisions in relation to privacy. Underlying this, controversies around court decisions could be a dynamic which draws the court, and the juridical field which it occupies, into conflict with the traditional media. Jacob Rowbottom (2015[568]) suggests an ongoing conflict between the courts and the media has underpinned juridical rulings from *Campbell* onwards.

The deliberations of Andrew Marr, which prompted him to reveal his super-injunction, are revealing of some of the possible dynamics within the media field in relation to developments in privacy law. Marr admits to being embarrassed, not by the affair which was the subject of the injunction; but by his use of court

[567] Paul Wragg,' A freedom to criticise? Evaluating the public interest in celebrity gossip after Mosley and Terry' (2010) 2 Journal of Media Law 2, 316.
[568] Jacob Rowbottom, 'A Landmark at a Turning Point: Campbell and the Use of Privacy Law to Constrain Media Power' (2015) 7 Journal of Media Law 2, 170.

procedures to suppress the details of that affair, which attracted criticism from fellow journalists such as Ian Hislop[569].

Within legal scholarship, some developments in privacy law have attracted criticism and division. The development of the 'concept of reasonable expectations of privacy', has attracted robust criticism from scholars of defamation law such as Eric Barendt (2016a[570]) who calls it 'a redundant concept'. Eric Barendt is critical of the likely impact of developments in privacy law on adjacent areas of law such as defamation (Eric Barendt, 2016[571]). One of Eric Barendt's criticisms of privacy law is the difficulty quantifying damages in privacy claims. It is noteworthy that even with some of the more recent privacy claims such as *Aven* (2020) the court has declined to explain its award.

Juridical Capital

It is noted that the juridical field takes an expansive view of its role in relation to privacy rights. For example, the court has been willing to adjudicate on a wide variety of contexts under the provisions of Article 8, some of which do not conform to conventional conceptions of privacy. As more social contexts are brought within into the ambit of juridical norm-brokering, the societal impact of the juridical field within privacy discourse is liable to increase. This could (as Pierre Bourdieu may suggest) have the effect of increasing the prestige of the juridical field, shaping privacy norms outside that field, or it could mean that the court and the rulings it produces in relation to privacy become increasingly remote from the experience of wider society. A quantitative study of MOPI rulings by David Mead (2017[572]) concluded that MOPI rulings are becoming increasingly focussed on the particular issues faced by celebrities, and they have little applicability to threats to privacy rights outside the more economically privileged sectors of society. Further, criticism of court decisions is widespread in the comments' pages on online journals, where the basis for those decisions can be misunderstood, or

[569] "BBC's Andrew Marr 'embarrassed' by super-injunction" (BBC News, 26 April 2011) <https://www.bbc.co.uk/news/uk-13190424> accessed 29 July 2022.
[570] Eric Barendt, '"A reasonable expectation of privacy": a coherent or redundant concept? (no 177).
[571] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (no 176).
[572] David Mead, 'A socialised conceptualisation of individual privacy: a theoretical and empirical study of the notion of the 'public' in UK MoPI cases' (2017) 9 Journal of Media Law 1, 100.

dismissed as irrelevant, or out of touch. The use by the court of its powers has also been criticised. For example, in the case of Ryan Giggs there was widespread discussion of the identity of the subjects of the injunction on Twitter, notwithstanding the risk of criminal sanctions for breaching the terms of the injunction.

One of the factors which could determine the future status of the juridical field in relation to privacy (and generally) is the construction and application of normative principles which support privacy rulings. These principles must be seen to be rational, and equitable, and relevant to all sectors of society.

Chapter 5
Research Methods

Introduction

This chapter (Chapter 5) considers the methods used to analyse the issue of legally defined privacy. Chapter 2 of this thesis considers the problem of legally defined privacy, and it locates that problem into the contexts of the legal field, and historically and culturally, within wider society. Chapter 3 considers an epistemological approach to the investigation of privacy, which provides a platform from which the problem of privacy can be seen both within both of these contexts, the legal context, and in that wider, cultural-historical context. Chapter 3 discusses an epistemological framework derived from the writings of Pierre Bourdieu. Chapter 3 also considers the corpus-linguistic methods used as a tool to undertake this investigation. It is considered that the proposed epistemological framework can be combined with these corpus-linguistic techniques with the assistance of 'concordancing' software, to analyse a large collection of privacy law reports. Chapter 4 reviews some of the case law including cases which are included in the study corpus. It considers some of the emergent issues within the canon of privacy case law, including conceptual ambiguities and gaps, and begins to locate these into the Bourdieusian framework set out at Chapter 3. This is the initial stage in this attempt to 'map' the semantic, conceptual, and cultural environment of privacy. This chapter considers the processes by which corpus-linguistic techniques are applied to delve deeper into that environment of privacy law; as a privacy law corpus is first built, and then analysed. This moves to a discussion and analysis of the study results, which follows at Chapter 6.

This Chapter consists of 3 sections:

Section 1

This Section considers the processes of corpus building. It discusses the framework adopted, the decisions made in the course of this process, and the conceptual and practical issues which shaped those decisions.

Section 2

This Section considers the tools being applied to the study. It considers issues around the selection and preparation of a suitable comparator corpus, against

which to compare data from the study corpus. It then considers selection of a suitable concordancing tool.

Section 3

This section considers the data extraction processes. It considers the application of the features of the concordancing software (#Lansbox 4.0[616]) to extract lists of keywords and collocates, and to extract concordance ('Keywords in Context') data. The section considers each of these 3 stages of data extraction. This section considers the application settings applied (including statistical measures selected), the data parameters, and the processes of preparation of data for coding and analysis.

Conclusions

This chapter concludes with some reflexive comments on the processes of data extraction. It is considered that the exercise of reflexivity is also an essential part of the research process[617]. The production of knowledge is a socio-cognitive process, which is as dependent on the relationship between the researcher and the object of research, as it is on 'objectively' observed properties of that research object[618]. It is therefore essential that the dynamics of the relationship between the researcher and the data is noted and interrogated. Each of Sections 1, 2, and 3 therefore considers some of the adjustments made at each of these stages of the research process, in relation to reflexive analysis of the tasks being undertaken.

i. The Processes of Corpus Building

In order to compile a corpus, it is important to consider the purpose of the corpus being constructed. This will inform decisions about the method by which the

[616] Vaclav Brezina Matt Timperley and Tony McEnery, '*#LancsBox v. 4.x*.' (2018) <http://corpora.lancs.ac.uk/lancsbox/download.php> Accessed 30th August 2022.
[617] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Blackwell 1992) 62.
[618] Ibid, 7.

corpus is constructed[619]. In the case of this study, the purpose of constructing a corpus is to cross-analyse it against a base corpus of written English text, with no predominant style, form, or genre. It is hypothesised that the type of text represented in the study corpus (privacy law reports) has characteristics particular to that type. It is intended that cross analysis of the 2 corpora will provide lists of keywords, collocates, n-grams (recurrent collocated phrases), and concordance lines which will assist in revealing the idiosyncratic characteristics peculiar to the linguistic field around privacy laws, recorded in law reports. It is further considered that this analysis would be revealing of the semiosis of privacy within the legal field (and allow comparison to the semiosis of privacy in wider society), but also revealing of some of the social processes and cultural forces that underlie the construction of legally defined privacy[620].

The sampling frame[621] from which the corpus is derived, is the 'population' of published privacy law decisions from the higher courts and tribunals of England and Wales, and Northern Ireland. Scottish appeals heard in the House of Lords/Supreme Court are also considered, but not cases heard in the lesser appellant courts of Scotland. It is considered that the Scottish traditions and legal processes are too dissimilar from those of England and Wales. However, Scottish cases proceeding to the highest appellate court could be assumed to be influential on the domestic courts[622]. Only cases post-dating the House of Lords hearing of *Campbell* would be included, since this introduced the principles of MOPI, and 'reasonable expectations of privacy' into the domestic courts. Cases post-dating May 2022 are also excluded.

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[619] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 2. Also, Alison Sealey and Chris Pak, 'First catch your corpus: Methodological Challenges in Constructing a Thematic Corpus' (2018) 13 Corpora 2, 230; and, Francesca Bianchi, *Culture, Corpora and Semantics: Methodological Issues in Using Elicited and Corpus Data for Cultural Comparison* (Salento 2012).

[620] Francesca Bianchi, *Culture Corpora and Semantics* (Salento 2012) 18; Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 109; Ibid, 117; Michael Stubbs, *Words and phrases: Corpus Studies of Lexical Semantics* (Oxford 2001) 188.

[621] Tony McEnery and Andrew Wilson, *Corpus Linguistics: An Introduction* (Edinburgh 2001) 78.

[622] Maria Marin takes a similar approach when compiling a corpus of law reports for her study of 'legalese': Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' (2017) 6 International Journal of Language & Law 18, 33.

In consideration of the purpose of the study corpus (to reveal linguistic features of privacy law reports), it is essential that the corpus accurately represents the sample frame defined in the preceding paragraph, capturing a good range of variations of theme, within that sample frame[623].

This presents a problem which Martin Bauer and Bas Aarts have called 'the corpus theoretical paradox'[624] that is, that whilst a corpus should be representative of all main variables within the genre it is intended to capture, it is not possible to determine what these variables may be without analysing a representative corpus. In order to navigate this 'paradox' It was decided to build the corpus through a series of iterative stages, allowing testing for 'representativeness' at each stage.

Notwithstanding the measures taken to ensure the representativeness of the study corpus, however, it should be remembered that the corpus is a *representation* of the totality of privacy law precedents. Therefore, as Susan Hunston warns: 'all attempts to draw generalisations from a corpus are in fact extrapolations'[625]. The corpus is a representation of privacy law precedents, intended to provide insights and inferences on the larger 'universe' of privacy law precedents. The corpus is static, partial and the text decontextualised, and altered into a machine-readable form. All of these processes can impact upon the reliability of the corpus and any insights or 'extrapolations' obtained from it[626]. It is suggested that this presents less of a problem in the case of legal texts than perhaps some other types of corpora. Legal cases (and samples of them) retain their influence in their written, decontextualised, form, since they can be cited as precedent[627].

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[623] Alison Sealey and Chris Pak, 'First catch your corpus: Methodological Challenges in Constructing a Thematic Corpus' (2018) 13 Corpora 2; Tony McEnery and Andrew Hardie, *Corpus Linguistics Method, Theory, and Practice* (Edinburgh 2012) 10-11.

[624] Martin Bauer and Bas Aarts, 'Corpus Construction: a Principle for Qualitative Data Collection' in: Martin Bauer and George Gaskell (eds) *Qualitative Researching with Text, Image and Sound* (Sage 2011) 30.

[625] Susan Hunston corpora in Applied Linguistics (Cambridge 2002) 22-23.

[626] Michael Stubbs, 'Corpora and Texts: Lexis and Text Structure' in Joybrato Mukherjee and Magnus Huber (eds), *Corpus Linguistics and Variation in English* (Rodopi 2012) 223.

[627] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' (2017) 6 International Journal of Language & Law 18, 22.

The construction of a corpus inevitably consists of a series of (conscious and unconscious) decisions by the compiler regarding selection of texts to include and exclude. These decisions influence the size of the corpus, the selection method for texts included in the corpus, issues relating to the 'representativeness' of the corpus, and the processes by which texts are prepared for analysis. Each of these matters is discussed, in turn:

a. Size of Corpus

A large corpus is more likely (although not certain) to capture more of the variations of form and content, within the class of texts that corpus is intended to represent. However, the question of how large a corpus should be to be considered sufficiently large, is dependent on the size and variety of forms within the class of texts the corpus is intended to represent. John Sinclair [628] declines to provide guidance on a specific number of words; but advises that the corpus should be: 'as large as possible'. Francesca Bianchi[629] advises that for specialised corpora 10,000-100,000 words may be sufficient, but she adds that 'the bigger the better'[630] Reviewing studies in which a corpus is constructed from court reports, Magdalena Szczyrbak[631], in her study of the use of the word 'little' in courtroom settings, used a corpus of 1.5 million words length. Tatiana Tkačuková[632], conducted a study of the use of the discourse marker 'well' in cases involving litigants in person, using a corpus composed of only 7 full court transcripts. Maria Marin however, in her corpus-based study of the use of "legalese" in court reports, notes that: 'As a matter of fact, 2.6 million words would have been [large] enough due to the low increase in the percentage of new types and terms appearing as the corpus grew bigger'[633]. -In her comparative study of 'disciplinary values', Ruth Breeze[634] uses 4 corpora of 500,000 words length each. Stanisław

[628] John Sinclair, *Corpus Concordance Collocation* (Oxford 1991) 18.
[629] Francesca Bianchi, *Culture Corpora and Semantics* (Salento 2012) 34.
[630] Ibid, 35.
[631] Magdalena Szczyrbak, 'Diminutivity and Evaluation in Courtroom Interaction: Patterns With
Little' (2018) 135 Studia Linguistica Universitatis Iagellonicae Cracoviensis.
[632] Tatiana Tkačuková, 'A Corpus-Assisted Study of the Discourse Marker Well as an Indicator of Judges' Institutional Roles in Court Cases with Litigants in Person' (2015) 10 Corpora 2.
[633] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' (2017) 6 International Journal of Language & Law 18, 25.
[634] Ruth Breeze, 'Disciplinary Values in Legal Discourse: a Corpus Study' (2011) 21 Iberica.

Goźdź-Roszkowski[635], in his analysis of word combinations in judicial argumentation, constructs a corpus of 500,000 words.

In this study, it is considered that the class of texts that this corpus represents is specific to a particular field (legal hearings) and theme (privacy), and the hearings they record are underpinned by various rules and conventions (such as the Civil Procedure Rules), limiting the potential for variation in structure and style. Time considerations places practical limits on the upper size of the corpus, since each case included has to be carefully selected, and prepared. This mindful process of selection, checking and preparation, has been repeated at each iteration of the corpus. The corpus was progressed through four iterations. At each of these stages the corpus was progressively expanded and modified, and the selection process reviewed. The final version of the corpus ["C1"] is comprised of the full-text versions of 200 privacy law cases: a total of just over 2.6 million word tokens, 43338 word types, and 39171 lemma types.

b. Selection Method

The study corpus went through a process of 3 iterations before the 4th and final version ['C1'] was completed.. The final iteration consisted of a total of 200 cases, 87% of which were selected with the assistance of a case citation tool and the other 13% through the application of a set of objectively verifiable criteria. In the first 2 iterations of the corpus, it was decided to rely on subjective criteria. This drew upon the researcher's personal knowledge, informed by the researcher's values and knowledge. Cases were then added that were referenced in those cases, or otherwise subsequently came to the researcher's attention as the researcher's knowledge increased together with progressive immersion into the 'fields' of privacy law and research (through joining interest groups, specialised social media groups, etc.). The corpus went through 2 iterations in this manner. The original corpus (Iteration 1) was reviewed after around 6 months. Some cases were removed, some were updated (as some of them had progressed to a higher court/tribunal) and the corpus was generally expanded.

[635] Stanislaw Goźdź-Roszkowski, 'Recurrent Word Combinations in Judicial Argumentation. A Corpus-Based Study' in Danuta Bartol, Anna Duszak, Hubert Izdebski and Jean-Marie Pierrel (eds) *Language, Law, Society* (Nancy 2006).

This approach had certain advantages. It meant that the corpus could be checked for 'representativeness', and included cases that the researcher, drawing on knowledge of the subject, considered important, whereas a random selection method could have missed them and produced an unrepresentative corpus largely consisting of insignificant cases. Such a corpus would not be an accurate *representation* of the field of legal discourse on the matter of privacy, and the data it generates would provide an inaccurate *extrapolation*. In contrast, a corpus based entirely on cases "hand selected" by the researcher would have placed the researcher's own privacy law habitus at the centre of the research. The corpus would mindfully reflect the researcher's own knowledge and values, rather than resting on an objective measure of a case's importance, this may be useful for an autoethnographic study of the Researcher's own academic habitus, but for the study under consideration this method would undermine the objectivity of the methods of data generation. One of the strengths of corpus methods is that they rest upon statistical measures, rather than the practitioner's own subjective judgement. Words are selected according to statistics-backed measures of their relative frequency, association, density, and dispersion. Based on this it was decided, on reflexion, that the cases included in the corpus should be chosen though a selection method that is not reliant on the Researcher's own (subjective) values. Random selection of cases was, however, considered to be impractical. To produce a list of cases based on random selection it would be necessary to obtain a complete list of privacy law cases from which to make random selections. Compiling such a list would be, if it were possible, a substantial project in its own right. In any event, it is not considered that a purely random means of selecting cases would be desirable. Random selection of the cases to put into a corpus could affect the representativeness of that corpus: the cases selected may be of a similar type, or the corpus could be composed of less significant, rarely cited, cases. In view of these matters it was considered that the cases should be selected by means which were not dependent on the researcher's knowledge or views, but the selection method should be weighted towards the more significant cases within the legal canon, deploying a measure of this which is not reliant on the researcher's own judgement.

Accordingly, it was decided to use the online citation tool LawCite[636] to assist in the selection of cases. LawCite is a large database of case references, of cases originating in the domestic higher courts and the higher courts of some other commonwealth jurisdictions. It allows the user to reference a particular case (using various search options) to establish other cases in which that case was cited. It is possible to filter search results according to various parameters, for example, according to jurisdiction, or in relation to a specific case. It was decided to enter the case of *Campbell* in the initial search for citations since this represents the earliest case within the historical period covered by this research (1st May 2004 to 1st May 2022) Selecting the case of *Campbell* it is possible to obtain a list of all the cases in that database, heard in the domestic higher courts and tribunals, in which the case of *Campbell* was cited. The citator provided no information about these cases other than the jurisdiction of the case in which it was cited. It was therefore necessary to check these cases according to the inclusion criteria (listed below). If the case met these criteria it was prepared, and then added to the corpus. Following this, each of these cited cases could be entered into LawCite, and a further list of case citations obtained to check, prepare, and add to the corpus. This process was repeated until no new case citations could be obtained.

Once a case had been selected using the case citation tool, it was checked for relevance. This was ensured by the application of a set of inclusion criteria. These criteria which were selected were objectively verifiable, for example, a case's relevance could be checked through review of the keywords and summary within the law report's header.

<u>The inclusion criteria were as follows:</u>

a. the case had to concern an issue of privacy and/or Article 8. This was initially determined by reading the case header and title.

[636]LawCite is an online citation tool which is available for use without charge for private research purposes. It is a collaborative project funded by various organisations including Australasian Legal Information Institute (AustLII) and the British and Irish Legal Information Institute (<u>BAILII</u>), as well as by individuals. It is available at: < http://www.lawcite.org/> accessed 5th November 2022.

b. The report was manually checked to ensure that it originated in the appellate tribunals of England and Wales, and Northern Ireland, or for a Scottish case the Supreme Court or the House of Lords.

c. The case had to have been decided within the historical period covered by the study (ie 1st May 2004 – 1st May 2022).

d. Each case was checked to ensure that it included the word 'privacy' and/or the phrase 'Article 8 (including abbreviations of Article 8 such as 'Art. 8')'. If the case failed to reference these at least 3 times, it was excluded.

e. Cases were then manually checked for relevance to ensure that they considered a substantive privacy issue. This was necessary to exclude, for example, costs hearings following settlement of the substantive privacy issue. As noted above, at criterion (a) this could be determined by review of the case summary and keywords in the law report header. Where a case had gone to appeal to a higher court or tribunal, the report from the most senior court/tribunal was preferred.

A total of 176 cases was selected using the case citator. Two of these cases did not meet the inclusion criteria and were not included. Once selected each case was manually reviewed to determine some of the themes and patterns in privacy law emerging from the corpus, viewed as a whole. This was a means of checking the representativeness of the corpus, whilst simultaneously providing an initial analysis of the texts included in the corpus. This review consisted of a cursory reading of the law report. A further 111 cases which had not been included in the corpus were also reviewed. This review was not as detailed as a traditional 'black-letterist' analysis of the reports, which would not have been possible due to the vast size of the case sample being reviewed and the time available. The observations from this process help to inform the discussion of privacy case law at Chapter 4 of this thesis.

Once each of the cases had been reviewed, the complete corpus was reviewed for its representativeness. Where it was considered that the corpus was unrepresentative through under-representing a particular theme or issue within privacy law, cases were selected to fill those gaps, according to the application of criteria which are set out at page 130, below. A total of 26 cases was selected in this manner, bringing the final number of cases in the corpus to 200.

c. **Representativeness**

The corpus is a representation of a larger body of texts of a particular type (the 'Universe' of privacy law precedents). The researcher's observations of patterns or idiosyncrasies within the corpus are 'extrapolated'[637] into that larger body. It is essential to the accuracy of this extrapolation therefore that the corpus accurately represents the variety of texts within that larger body, and pays regard to their proportions, and relative degree of influence with the field.

The corpus went through a process of 4 iterations. In the first 2 iterations of the corpus the cases were selected according to subjective criteria. In the final iteration the corpus was largely (87%) composed of cases selected using LawCite with a small number (13% of the total) chosen by the researcher. It was decided to use the citation tool to select the majority of the cases, to reduce the risk of confirmation bias skewing case selection (and therefore skewing the data obtained from the corpus) towards the researcher's own preconceptions and assumptions. Through hand selecting some of the cases, however, it was possible to ensure that important cases, otherwise missed, could be included in the corpus, as well as cases of a particular type, or theme that had been missed or under-represented. Increasing the number of cases in the corpus from 174 cases to 200 cases also significantly increased the size of the corpus, increasing it to around the 2.6 million words that Maria Marin[638] had suggested is optimal for a study corpus. Although only a small proportion of the cases were added in this manner, the basis on which these cases were selected was considered carefully, and related to factors which could be objectively established by, for example,

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[637] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 22-23.

[638] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' (2017) 6 International Journal of Language & Law 18, 25.

reference to the keywords and case summary at the head of the law report, (confirming the identity of the tribunal, the area of law invoked in the dispute, the type of hearing, etc), and the outcome at the end of the law report. The case, itself, was not reviewed at this stage to avoid bias in case selection. With regard to those hand-selected cases the following factors were considered:

a. The variety of types/levels of seniority of presiding tribunal; including cases from, for example, the Employment Appeals Tribunal, High Court, Court of Appeal, Supreme Court, etc

b. The area of law in which the privacy issue arises (including criminal hearings, employment claims, defamation, etc).

c. The type of application (application for interim relief, anonymity order, judicial review, full hearing, etc)

d. Cases in which the privacy/Article 8 Application was refused, as well as cases in which the Application succeeded.

e. The variety of social contexts in which privacy issues arise. This includes variety of ethnographic characteristics of the applicant, with respect to those characteristics that can be determined from the law report (including, for example, cases which were made by, or on behalf of minors, and by applicants from a range of socio-economic circumstances).

f. The Variety of Article 8/privacy law themes (such as 'refusal of treatment' cases[639], privacy in relation to the actions of individuals[640], celebrities engaged in family activities[641], the media[642], the police[643], privacy in relation to allegations of criminal conduct[644], etc).

[639] E.g., *A Healthcare NHS Trust v P* [2015] EWCOP 15 (refusal of treatment by a 17 years' old woman following recovery from an overdose).
[640] E.g., example: *Price v Powell* [2012] EWHC 3527 (QB).
[641] E.g., example: *Weller v Associated Newspapers Ltd* [2012] EWHC 496 (QB).
[642] E.g., *Coogan v News Group Newspapers Ltd* [2012] EWCA Civ 48.
[643] E.g., *R (on the application of Catt) v ACPO* [2015] UKSC 9.
[644] E.g., *Khuja v Times Newspapers Ltd* [2017] UKSC 49.

g. The inclusion of cases which have a social and cultural significance outside of the field of law[645]. This was more difficult to establish through objective means, but the Researcher's own perceptions on this matter could be checked with an Internet search, which would provide an impression of a case's significance outside of legal-themed websites (for example, in the media).

h. A reasonable spread across the historical period from the House of Lords decision in *Campbell* in 2004 to end September 2021. Cases which had been overruled (and were therefore no longer an authority on a particular point of law) were excluded. The stop date of September 2021 was chosen based on a calculation of the amount of time available and the likely time required for completion of the research.

i. It was noted that there was a large degree of overlap at law between 'privacy', 'breach of confidence', 'MOPI' and 'Article 8' (in its various manifestations). Since the purpose of the study is to investigate the meaning and nature of privacy in the context of the law, it was decided to avoid making pre-judgements regarding the meaning of privacy, which would undermine this purpose. Accordingly, regard was paid to the variety of meanings and manifestations of privacy captured by the corpus, with a balance of MOPI, Breach of Confidence, and Article 8 claims.

There is, of course, a potentially infinite number of variables within any genre of text. Other factors could have been identified, which are likely to have some degree of discursive influence on the overall corpus. However, it was decided to apply a small number of broad criteria to allow a wider variety of law reports to be included in the texts. The hand-selected cases were chosen mindfully, to fill perceived gaps in the corpus, according to factors a.-i. This exposed the corpus to the risk of imbalance relating to the researcher's own habitus. However, the risk of confirmation bias influencing the selection of cases also needed to be balanced

[645] E.g., *HRH The Duchess of Sussex v Associated Newspapers Limited* [2021] EWHC 273 (Ch) (concerning Meghan Markle's letter to her father, Thomas Markle).

against the risk of building a corpus which fails to represent, in a balanced manner, the field of legal discourse on the subject of privacy. The risk of confirmation bias was mitigated by the careful application of the criteria (which were empirically measurable) outlined above, and by the small number of cases selected in this manner.

Throughout the various iterations of the corpus the number of cases included progressively increased. As is noted earlier in this chapter, a larger corpus reduces the risk of missing significant themes or 'types' of claim within the privacy law canon or giving undue weight to a particular theme, or type. A larger corpus also mitigates the impact of biases relating to individual inclusion/exclusion decisions.

d. **Preparation of cases**

As Tony McEnery and Andrew Hardie[646] advise, it is not possible to create a corpus without altering the text sources. The text is inevitably edited, reformatted, and otherwise prepared to render it machine readable. Mindful of this, it was decided that minimal alterations should be made to the text to preserve the integrity of the structure of the legal texts, to avoid losing valuable data. Texts were included in their full form. This weighted the corpus towards the larger cases, but it was considered that any bias this introduced was offset by the likelihood that a longer case report would contain text covering a wider variety of themes, or a more detailed (and therefore more insightful) analysis of significant themes. It was noted also that the longer case reports tended to document House of Lords or Supreme Court hearings, which coming from the highest domestic court, may be assumed to occupy a position of greater importance within the legal canon. Cases were therefore included in full, to avoid missing valuable data.

Cases were, included in their full text, but the title, header and case summary were removed, along with any text which follows the judicial decision. It was noted that inclusion of titles and case summaries had the tendency to interfere with the application of the functions of the concordancing software. The effect was to bias the results of word analysis towards the more limited vocabulary used

[646] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 1.

in the case headers. Further, it was noted that text following the primary judicial decision would often consist of words signifying agreement with the leading decision. Where this occurred only the primary judicial decision was included. However, where detailed dissenting, or qualifying, decisions were provided by other judges, these were included in the corpus. In order to allow case reports to be machine read they were converted to plain text ('.txt') format.

In its final version, the 200 cases which made iteration 3 were reviewed. A total of 2 cases selected by the citator were replaced because they did not meet the inclusion criteria. The final corpus was then restructured. The structure of Iteration 4 consisted of a folder with each of the 200 cases saved under a separate file, whereas all the cases in Iteration 3 were contained within a single file. The change of structure allowed the concordancing tools to make comparison between the texts of individual cases in the corpus. This followed a decision to use #Lancsbox[647] rather than Antconc[648], to analyse the texts. A full list of the cases comprising the final iteration of the corpus is appended to this thesis.

ii. The Study Tools

This section considers the 'tools' applied to the corpus to extract data. It considers (a) the selection of the comparator corpus; and (b) selection of concordancing software applied to the data. Each of these matters is considered in turn:

a. Selection of The Comparator Corpus

The preceding section considers the processes of corpus construction. It is noted that the primary consideration, when constructing a corpus, should be the intended purpose of the corpus. As Tony McEnery and Andrew Hardie[649] advise, the corpus should be constructed in such a manner as to produce meaningful data in relation to the research questions. This informs decisions regarding the size of

[647] Vaclav Brezina, Pierre Weill-Tessier, and Anthony McEnery (2020). #LancsBox (Version 5.x) [Computer Software]. Available from http://corpora.lancs.ac.uk/lancsbox
[648] Laurence Anthony (2022). AntConc (Version 4.1.0) [Computer Software]. Available from https://www.laurenceanthony.net/software
[649] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 6, see also; Francesca Bianchi, *Culture Corpora and Semantics* (Salento 2012) 33.

the corpus, selection methods, issues of representativeness, and the manner of preparation of texts. In this study the corpus is intended to be representative of a particular 'class' of texts (law reports) relating to a particular issue (privacy). The corpus is a small sample taken from a much larger canon of privacy law reports. It is anticipated that close analysis of this sample would inform 'extrapolations'[650] about the wider class of texts it represents. The 'extrapolations' Hudson describes concern the social processes behind the production of those texts, as well as the features of the texts themselves. This association of text with the social conditions around the production of the text, is core to the approach to corpus studies described by pioneering linguists, such as: Susan Hunston[651], Michael Stubbs[652], and John Sinclair[653], which focusses on analysis of collocates and concordance lines[654]. It has been noted that the reliability of these extrapolations, rests upon the extent to which the study corpus represents that wider class of texts. So that this can be considered, it is necessary to look further at the class of texts represented in the study corpus. This also informs the selection of the comparator corpus, which must be sufficiently different to highlight peculiar features in the study corpus, but sufficiently similar to allow comparison to be made. Accordingly, this section will first consider the particular features of that class of texts included in the corpus (law reports) which distinguishes it from other kinds of text. This discussion will then turn to issues relating to the impartiality of the comparator corpus, structure of the comparator corpus and practical considerations in corpus selection.

The Features of Law Reports

Law reports are a written record of judicial hearings. The 'official' law reports such as those published on the Supreme Court Website, are generally assumed to

[650] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 23.
[651] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002).
[652] Michael Stubbs, *Words and phrases: Corpus Studies of Lexical Semantics* (Blackwell 2001).
[653] John Sinclair, *Corpus, Concordance, Collocation* (Oxford 1991).
[654] These scholars (and their 'corpus driven' approach) belong to a school of linguists called by some scholars, 'Neo-Firthians' after the linguist and semiotician John Rupert Firth (1890-1960), although Tony McEnery and Andrew Hardie, suggest that Firth, himself, would probably not have identified as a 'Neo-Firthian', Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 122.

faithfully record the words used in those hearings[655]. It is considered therefore that court reports are substantively a product of the Courts, and the juridical field they occupy. It is hypothesised that the Courts, consciously and unconsciously, apply a series of juridical 'rules' (norms and values), which structure the text of law reports, informing the syntax and word choices within the text[656]. The application of these 'rules' can be evident in the content and structure of that class of texts. This is not something unique to law reports, but it can be seen in any class of text which originates from a particular social group, or field. Linguistic analysis of the text of newspaper articles[657], policy documents[658], social media discussions[659] have all shown peculiarities of style and content, relating to the 'rules' of the social fields responsible for construction of that text.

As the studies cited in the preceding paragraph, and similar studies focussing on legal text[660], demonstrate the production of texts is a social act which is revealing of wider social structures behind the text's authorship. This includes the rules of particular social groups. Accordingly, the structure of court reports is informed by the application of a range of (informal and formal) rules, relating to the juridical field, (and other fields occupied by the presiding judges). However, court reports, have an additional feature which sets them aside from other genres of text, and renders them particularly worthy of analysis. That is that they record 'performative utterances'[661], judicial statements which, rather than merely

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[655] Andrew Goodman, *How Judges Decide Cases* (XPL Law 2005). However, the importance of precedent is such that where no formal law report exists, informal law reports can be cited at courts, such as summaries made of cases (frequently by the practitioners themselves) and published for example in The Times newspaper.
[656] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 Hastings Law Journal 805, 818-819.
[657] E.g., Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A useful methodological synergy? Combining critical discourse analysis and corpus linguistics to examine discourses of refugees and asylum seekers in the UK press' (2008) 19 Discourse & Society 3.
[658] Such as Shannon Fitzsimmons-Doolan's study of language ideologies embedded into educational policy documents: Shannon Fitzsimmons-Doolan, 'Using Lexical Variables to Identify Language Ideologies in a Policy Corpus' (2014) 9 Corpora 1, 57.
[659] E.g., Michael Loadenthal, 'Interpreting insurrectionary corpora: Qualitative-quantitative analysis of clandestine communiqués' (2016) 10 Journal for the Study of Radicalism 2.
[660] One of the rare examples of such a study, is Goźdź-Roszkowski's Neo-Firthian analysis of academic and practitioner legal texts in, Stanisław Goźdź-Roszkowski,'Responsibility and Welfare: Keywords and Semantic Categories in Legal Academic Journals' in Davide Giannoni and Celina Frade (eds) *Researching Language and the Law* (Peter Lang 2010).
[661] John Langshaw Austin, *How to do things With Words* (Oxford 1962).

describing a matter or state of affairs, actually create it[662]. Performative utterances were described by the linguistic philosopher John Lanshaw Austin. Austin identifies them according to a set of structural, grammatical, criteria, as well as identifying social contexts in which they may be located. However, Bourdieu distinguishes performative utterances primarily on their substantive function as 'acts of *naming* or of *instituting*' [author's own emphases]. He considers these linguistic utterances to be transformative, 'magical acts'[663], and the pronouncement of performative utterances an essential function of the juridical field. He considers that the legal canon, which records these 'magical' utterances therefore has an enduring status within the juridical field, and in any context in which legal issues arise. Based upon Pierre Bourdieu's observations, it is anticipated that closer analysis of these performative utterances in their semantic context will provide valuable data concerning the juridical construction of privacy, and the social conditions which underlies this.

Impartiality of Comparator Corpus

It is noted in the preceding paragraph that the production of law reports is underpinned by the application of various rules relating to the juridical field, which inform the structure and content of those reports. It is considered that distinctive features of the structure and content of law reports, can be identified through cross-analysis of a privacy law corpus [hereafter 'C1'] against a base, comparator, corpus. Regarding the comparator corpus, it was decided that it would be unnecessary to compile one due to there being a good range of large, general, corpora available online. To consider the suitability of the corpus, it was decided to apply similar criteria (of size, structure, and representativeness) as those that informed the construction of the study corpus.

Size

Like the study corpus, a comparator corpus should be as large as practicable, since a larger corpus would be more likely to capture a larger range of variables[664] in

[662] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 Hastings Law Journal 805, 838.
[663] Ibid.
[664] Tony McEnery and Andrew Wilson *Corpus Linguistics: An Introduction* (Edinburgh 2001) 29.

topic, genre, style, etc. Further, a larger corpus reduces the impact of the 'whelk problem'[665] a phrase humourously coined by the computational linguist Adam Kilgarriff, who observed that a single book on sea molluscs included in a small corpus would likely cause undue significance to be attached to rare, specialist, terms such as 'whelk'. The impact of such biases, arising from individual text selections, would be diminished in larger corpora. A good selection of general, English language corpora is available online. These corpora are intended to capture the generality of English language use, reflecting no particular genre, topic, or writing style. Many of these are considerably larger than C1 and can therefore be considered adequate.

Structure

Issues of representativeness determine requirements regarding the content of the comparator corpus, the content must be sufficiently dissimilar to allow meaningful comparison to be made to the study corpus. Regarding the structure of the comparator corpus, however, the form that the corpus takes should be sufficiently similar, to facilitate machine cross-analysis. Accordingly, it was decided that the comparator corpus needed to be text only (excluding, for example, photographs and sounds) and available in a format which was compatible with the concordancing software being used. On further consideration it was also decided that the corpus had to originate from the UK, rather than another English-speaking country. This was to avoid the risk of bias in the data relating to differences in cultural attitudes. This excluded one of the most prominent general English language corpora, the 'Brown Corpus'[666], since this was compiled at Brown University in the USA. Following a pilot study, attempts to construct a comparator corpus from Wikipedia[667] were also abandoned. It was noted that data obtained from that pilot displayed a disproportionate number of terms and concepts taken from the fields of Information and Technology. Other corpora such as the LOB[668]

[665] Adam Kilgarriff, 'Putting frequencies in the dictionary' (1997) 10 International Journal of Lexicography 2.
[666] Henry Kučera and W. Nelson Francis, *The Brown Corpus of Standard American English* (Brown 1961).
[667] Wikimedia Foundation and Contributors, (2022) <https://en.wikipedia.org/wiki/Main_Page.> accessed 30th August 2022.
[668] Geoffrey Leech, Stig Johansson and Knut Hofland, *Lancaster-Oslo/Bergen Corpus* (Lancaster, Oslo and Bergen 1978).

and the BNC[669] pre-dated important cultural and technological developments such as the Internet and social media.

Representativeness

Whereas the purpose of the study corpus is to represent a particular class of texts (law reports), the comparator corpus is intended to give no weight to any particular class, or genre, of texts. The general English language corpora discussed in the preceding paragraph would be appropriate for this since they were compiled according to a methodology designed to draw from a wide range of genres of text. The notes accompanying the BNC corpus, for example, state that:

> The written part of the BNC (90%) includes, for example, extracts from regional and national newspapers, specialist periodicals and journals for all ages and interests, academic books and popular fiction, published and unpublished letters and memoranda, school and university essays, among many other kinds of text[670].

The base data generated by the comparator corpus is intended to provide a neutral, 'base line', which highlights peculiarities in the data (keywords, collocates, etc) obtained from the study corpus (C1). These 'peculiarities' allow extrapolations to be made about this class of text and the socio-cognitive forces which underpin the texts' production. A comparator text which is biased towards a particular social group or field would skew the data towards that bias. Further, this study seeks to understand judicially defined privacy in relation to wider, societal, conceptions of privacy. It is essential therefore that the comparator corpus displays minimal bias towards a particular type of text which might influence conceptions of privacy. A corpus derived largely from newspaper text, for example, would be unsuitable, since it would represent the issue of privacy from a perspective influenced by the rules and internal divisions of the media field[671]. Such a corpus would be liable to be unduly influenced by the structures and values of that field, which (being the party to many significant privacy

[669] The BNC Consortium, *The British National Corpus* (2001) <http://www.natcorp.ox.ac.uk/>accessed 30th August 2022.
[670] Ibid, at < http://www.natcorp.ox.ac.uk/corpus/> accessed 30th August 2022.
[671] The structures and rules of newspaper text have been examined in corpus linguistic studies such as, Paul Baker, Costas Gabrielatos and Tony McEnery, 'Sketching Muslims: A Corpus Driven Analysis of Representations Around the Word 'Muslim' in the British Press 1998–2009' (2013) 34 Applied Linguistics 3, 255.

disputes), may hold conceptions of privacy not widely held outside that field. This presents an epistemological paradox: if text production is a socio-cognitive process, and different types of text relate to the 'author's' membership of particular social groups or 'fields', it is simply not possible to find a comparator text corpus which is absolutely 'culturally neutral'. All corpora[672] are finite samples taken from a much larger class of texts. In this case the 'class' of texts represented by the comparator corpus is the totality of contemporary written texts originating from the UK. Accordingly, to be 'representative' of that class of texts the comparator corpus must be representative of modern written English as a whole. Given the size and diverse nature of this class of texts no sample taken, however large, could perfectly represent it[673].

However, the size, origin (being based on sources of English text originating from the UK), and the care taken in its construction, made the BNC a clear choice as comparator corpus. However, an early, pilot study confirmed that, due to its date of compilation (2001 at its most recent revision), it failed to include references to important technological and cultural developments. It was anticipated when the research process commenced that the full version of the updated BNC (the 'BNC2014') would become publicly available before that part of the study was completed. However, this did not happen within the time fame provided for completion of this study. The spoken BNC2014 was available, and it was used in a further pilot. However, it was considered, on review of the data that the spoken language corpus was significantly different as a medium of communication, to written English. The data produced contained a large proportion of para-verbals (such as 'ah' and 'um') and words which could be descriptors of non-verbal gestures (such as 'pause' and 'silence'), and appeared to over-emphasise informal terms, slang, and contractions. A shortened, balanced, form of the 100 million word BNC2014 was then released by Vaclav Brezina, one of the project leads of the BNC2014 project[674]. This shortened form of the corpus, the 'BNC2014-baby' is around 4 million words in size and therefore more than twice the size of the study

[672] A few exceptions may be found in those few corpora which relate to a finite, clearly defined, class of texts, such as a corpus made of all extant works written in Old English.
[673] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 10.
[674] The other project lead is Tony McEnery, Lancaster University.

corpus. On reflexion it was decided to use the BNC2014-baby as the comparator corpus.

b. Selection of concordancing software

The decision to use the BNC2014 Baby as the comparator corpus dictated the choice of concordancing software. This corpus is only available for use through #Lancsbox[675]. This presented some issues when the software was applied to the corpora to obtain a list of keywords and collocates. The functionality of #Lancsbox differs to that of Antconc[676] the choice of software when the study was first planned. One of the issues with this is that #Lancsbox does not generate a list of keywords in the same manner as Antconc. This is discussed at Section iii (data extraction processes).

iii. The Data Extraction Process

Section i. of this chapter considers the processes of corpus construction, section ii. the selection of tools for analysis. This section (section iii) reviews the processes of data extraction, which consists of 3 stages, which progressively become more detailed. The first stage is keyword extraction, the second stage is collocate extraction, and the third stage is the extraction of concordance data. Each of these stages of data extraction is discussed, in turn. There follows, at Section iv, a discussion of some of the issues arising from the processes detailed in this section, including issues relating to the statistical measures of significance and dispersion deployed in data extraction.

a. Keyword Extraction

The concept of keywords in the context of corpus linguistics is discussed in Chapter 3 at page 36 of this thesis. The term 'keyword' is, itself, polysemantic, but for the purpose of this study it refers to words which are found to be statistically

[675] Vaclav Brezina, Pierre Weill-Tessier, and Anthony McEnery, '#LancsBox (Version 5.x)' (Computer Software Lancaster University 2020) <http://corpora.lancs.ac.uk/lancsbox> accessed 30th August 2022.
[676] Laurence Anthony 'AntConc (Version 4.1.0)' [Computer Software, Waseda University 2020]. <https://www.laurenceanthony.net/software>accessed 3rd November 2022.

prominent in terms of their relative frequency within the study corpus, when cross-analysed against another corpus[677]. However, within corpus linguistics the word 'keyword' retains some of the meaning imparted to the term by the cultural critic Raymond Williams[678], to refer to words which have cultural significance, since these prominent words provide an indication of the semantic themes captured by the corpus and the overall stylistic 'tone' of the corpus[679]. As Michael Stubbs observed, keywords are the 'nodes around which ideological struggles are built'[680].

Extracting lists of keywords from different corpora allows those lists (and therefore the corpora from which they have been derived) to be compared. This process of keyword extraction, however, takes these keywords out of their semantic context. Accordingly, their exact meaning in the context of the phrases in which they occur (and the text as a whole) cannot always be determined. Also, because keywords are generated through the application of statistical measures, they are not fixed, but keyword lists generated from the application of one statistical measure can differ from those generated by a different statistical measure. Accordingly, they provide only initial, superficial, and indirect impressions of the discursive content of the corpus and therefore provide little more than a 'starting point'[681] for deeper linguistic analysis. However, the appearance of a large proportion of semantically, or stylistically related, words might point to broader, significant, themes within the corpus. Equally, the prominence of semantically complex, or unusual words within in a corpus could indicate areas of semiotic density in the corpus, which are worthy of deeper analysis. It was therefore intended that keyword analysis would be an initial stage of the semantic mapping of the corpus, guiding the later stages (stages 2 and 3) of the data extraction process.

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[677] Paul Baker, 'Querying Keywords: Questions of Difference, Frequency, and Sense in Keywords Analysis' (2004) 32 Journal of English Linguistics 4, 346; also, Francesca Bianchi, *Culture, Corpora and Semantics: Methodological Issues in Using Elicited and Corpus Data for Cultural Comparison* (Salento 2012) 47.
[678] Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Fontana 1988).
[679] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 66.
[680] Michael Stubbs, *Words and Phrases: Corpus Studies in Lexical Semantics* (Blackwell 2001) 188.
[681] Sara Laviosa, Adriana Pagano, Hannu Kemppanen and Meng Ji, *Textual and Contextual Analysis in Empirical Translation Studies* (Springer 2017) 31.

The pilot stages of the research process were conducted with a software application, Antconc, which has a range of sophisticated keyword analysis tools, which allow various statistical measures to be applied to a corpus. Antconc makes a statistics-backed lexical comparison of the test corpus against a comparator corpus assigning a numerical 'keyness' value to each word. #Lancsbox also provides a range of user defined settings which identifies statistically significant words within a corpus. However, the Keyword analysis tools for #Lancsbox do not work in the same manner as Antconc. Rather than providing a 'keyness' measure for each word in the study corpus, based on comparison with a base corpus, #Lancsbox merges the 2 corpora and provides keyness statistics for the combined whole. This does not allow direct comparison to be made between 2 sets of keywords (one from each corpus) as intended. However, it was determined that this data could be deduced from the merged keyword statistics through grouping those words according to their relative frequency[682] in each corpus.

The following process was therefore devised to extract a set of keywords for each of the corpora:

1. Using one of the tools provided by #Lancsbox, each of the corpora was 'Part of Speech' ['POS'] 'tagged' with a marker to distinguish different word classes (verbs, adjectives, adverbs, etc). This allowed different word classes to be distinguished for analysis. It was considered that POS tagging would also reduce potential biases introduced by 'polysemy, homography, and different word classes'[683]. Similar looking words can have very different contextual meanings, the word 'bow' for example can refer to an implement for playing a violin, or the act of lowering one's head, in deference to someone. An analysis tool which merely counts the occurrences of individual word types obscures the semantic differences between these similar-looking words. It was considered that POS tagging, however, would help to reduce this effect. Through distinguishing classes of polysemic words it would be possible to distinguish some of the senses

[682] Based on a measure of the frequency of a particular word per thousand words within the corpus.
[683] Francesca Bianchi, *Culture Corpora and Semantics* (Salento 2012) 46.

in which those words are used. With regard to the preceding example, it would be possible to distinguish the senses of 'bow', as a noun and as a verb. Issues of polysemy and homography remain, however, since such words can have multiple meanings even within the same class of words, for example: the word 'bow' when used as a verb can refer to the act of lowering one's head, but it can also refer to the manner in which a violin is played ('to bow', rather 'to pluck' or otherwise manipulate the strings).

2. Using the statistical settings of #Lancsbox the words in the corpus were arranged according to their relative frequency (frequency of each word per 1000 words of text) and dispersion. The dispersion measure chosen was the coefficient of variation ['Co.V'], which describes the amount of variation relative to the mean relative frequency of a word or phrase in the corpus[684]. The (automated) application of these statistical measures to select keywords captured the relative 'density' of words within the corpus, as well as it's 'spread' across the texts of which the corpus was composed (reflecting the 'ubiquity' of each word within the corpus and the field it represents)

3. The same measures of relative frequency and Co.V were applied to the comparator corpus (BNC2014 Baby), and the words in that corpus arranged accordingly.

4. In order to obtain a keyness value for each word in the two corpora it was necessary to apply a measure of significance to the combined corpora. The significance measure used was log likelihood ['LL'], a widely used measure in the field of corpus linguistics[685]which is 'based on the ratio of

[684] Vaclav Brezina, *Statistics in Corpus Linguistics: A Practical Guide* (Cambridge 2018) 50.
[685] Examples of the use of LL in corpus based studies include:
Stanisław Goźdź-Roszkowski,'Responsibility and Welfare: Keywords and Semantic Categories in Legal Academic Journals' in Davide Giannoni and Celina Frade (eds) Researching Language and the Law (Peter Lang 2010).
Basil Germond, Tony McEnery and Anna Marchi, 'The EU's Comprehensive Approach as the Dominant Discourse: a Corpus-Linguistics Analysis of the EU's Counter-Piracy Narrative' (2016) 21 European Foreign Affairs Review 1, 137;
Maria Marin, 'Legalese as Seen Through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' [2017] 6 International Journal of Language & Law, 18;

the probability of 2 parameters ρ and ρ1 (from corpus 1 and corpus 2) divided by the probability when we only have one parameter for both corpora'[686]. The threshold value was set at 6.63, which corresponds to the 99th percentile ($\rho < 0.01$).

The keyword list thereby obtained was then filtered so that only verbs, nouns, and adjectives were retained. Adverbs were also filtered out of the results, since it was noted that this included in both corpora a high proportion of mundane words, such as: 'as', 'so', and 'then'. These words (tagged as 'adverbs' by the operation of #Lancsbox) offered little concerning the understanding of the semiosis of privacy, in either corpus. Nouns, adjectives and verbs were retained due to their status as: 'the word classes that can more clearly indicate semantic/discourse prosodies or topics/topoi'[687].

Abbreviations, Latin words and proper nouns were removed from the remaining list of keywords. There were also some recurring combinations of letters and numbers within this list of 'keywords', such as paragraph and reference numbers. These were also removed. The remaining words were then sorted into 2 groups according to their relative frequency in each of the 2 corpora, to produce a list of 'keywords' from each (BNC2014-baby and C1). The highest scoring 200 words from each list was retained, sorted, and coded. It was considered that this was a sufficiently large number of keywords to provide an initial impression of the semantic themes captured by the corpora, and to allow a comparison to be made between them. The coding process is discussed at Chapter 6.

b. **Collocate Extraction**

The concept of collocates is discussed at pages 36-38 of this thesis. The concept arises from a conception of language termed by John McHardie Sinclair the 'idiom principle'[688]. The idiom principle posits that words are not individually selected by

[686] Jefrey Lijffijt, Terttu Nevalainen, Tanja Säily, Panagiotis Papapetrou, Kai Puolamäki and Heikki Mannila, 'Significance Testing of Word Frequencies in Corpora' (2016) 31 Digital Scholarship in the Humanities 2, 379.
[687] Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press,1996-2005' (2008) 36 Journal of English Linguistics 1, 11.
[688] John Sinclair, *Corpus Concordance Collocation* (Oxford 1991), 1150-111. The term, 'collocate' was not invented by Sinclair, however, having been used by earlier linguists

a speaker, but rather are grouped into 'units of meaning' which are pieced together in the manner of a 'verbal jigsaw puzzle'. Accordingly, these units have a collective semiosis which supersedes the semiosis of the individual words of which they are comprised.

The purpose of collocate extraction in this study is to identify words which, in the context of the corpus (and, by inference, in the context of the semantic field it represents), are consistently found to be proximate to the word being analysed (the 'nodal word'). In the case of this study, the chosen nodal word was 'priva*'. The asterisk operates as a 'wild card' in #Lancsbox and therefore this nodal 'word' captures the word 'privacy' as well as its lemmas 'private' and 'privately'. The operation of #Lancbox then assigns a statistical value to each word that is located within a set 'span' (number) of words to the left, or right, of the nodal word. This value represents the 'strength' (that is, the extent to which it is associated with the nodal word and no other), and frequency of its association with the nodal word. Following the idiom principle those words which are statistically demonstrated to have a high association with 'priva*', likely help to construct its meaning. Extracting and analysing these collocates is therefore the second stage in the process of determining the meanings imparted to the concept of privacy (and its lemmas) in each corpus, following the initial stage of keyword extraction/analysis.

The following process was applied to obtain a list of collocates of 'Priva*' in each of the 2 corpora:

1. The Corpora were 'POS' ['Part of Speech'] tagged and a filter was applied to capture only Verbs, Nouns and Adjectives. It was considered that retaining verbs, nouns and adjectives collocated to priva* would be revealing of some of the (judicial) actions, phenomena/people, and associations imparted to privacy and its lemmas.

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such as John Firth to describe relationships between words c/f John Firth, 'Modes of Meaning' in John Firth (ed), *Papers in Linguistics 1934–51* (Oxford 1964).

2. The 'span' was set to 5 words on either side of the nodal word. This followed Sinclair's observation, that collocated pairs of words are 'not necessarily adjacent'[689]. It was considered that a larger span would capture a broader data range, including the less obvious collocational pairings, and was noted to be the commonly selected span in published corpus based collocate studies[690].

3. The measure of association selected was Mutual Information ['MI']. MI is a commonly used measure of association in the field of computational linguistics. It compares the probability that 2 words will:

> Occur together as a joint event (i.e., because they belong together) with the probability that that they occur individually, and their co-occurrences are simply a result of chance[691].

The use of MI as a measure of association has been criticised in the field of computational linguistics, for its perceived tendency to over-emphasise rare word combinations[692]. However, in the case of this study it was considered that the rarer and more unexpected collocations could be revealing of some of the more obscure meanings imparted to the concept of privacy, and such data should therefore be captured at this stage[693]. Any spurious results could be eliminated at the next stage of this study (concordance analysis). The minimum frequency of a collocation was set to 5 (the default setting in #Lancsbox), and the minimum MI value was set to 3 (the default setting), which corresponds to the 99th percentile ($\rho<0.01$).

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[689] John Sinclair, *Corpus Concordance Collocation* (Oxford 1991) 115.
[690] Examples of this include, Bastian Vollmer, 'Security or Insecurity? Representations of the UK Border in Public and Policy Discourses' (2017) 12 Mobilities 3, 295; and, Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press,1996-2005' (2008) 36 Journal of English Linguistics 1, 11.
[691] Tony McEnery and Andrew Hardie, *Corpus Linguistics: An Introduction* (Edinburgh 2001) 86.
[692] Vaclav Brezina, *Statistics in Corpus Linguistics* Cambridge 2018) 70.
[693] Costas Gabrielatos and Paul Baker, 'Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and AsylumSeekers in the UK Press, 1996-2005' (2008) 36 Journal of English Linguistics 1, 11.

The results were manually checked to remove recurrent word/number combinations, such as paragraph markers and case references (which had been erroneously included as words) abbreviations, Latin words, and proper nouns. It was decided to include a large number of collocates to capture as much information as was practically possible, and also to reduce the impact of individual inaccuracies or biases in the results. Accordingly, the highest valued 150 collocates to priva* were retained from C1. The full number of collocated verbs, nouns and adjectives in BNC2014 Baby was retained. This was 116 words. The processes by which these words were coded and analysed is discussed at Chapter 6.

c. Concordance (KWIC) Analysis

Concordance Analysis (the third stage of the analysis process) consists of extracting lines of text of a set number of words on either side of a nodal word for closer analysis. Sinclair in his influential work: Corpus, Concordance and Collocation[694], describes a process in which concordance lines are selected, prepared, and arranged for analysis. In #Lancsbox, these processes are assisted by the KWIC ('Keyword in Context') application. This allows large amounts of text of set length, on either side of a nodal word, to be filtered and reviewed at once. The preparation of concordance lines serves 2 distinct functions within this study:

i. The first of these functions is to provide a means of verifying data obtained from the earlier stages of the study process. Viewing significant words in their textual context would provide a means of checking the sense in which these are being used. Concordance lines would also confirm the findings from earlier stages of corpus analysis regarding discursive themes, stylistic mannerisms, etc.

ii. The second function is that the concordance lines facilitate a more qualitative process of analysis, which has been compared to the techniques of Critical Discourse Analysis[695]. In this process the text can be

[694] John Sinclair, *Corpus, Concordance Collocation* (Oxford 1991) 105.
[695] Paul Baker, Costas Gabrielatos, Majid Khosravinik, Michał Krzyżanowski, Tony McEnery and Ruth Wodak, 'A useful methodological synergy? Combining critical discourse analysis

subjected to a detailed analysis for recurrent lexical or stylistic patterns, indicative of deeper, hidden meanings.

The techniques of the concordance analysis process are discussed at Chapter 6 of this thesis.

Concordance selection

Following the mixed methods approach which informed the processes of extraction of keywords and collocates, it was decided to select concordance lines according to a mixture of objective (statistics derived), and subjective (intuitive) criteria. The procedure for selection of concordance lines was devised after the collocates had been extracted and processed. The rationale for this is that, in the context of this research, concordance analysis is intended to both verify, and expand upon, findings from earlier stages in the research process. In keeping with this corpus-driven approach[696], it was decided that questions and issues raised by consideration of data obtained from the earlier stages of the research process therefore should drive the methods applied in this, final, stage of the study process. This included the processes by which concordance lines were selected. It was also necessary to balance the likely time taken processing concordance data, and time available to complete the research. This placed practical limits on the number of concordance lines which could be processed.

It was decided that concordance lines would be taken from 50 keywords from each of the corpora: 30 of these would be selected due to their high MI value[697], and 20 due to their discursive complexity (such as the quasi-metaphorical word: 'balance', found in C1). These words were selected for detailed analysis. A limit of 100 KWIC lines per collocate was applied after it was noted that some words were collocated to 'priva*' many times (the collocates: 'right', 'information', 'life', and 'expectation', for example, were collocated with 'priva*' over 1000 times). A further 24 words were chosen from C1 for briefer analysis using the KWIC feature,

and corpus linguistics to examine discourses of refugees and asylum seekers in the UK press' (2008) 19 Discourse & Society 3, 279.

[696] Gerlinde Mauntner,'Mining Large Corpora for Social Information: The Case of Elderly' (2007) 36 Language in Society 1, 53; Paul Rayson, 'From Key Words to Key Semantic Domains' (2008) 13 International Journal of Corpus Linguistics 4, 523; Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge 2012) 150.

[697] A hypothetical 'perfect' MI value would be 0.

merely to check the context in which they were being used, to assist with coding. For the purposes of this stage of the process, the POS tagging was removed from the corpora. This tagging rendered the concordance lines more burdensome to read. The context in which polysemic words were used would be apparent at this stage in any event.

Further applications of #Lancsbox were deployed to assist with this, final, detailed analysis. One of these, the 'Whelk' tool provided data concerning the dispersion of words across the corpus. This function of #Lancsbox therefore established the extent to which that word was 'typical' of the whole corpus, rather than being associated with a small number of texts within it. In the case of this study, the Whelk tool was deployed to establish whether significant words were particular to a single case, or genuinely reflected the terminology of the judicial linguistic field in relation to 'privacy'.

Clusters

The other feature which was applied at this stage of analysis was the 'NGram' tool. This tool allows identification of recurrent word 'clusters', or repeated idiomatic phrases, of a set word length. Accordingly, applying the measure of log-likelihood to both corpora, the most prominent word clusters of 3, 4, and 5 words length were extracted from each corpus. It was initially conceived that these longer phrases would facilitate a terminological analysis of each corpus to compare the proportion of technical terms and phrases in each, through similar techniques as those deployed by Maria Marin in his analysis of a corpus composed of legal papers[698]. Unfortunately, it was not possible to extract sufficient data from BNC2014-baby to allow this analysis to be conducted. However, following Stanislaw Goźdź-Roszkowki's comment that: 'studies show that recurrent multi-word expressions, due to their sheer frequency, play a significant role in constructing texts, albeit to a varying frequency'[699], the cluster data was retained for a further (and final) 'stage' of analysis for each corpus.

[698] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis. International Journal of Language & Law, Vol. 6, pp. 18-45 2017

[699] Stanisław Goźdź-Roszkowki, 'Discovering Patterns and Meanings. Corpus Perspectives on Phraseology in Legal Discourse' (2012) 60 Roczniki Humanistyczne 8, 47.

iv. Conclusion

The methods discussed in this chapter concern the application of statistical measures of association, dispersion and frequency. It is necessary at this stage to address some of the issues arising from the use of statistics as an aid to linguistic analysis.

First, statistical measures are based on a particular model of the data being reviewed and emphasise particular aspects of that data. Accordingly, as the application of one measure to a corpus to obtain a list of keywords or collocates is likely to produce different results to the application of a different statistical measure[700]. The use of statistical measures to identify keywords and collocates introduces an empirical element to the process of language analysis, and this is one of the strengths of the corpus approach. However, the picture of the corpus text provided by that measure reflects a particular arrangement of the data.

Concordancing applications such as #Lancsbox provide a range of statistical measures which can be applied to text data. These statistical measures have been taken from a variety of sources. However, comparatively little has been published regarding the application of these statistical measures to language studies. This is problematic since statistical measures are typically based on assumptions regarding the distribution of data which may not be appropriate to language data. For example, some statistical measures (such as χ^2) assume that variables are independently distributed across a sample frame[701]. Words, however, are not randomly selected, or evenly distributed, across a page but are mindfully selected in groupings, according to a range of complex grammatical rules.[702] The primary statistical tools used in this study were Log-Likelihood (for Keywords and clusters)

[700] Jefrey Lijffijt, Terttu Nevalainen, Tanja Säily, Panagiotis Papapetrou, Kai Puolamäki and Heikki Mannila, 'Significance Testing of Word Frequencies in Corpora' (2016) 31 Digital Scholarship in the Humanities 2, 374; Vaclav Brezina, *Statistics in Corpus Linguistics: A Practical Guide* (Cambridge 2018).
[701] Jefrey Lijffijt, Terttu Nevalainen, Tanja Säily, Panagiotis Papapetrou, Kai Puolamäki and Heikki Mannila, 'Significance Testing of Word Frequencies in Corpora' (2016) 31 Digital Scholarship in the Humanities 2, 375.
[702] John Sinclair, *Corpus, Concordance, Collocation* (Oxford 1991) 115.

and Mutual Information (for Collocates) both of which measures are widely used in corpus studies.

Log-Likelihood ('LL') is a measure of significance which has become sufficiently embedded into the field of corpus linguistics, for it to be sometimes referred to as a measure of 'keyness'[703]. Its value as a measure of significance in word studies is that, unlike some of the other measures of significance 'it makes no assumption of a normal distribution'[704]. Further, LL is based on a 'null hypothesis' testing paradigm[705], that is that it proceeds from an assumption that no statistical relationship exists between the values (words). Accordingly, through the application of LL, significance and correspondence between words, is therefore established progressively as the probability that 2 words occur together as a matter of chance is measured against the probability that they share a statistical relationship. The use of Log-likelihood in language studies has attracted some criticism. Jefrey Liffijit et al[706] in a comparative study of measures of association, found that both Log-likelihood and Chi-square fail to account for uneven distributions of words where there is a large degree of variance of distribution, and therefore provide false readings for mean distribution of words. However, this effect is mitigated in the case of #Lansbox, by its 'Whelk' tool. This provides data regarding the distribution of words across the corpus. Another issue with Log-Likelihood as a measure for 'keyness' is that it can produce a very large number of 'significant' words. To accommodate this, some of the keyword studies which use Log-likelihood set the threshold for inclusion at a very high level of certainty, to restrict the amount of keyword data[707].

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[703] Vaclav Brezina, *Statistics in Corpus Linguistics: A Practical Guide* (Cambridge 2018) 85. Brezina, however, considers referring to the log-likelihood as "keyness" is 'unhelpful'.
[704] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and* Practice (2012) 52; Jefrey Lijffijt, Terttu Nevalainen, Tanja Säily, Panagiotis Papapetrou, Kai Puolamäki and Heikki Mannila, 'Significance Testing of Word Frequencies in Corpora' (2016) 31 Digital Scholarship in the Humanities 2, 377.
[705] Vaclav Brezina, Tony McEnery, Stephen Wattam,'Collocations in Context: a New Perspective on Collocation Networks' (2015) 20 International Journal of Corpus Linguistics 2, 161.
[706] Jefrey Lijffijt, Terttu Nevalainen, Tanja Säily, Panagiotis Papapetrou, Kai Puolamäki and Heikki Mannila, 'Significance Testing of Word Frequencies in Corpora' (2016) 31 Digital Scholarship in the Humanities 2..
[707] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and* Practice (2012) 52.

For example, in their corpus study of representations of immigrants to the UK, Costas Gabrielatos and Stephen Baker, set 'the threshold for keyness … at an extremely low p value ($p \leq 10 -14$)'[708]. Lesley Jeffries and Brian Walker, in their study of keywords in the press, set the threshold at $p < 0.001$[709] (or 99.9% certainty). In the case of the present study, however, the threshold was set at $p < 0.01$ value (or 99% certainty, a log-likelihood value of 6.61). In the context of this research keyword analysis was intended to provide only a superficial, initial, view of the corpora; with more detailed analysis following at stages 2 (collocate analysis) and 3 (concordance analysis). Accordingly, it was decided to capture as much keyword data as was practicable, since this data could be processed rapidly, and would be verified by the later stages of the process (reducing the potential for spurious data biasing the study findings).

Mutual Information ['MI']

MI is a measure of association which originates from the field of information theory[710]. In language studies, it compares the probability that a pair of values (words): 'occur together as a joint event (i.e., because they belong together) with the probability that they occur individually and that their co-occurrences are simply a result of chance'[711]. MI considers pairs of values together, rather than individual word 'events'. It is therefore particularly suitable as a measure of association between word pairings[712], and it is widely used in collocation studies. As a measure it takes no account of the size of the corpus[713] and it is therefore suitable in comparative studies of corpora of different sizes. However, it has been criticised in language studies for providing only one side of the collocational relationship between words; termed by Hunston the *strength* of association[714].

[708] Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding' A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005' (2008) 36 Journal of English Linguistics 1, 10.
[709] Lesley Jeffries and Brian Walker, 'Key Words in the Press: A Critical Corpus-Driven Analysis of Ideology in the Blair Years (1998- 2007)' (2012) 5 English Text Construction 2, 208.
[710] Tony McEnery and Andrew Wilson, Corpus Linguistics: An Introduction (Edinburgh 2001) 86.
[711] Ibid.
[712] Tatiana Tkačuková, 'A Corpus-Assisted Study of the Discourse Marker Well as an Indicator of Judges' Institutional Roles in Court Cases with Litigants in Person' (2015) 10 Corpora 2, 156.
[713] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 73.
[714] Ibid, at 73.

That is the *exclusiveness* of word pairings. In order to mitigate the effect of this perceived weakness it was originally intended that 2 sets of collocates would be extracted in this study. A further set of collocates would have been extracted from both corpora using LL. As discussed in the preceding paragraph, LL is a measure of significance and therefore measures the *certainty*[715] (or the 'typicality') of collocation. This is the approach taken by Costas Gabrielatos and Paul Baker[716] who extracted collocate lists using these measures (LL and MI). Unfortunately, time restrictions precluded this, in the case of this study. However, it was noted that the Whelk tool in #Lancsbox established the 'spread' of the word pairings identified, and therefore 'idiosyncratic' collocates, which were restricted to a small number of instances, would be easily identified. Further, unlike Costas Gabrielatos and Paul Baker's study, which focussed exclusively on collocates, this study would also have keyword, concordance and cluster data sets, as a means of verifying the 'typicality' of the collocate data. The other issue with MI as a measure of association is that it is reported to over-emphasise rarer word combinations[717]. In this study, however, it was considered that data concerning the more unusual recurrent word associations should be preferred over data concerning the more typical word combinations, as these could be revealing of the more 'hidden' associations brought to the semiosis of privacy; potentially providing the richest data. This is the approach taken by Geraldine Mauntner in her study of language ideologies around the word, 'elderly'[718].

To conclude, it is necessary to consider that each stage of the processes of this study consists of a mixture of objective and subjective criteria. Even those parts of the study which ostensibly present objective, empirical, data such as that obtained through application of statistical measures, can rest upon subjective assumptions and intuitions. This is inevitable, since the production of knowledge

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[715] Ibid, at 73.
[716] Costas Gabrielatos and Paul Baker, 'Fleeing Sneaking, Flooding' A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005' (2008) 36 Journal of English Linguistics 1. In Geraldine Mauntner's study of collocates of the word 'elderly' 3 lists of collocates were extracted using the measures of T-Score, and Joint Frequency, as well as MI: Geraldine Mauntner 'Mining Large Corpora for Social Information: The Case of Elderly' (2007) 36 Language in Society 1, 51.
[717] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 74.
[718] Geraldine Mauntner 'Mining Large Corpora for Social Information: The Case of Elderly' (2007) 36 Language in Society 1, 55.

is a socio-cognitive process, occupying a space between the (internal) cognition of the researcher, and the (external) environment that the researcher occupies[719].

The Researcher's own knowledge of privacy laws can be usefully deployed in the research processes, in, for example the construction of the corpus, and at the point of data interpretation (which is discussed in the following Chapter). This knowledge has been applied to identify flaws in research methods. For example, in an earlier pilot study, a review of the comparator corpus followed an observation that the data contained no reference to the Internet. However, it is necessary to find a balance between the useful application of the Researcher's knowledge and intuitions, and the risk of confirmation bias skewing the research data towards the Researcher's own preconceptions. It was therefore necessary for the Researcher to consider steps to mitigate the effects of confirmation bias and its impact on the reliability of the data obtained through application of the methods described in this Chapter. One of the main measures taken to mitigate the effects of confirmation bias was that the study was not conducted in one single step but as an iterative process, conducted in stages across a period of several years. This allowed the data quality and hypotheses to be tested and adjustments made to the study process. There were, for example, 4 iterative versions of the study corpus, but 3 comparator corpora were tried (the BNC, a Wikipedia corpus, and the BNC2014-spoken corpus) before the BNC2014-mini was chosen. The early pilots of this research process informed significant changes to the study corpus, choice of comparator corpus, choice of extraction methods, etc. The periods of reflexivity which were built into this process included peer review of the study results, discussions within a 'community of knowledge' established by the Researcher including membership of specialised corpus linguistic groups on social media, a structured post-graduate researcher's 'round table' group and presentation/discussion of the research and initial data sets at a national conference at which the initial results were presented and discussed[720]. As a result of these discussions, it was possible to check some of the early results and conclusions against the views of the community of knowledge established by the Researcher. Careful consideration was given to the use of statistical measures to

[719] Pierre Bourdieu and Lois Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992) 7.
[720] At TRILcon, a national conference based at Winchester on 25th April 2018.

extract the keywords, collocates, and n-grams, from both corpora. The Researcher took no hand in the selection/generation of these data, which were generated by the application of the functions of #Lancsbox according to the configuration settings described in this chapter. The sheer size of the corpora prevented detailed analysis of them, other than through the operation of the applications of the concordancing software. The study corpus consists of 20601521 word 'tokens', 43378 word types, and 39171 lemma types. Based on an average of 500 words per single typed, word processed, A4 page, this is equivalent to over 5000 pages of text. This, and the complexity of the mathematical processes applied to extract this data, prevented the Researcher from pre-empting data results. Further, each of these data sets extracted from that corpus was obtained independently of each other: the keyword list, for example, formed no part of the process of obtaining collocate lists or n-gram lists. Accordingly, each data set could be used to test the veracity of each of the other data sets. Further, the data sets obtained were as large as possible (given the time available for completion of this study) to minimise the impact of any spurious results. Further, the statistical measures used (log-likelihood for keywords, mutual information for collocates) were set at a high level of certainty (equivalent to the 99th percentile).

Consideration was given to the quality of the data obtained in this research and in particular to the risk of confirmation bias. However, the Researcher also took account of Karl Popper's dictum that: 'non-replicable single occurrences are of no significance to science' [721]. The data sets obtained and discussed this thesis were tested for replicability, and they were found to be replicable. Similar data sets were generated on multiple occasions through matching the configuration settings (the statistical measures used, and the parameters of those measures) and the processes described in this chapter, applying these processes to the corpora. Regarding the study corpus, the list of cases used to construct the corpus is appended to this thesis. Minimal textual amendments were made to those cases on inclusion into the corpus, the processes of which are described at section i (d) of this Chapter (the Process of Corpus Building: Preparation of Cases). These consist of removal of the title and header of the case and retention of only the primary judicial finding where the input of the other judges in the panel is merely

[721] Karl Popper, The Logic of scientific discovery (Routledge1959)

to voice agreement with the primary finding. Then follows conversation of the case to a .txt format. Following these simple processes and applying them to the cases included in this corpus it would be possible to build an identical corpus to corpus C1 and duplicate the results obtained in this study.

Should a researcher seek to repeat the processes by which the corpus was constructed, this would likely produce a slightly different, but broadly similar, corpus. Regarding the processes of selection of the cases in the corpus, the case list would substantially be matched through use of the same case citator, which (assuming that the same citations are held in that case citator) would provide a similar list of cases, if the same historical (May 2004-May 2022) and jurisdictional criteria are used to filter those results, and the same case is used, initially, to generate the citations (*Campbell*). The criteria used to obtain the small number of additional cases would likely result in a different selection of the small proportion of addition cases with some likely changes to the study data. However, the purpose of the corpus is not to capture all themes within a discursive field, which would not be possible unless the corpus contained every text within that field, but to allow the discursive themes 'captured' in that corpus to be examined in detail. However, since the corpus is a representation of the whole field there is a clear benefit in having a properly 'weighted' corpus which more accurately represents the discursive field it is intended to 'capture'[722]. The construction of a representative corpus is a process which cannot be undertaken without some recourse to the compiler's knowledge of the theme the corpus is intended to capture[723]. In any event, were it possible to generate a corpus through purely random means, the corpus generated would be different on each occasion, producing different data, but which cannot be relied upon to capture significant themes in the field. In relation to this study, it is considered that a large corpus, capturing some of the main themes at the time it is constructed (with consideration given to the variety of themes it captures and their relative significance), is best positioned to generate data allowing those themes to be

[722] Sealey A and Pak C, 'First catch your corpus: methodological challenges in constructing a thematic corpus' (2018) 13 Corpora 2.
[723] Martin Bauer and Bas Aarts, 'Corpus Construction: a Principle for Qualitative Data Collection' in: Martin Bauer and George Gaskell (eds) *Qualitative Researching with Text, Image and Sound* (Sage 2011) 30.

examined in detail. Notwithstanding this, reproducing the corpus used in this study would be a simple matter, and that corpus would generate similar data (with a chance of minor variations due to the operation of the software) to that obtained from this study, fulfilling Karl Popper's dictum.

Chapter 6, which follows, considers further this application of quantitative (externally-based) and qualitative (internally-based) methods with respect to the processing and interpretation of data.

Chapter 6
Data Interpretation and Analysis

Introduction

Chapter 5 sets out a process for analysing text-based corpora. This process consists of extracting complimentary sets of text data in three stages. In the first stage a set of keywords is extracted. These keywords have been found to be prominent within the corpus as a whole, through the application of statistical measures. The purpose of extracting keywords is to provide a rudimentary 'map' of the semantic fields and themes captured by the corpora. The second data set is a set of collocates of the word 'privacy' (and its lemma forms, 'privately' and 'private'). The purpose of this is to understand the meanings and (socio-cognitive) associations brought to those words within the context of the semantic environments captured by each corpus. In the tertiary stage of the data extraction process, blocks of text are obtained from each corpus for deeper analysis. This consists, initially, of sets of word clusters from each corpus. Then 'Concordance lines' are taken from the corpora for further analysis. These are blocks of text, of a set length of 5 word units, positioned either side of the search term, 'priva*'. This Chapter considers the coding and interpretation of these data sets. Part I considers the techniques of data analysis and coding and the management of the risk of confirmation bias in relation to these processes. Following this, each data set will be discussed in turn (keywords, collocates, clusters and concordance lines). There follows, at Part II a detailed analysis of the whole, according to the Bourdieusian model proposed at Chapter 3 of this thesis. The full data sets obtained have been placed into the appendices, following this thesis, at pages 312-367.

i. Techniques of Data Extraction/Processing

The techniques used to analyse the data have not been discussed in the preceding chapter (Chapter 5) on study methods. At the time of consideration of the methods of research, the matter of data coding and interpretation was kept 'open'. This is consistent with the 'corpus-led' approach proposed in the thesis title. In the context of this research, the purpose of the corpus methods used is to discover new 'facts' about the texts included in the corpus, and from this make 'extrapolations' around the class of texts that the corpus represents. Accordingly, it was decided to allow the coding categories to arise inductively, after the process of data collection had been completed for each of the data sets, rather than applying preconceived coding categories onto the data. Following some of

the techniques suggested in the 'Grounded Theory' approach[724] it was decided to apply a 'ground up' process of codification in which data sets would be examined, until emergent patterns could be abstracted from that data[725]. From these emergent patterns, the data could be categorised and codified. It was decided not to pre-empt the nature of the data, or the likely patterns or themes suggested by it. This approach, it was considered, would mitigate against the risk of anticipation of the results, and prevent the structuring of results into pre-conceived categories. However, whilst this approach helped to limit the risk of confirmation bias at the point of data collection, it can place the researcher's own epistemological framework at the centre of the coding process, bringing the risk of that framework's potentially distorting effects. Consideration therefore had to be given to methods by which the risk of bias introduced into the coding process could be managed.

Neither the risk of confirmation bias, nor risk of bias generally, are addressed in detail in *Outline of a Theory of Practice*[726]. Pierre Bourdieu suggests in that work that conventional distinctions between 'objectivity' and 'subjectivity' are artificial, commenting that: 'the mind is a metaphor of the world of objects which is itself but an endless circle of mutually reflecting metaphors'[727]. Further, in *An Invitation to Reflexivity*[728] he promotes techniques of reflexive self-analysis as a valid method of knowledge discovery, locating the researcher's habitus at the centre of the process of knowledge construction. However, in that work Loïc Wacqaunt, paraphrasing Pierre Bourdieu, considers the risk of bias in relation to those reflexive processes. He suggests 3 sources of bias by which the researcher's focus can be distorted:

i. 'The social origins and coordinates of the researcher...[which is] controlled by means of mutual and self-criticism'[729];

[724] Antony Bryant, *Grounded Theory and Grounded Theorizing* (Oxford University Press 2017).
[725] Ibid, at 122.
[726] Pierre Bourdieu, *Outline of a Theory of Practice* (R. Nice tr, Cambridge University Press 1977)
[727] Ibid, at 91.
[728] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992)
[729] Ibid, at 39.

ii. 'The position that the analyst occupies...in the microcosm of the *academic* field' [Author's own emphasis];

iii. 'The *intellectionalist bias* which entices us to construe the world as a *spectacle*, as a set of significations to be interpreted rather than as concrete problems to be solved practically' [Author's own emphasis].

To check the impact of these biases Loïc Wacquant suggests mindful application of techniques of 'reflexivity', by which he means not merely the solitary practice of self-social analysis and conscious acts of challenging of emergent theories in relation to those biases, but also the marshalling of the 'collective scientific unconscious'[730] which should involve 'all the antagonistic and complimentary positions which constitute the scientific field'[731]. Loïc Wacqaunt and Pierre Bourdieu, consider that knowledge is a construction, a product of the operation of the researcher's habitus and the influences of the (academic) field that the researcher occupies. Rather than eliminating bias, which is 'embedded' into these processes of knowledge construction, they advise mitigating the effects of those biases through processes of 'mutual and self-criticism'[732]. These reflexive processes broaden the researcher's epistemological lens. They allow the sources of the researchers' biases to be identified and acknowledged. Crucially they encourage the researcher to apply different perspectives to the data, to challenge hypotheses.

Applying Loïc Wacqaunt's advice to this research, it was decided that the process of coding and categorisation of each data set should be an iterative process, with each data set extracted and then coded in turn. Each stage of the corpus process was intended to be a distinct act of knowledge construction, with each stage, initially, conducted independently of the other. The keyword data was extracted and codified, then the collocate data, then the N-gram data. The whole was then reviewed before concordance lines were taken, then the whole reviewed on further occasions. This iterative process provided space for techniques of reflexivity to be applied at each key stage of the data collection, coding, and

[730] Ibid, at 40.
[731] Ibid.
[732] Ibid.

interpretation process, with further reflexive consideration undertaken at the point of discussing the data in the body of this thesis. The impact of this iterative approach to data extraction and interpretation, and 'data led' approach to coding can be seen in the differences between the coding frameworks applied to each set, with notable differences in the format of the figures for each data set (keywords, collocates, n-grams), arising from the differences in conceptual categories suggested by those individual data sets. Applying Loïc Wacquant's advice, this process of reflexive analysis included discussion of the research with the 'community of knowledge' that the researcher was connected to. This included membership of a structured, cross-disciplinary, post-graduate research group. Within this community of knowledge, the Researcher was able to seek the views of other researchers in the wider 'scientific field' who practiced in other disciplines than the social sciences, for their 'antagonistic' insights into this research and the Researcher's hypotheses. Also, through providing feedback on the work of practitioners of 'antagonistic' disciplines, the Researcher was able to gain insights into other perspectives and epistemological frameworks, broadening the Researcher's own interpretive lens, and strengthening the Researcher's own 'inner critic'.

Loïc Wacqaunt addresses the issue of bias generally in Pierre Bourdieu's model, and he suggests techniques for identifying and confronting the sources of that bias. However, he does not address the particular issue of confirmation bias. Other scholars have provided some practical suggestions in relation to the issue of confirmation bias. Walter Schumm[733] provides some advice on the stance that the researcher should take towards the data. He suggests that the researcher should proceed from the 'null hypothesis', the principle that there is 'no difference between two (or more) groups or no correlation between two (or more) variables'. Where a hypothesis is formed, Walter Schumm suggests that the researcher should mindfully create other, antagonistic, hypothesis which could explain correlations in data. He also recommends periodic literature reviews to check those hypotheses against current knowledge. He suggests that the researcher should be prepared to accept findings which mitigate or contradict

[733] Walter Schumm, 'Confirmation Bias and Methodology in Social Science: an Editorial' (2021) 57 Marriage & Family Review 4, 1.

hypotheses as enthusiastically as those which support them. Brendan McSweeny (2021)[734] warns against the risk of 'consequentialism' in social research, and the potentially distorting effects of an unacknowledged social or political agenda. He advises that researchers should search for contrary evidence and rival hypotheses in their data, and that they should be mindful of the risk of 'imaginary supportive secondary evidence'[735]. He acknowledges that 'truth' can be found in any text, including works of fiction, but makes clear distinctions between 'the knowledge...derived from artistic work' and 'empirical propositions [which] require anchoring in empirical data'[736].

The techniques which Walter Schumm and Brendan McSweeny describe have been built into the reflexive practices that informed the data coding and interpretation processes in this research. Through reflexive consideration of the data (in periodic literature review, group discussion and personal reflection) hypotheses were reviewed and tested. As Brendan McSweeny advises, the hypotheses were 'anchored' on empirical data, since all data was extracted through application of statistical measures.

Particular note should be made of keywords which, being the earliest stage of the process described, and consisting of wholly decontextualised data, are the most problematic of the data sets described. Regarding the extraction of keywords, the extraction process involved the 'sorting' of the data through the application of two measures (relative frequency and co-efficient of variation) to allow comparison to be made between the data sets from the 2 corpora. This was a complex process, but one which is wholly driven by the application of statistical measures, and data obtained through this process empirically derived. Further, the measure used to directly compare the data sets from the 2 corpora is Log-likelihood, which is based on a null hypothesis paradigm, which accords with Walter Schumm's advice. However, it was found that 2 caveats should be applied

[734] Brendan McSweeny, 'Fooling Ourselves and Others: Confirmation bias and the Trustworthiness of Qualitative Research Part 1 (the Threats)' (2021) 34 Journal of organisational change management 5, 1063.
[735] Ibid, at 1068.
[736] Brendan McSweeny, 'Fooling Ourselves and Others: Confirmation Bias and the Trustworthiness of Qualitative Research Part 2 (Cross-Examining the Dismissals)' (2021) 34 Journal of Organisational Change Management 5, 844.

to this data. The first of these is that the processes of keyword extraction described in this study tend to highlight the differences between the data sets. This issue with keyword analysis, that it highlights differences in corpora whilst diminishing similarities, is noted by Paul Baker in his study 'Querying Keywords'[737]. Following Paul Baker's advice, large amounts of keyword data were taken (200 keywords per corpus), and the statistical threshold for the measure used (LL) was set to a high degree of certainty (equivalent to the 99th percentile). This reduces the impact and likelihood of individual errors. Another caveat regarding keyword data is that, being decontextualised, it is necessary to draw some inferences regarding the exact sense in which a polysemous word is being used. Polysemous words, can invoke a range of meanings and associations. To allow for this the coding categories have been kept as broad as practicable to accommodate subtle differences in the sense with which a word is being used. Furthermore, through use of the 'part of speech' tagging feature of the concordancing software used, it is possible to distinguish homonyms with differing parts of speech (e.g., the noun and verb forms of the word 'act' can be distinguished). Further, any initial observations, and initial hypotheses, are tested in the stages of analysis that follow (collocate and cluster analysis), the data of which is obtained independently, and concordance analysis, which allows some of the data to be examined in context.

As practical measures against the risk of confirmation bias, each of the data sets extracted is as large as practicable, mitigating the effects of any individual errors. The comparator corpus provides a practical, 'neutral', baseline against which to measure the extent of any patterns noted in the study corpus. Further, all data results have been provided in the appendices to this thesis, including the data which does not form any part of the discussions in this thesis. These data sets have been included in full, including the statistical values applied by #Lancsbox.

ii. Keyword Extraction and Analysis

Following the methods discussed in Chapter 5 a set of 200 keywords was extracted from each corpus. The full keyword sets are at appendix (ii), at pages

[737] Paul Baker, 'Querying Keywords: Questions of Difference, Frequency and Sense in Keywords Analysis' (2004) 32 Journal of English Linguistics 4, 346.

312-330. The keyword sets obtained from the 2 corpora are remarkably different regarding the semantic themes represented, and stylistic tone. However, as is noted in the proceeding section it should be borne in mind that these differences are accentuated by the methods used to obtain them, which focus on words which are comparatively prominent in each corpus. However, in the case of this study, there is provision for examination of similarities between corpora, at the later stages of collocate analysis, cluster analysis, and concordance analysis. Furthermore, whilst Paul Baker's observations are clearly apposite (as Baker warns, similarities in the keyword sets are muted) some similarities in the 2 sets of keywords can still be noted. It is apparent, for example, that in both sets there is a low frequency of significant keywords relating to the Internet, and online environment. However, most of the patterns noted relate to the *differences* in style, tone, and theme of the 2 keyword sets rather than similarities. The verbs, adjectives, and nouns of each corpus is discussed in turn. These have been arranged according to loose functional or thematic categories suggested by those sets of data.

The C1 Keyword Set

The keywords generated from C1 include a significant number of technical words, associated with the fields of law and litigation. This does not include Latin terms (*prima*, *facie*, *fortiori*), and abbreviations (such as 'ECHR'), which were manually removed from the data set before processing. There are some words in the set which, although in general usage, have specific meanings in the context of litigation such as *act* (which could refer to a statute, or to identify the party a lawyer represents, or 'acts' for). Based on the assumption that such words are used primarily in their technical-legal senses, the 200 'most key' verbs, adjectives and nouns includes a total of 95 technical legal expressions. These invoke legal processes, and principles, and provide a 'cast list' of members and visitors of the juridical field. Some of the keywords (including some of the technical legal expressions) relate to the processes of argumentation and disputation. Examples of this are: *allege*, *argument*, *establish*. Some of these words suggest the thought processes undertaken by the judiciary in the course of considering and evaluating the arguments and facts presented to them, such as *balance*, and *consider*. Other words suggest authorities invoked by the tribunal or the parties (including *act*,

authority, *rule*). There is some indication also of other fields of socio-economic activity which impact on juridical processes, in relation to privacy (such as the field of media, invoked in the keywords: *journalist*, *press* and *publish*). There are also some words which share 'family resemblances'[738] with privacy and its lemmas, including words which are near synonymous, or antonymous, such as: *anonymity*, *confidence*, *confidentiality*, *identification*, *identity*, *individual*, *privacy*, *public*, *publication*, *publicity*, *reporting*. To facilitate a deeper examination of the keyword set there follows a separate discussion of the verbs, adjectives and nouns in this set:

Verbs

The verbs in the set have been roughly ordered into semantic themes at *Figure A*, immediately below.

[738] Ludwig Wittgenstein, Philosophical Investigations (Gertrude Anscombe tr, Oxford 1953); the concept is invoked in relation to the semiosis of privacy in: Daniel Solove, *Understanding Privacy* (Harvard 2008); Asimina Vasalou, Adam Joinson and Davis Houghton, 'Privacy as a Fuzzy Concept: A New Conceptualization of Privacy for Practitioners' (2015) 66 Journal of the Association for Information Science and Technology 5, 918; and, Kieron O'hara, 'Privacy: Essentially Contested, a Family Resemblance Concept, or a Family of Conceptions?' (Amsterdam Privacy Conference, Amsterdam, 2018) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3262405> accessed 20th May 2021.

Figure A
C1 Keywords (Verbs)

	Declaring	Conceding / Exchanging	Connecting	Considering	Finding	Intervening
ACTIONS (VERBS)	Allege	Accept	Arise	Apply	Entitle	Prevent
	Contend	Give	Concern	Consider	Establish	Protect
	Disclose	Grant	Contain	Refer	Justify	Restrain
	Identify	Obtain	Engage	Regard (v)	Satisfy	
	Publish	Provide	Include			
	Report	Respect (v)	Involve			
	State	Seek	Relate			
	Submit	Submit	Rely			
	Declaring		Require			

The Online OED defines a 'verb' as: 'a word or lexical unit which is used to indicate the occurrence or performance of an action or the existence of a state or condition'[739]. Accordingly, the verbs in the keyword set highlight some of the activities, including thinking and reasoning processes, which characterise juridical processes in relation to privacy. The verbs in the keyword set suggest that there are several distinct stages within this process, consisting of acts of Declaration (by the parties), Concession and Exchange, Connecting, Considering, Finding, and Intervening (through application of juridical authority). These words have been decontextualised and it is not possible at this stage to determine any of the circumstances around these acts, or even whether the persons making these actions are the judges themselves, or whether they are, for example, quoting submissions from Counsel. However, some of these verbs (such as [I] *accept*, *apply*, *consider*) appear to be 'humdrum verbs in the first person singular present indicative active' and therefore, conforming with John Austin's structural criteria

[739] OUP, 'Verb n' (OED Online 2022) <https://www.oed.com/view/Entry/222358?rskey=P0VXUS&result=1>accessed 30th September 2022.

for a performative utterance[740]. John Austin, and Pierre Bourdieu, also cite social contextual conditions for performative utterances[741], however, and the context of those keywords cannot be determined at this stage of the study process.

Nouns

The nouns in the set have been roughly ordered into semantic themes at *Figure B*, immediately below.

[740] John Austin, *How to Do Things With Words* (Oxford 1962) 4-5.
[741] Ibid, at 14-15; Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 Hastings Law Journal 805, 838.

Figure B
C1 Keywords (Nouns)

	Close Relatives of Privacy	Judicial Processes	Source Authority	Persons/ Entities	Context/ Issues
LEGAL PROCESSES & ENTITIES (NOUNS)	Anonymity	Action	Act	Appellant	Article*
	Confidence	Allegation	Article*	Applicant	Breach
	Confidentiality	Appeal	Authority	Child	Circumstance
	Damage	Application	Convention	Claimant(s) ('s)	Conduct
	Defamation	Argument	Duty	Counsel	Consent
	Disclosure	Balance	Expectation	Court	Context
	Individual	Balancing	Law	Defendant (s)	Conviction
	Interference	Case	Obligation	Journalist	Disclosure
	Intrusion	Claim	Paragraph	Judge	Distress
	Investigation	Complaint	Principle	Lord (s)	Document
	Justice	Conclusion	Provision	Party*	Fact
	Privacy	Consideration	Right(s)	Person	Freedom
	Public	Decision	Rule	Plaintiff	Harassment
	Publicity	Disclosure	Section	Police	Harm
		Evidence		Press	Identification
		Hearing		Public	Identity
		Injunction		Respondent	Information
		Investigation		Secretary	Interest
		Issue		Solicitor	Justification
		Judgement		Tribunal	Litigation
		Jurisdiction		Witness	Misuse
		Matter			Newspaper (s)
		Notice			Offence
		Order			Party*
		Proceeding			Photograph
		Protection			Publication
		Relief			Question
		Remedy			Relationship
		Restriction			Report
		Submission			Reporting
		Trial			Statement
		View			Tort

The Online OED[742] defines a 'noun' as: 'a word used as the name or designation of a person, place, or thing'. Of the 200 keywords in the set, 135 are nouns. The majority of these are terms which are associated with the law and legal processes The nouns in this set name some of the persons and circumstances (contexts and issues) associated with juridical processes in relation to privacy. They also nominate some of the processes themselves, which form part of the judicial function: *balancing*, [giving] *consideration*, [considering] *evidence*, [making a] *decision*, and [making an] *order*, [considering a] *remedy*, a *notice*, or an *injunction*. There is reference, also, to sources of authority which empower the judicial act such as: written law (*act*, *paragraph*, *section*), or common law/normative practice (*obligation*, *principle*, *rule*). The capitalisation of the word *Convention* indicates that it refers to the text of the ECHR, rather than to a normative expectation. There are also some words which are semantically related to lemmas of privacy, having a near synonymous or antonymous relationship with them.

There are some words within this set which suggest a semantic depth which cannot be fully examined at this stage. The metaphorical words *balance,* and *balancing,* could suggest a particular approach taken by the tribunal in relation to privacy disputes[743], that is, the balancing of Article 8 privacy with oppositional Article 10 rights to freedom of expression. There are also some words which may suggest more nuanced features or attributes of judicially defined privacy, pertaining to the social context and scope of privacy obligations such as: [the] *circumstance*, *conduct*, *context*, *distress*, *harm*, *identity*, *identification*, *consent*, *freedom*, *nature* and *risk*. Some of these terms are reflective of academic debate around privacy in the fields of law and the social sciences. The notion of privacy in relation to *context* or *circumstance*, for example, is explored by Helen Nissenbaum[744]. The discursive connection of privacy with themes of *risk* has also

[742] OUP, 'Noun n' (OED Online 2022) <https://www.oed.com/view/Entry/128692?redirectedFrom=noun#eid> accessed 6th October 2022.
[743] Rebecca Moosavian, 'A Just Balance or Just Imbalance? The Role of Metaphor in Misuse of Private Information' (2015) 7 Journal of Media Law 2, 196.
[744] Helen Nissenbaum, *Privacy in Context: Technology, Policy and the Integrity of Social Life* (Stanford 2010); See also Alice Marwick and Dynah Boyd, 'I Tweet Honestly I Tweet Passionately: Twitter Users, 'Context Collapse' and the Imagined Audience' (2010) 13 New Media and Society 1, 114.

been widely discussed[745], as have themes of *harm* (See, for example, Daniel Solove's taxonomy of privacy according to the harmful activities it addresses[746]). The nuanced issue of *consent* and privacy is explored (and criticised) in, for example, Mathew Weait's study, 'Harm, Consent and the Limits of Privacy'[747] and in Julie Cohen's 'Turning Privacy Inside Out'[748]. The notion of privacy in relation to Identity construction has been discussed by the social psychologists Irwin Altman[749], and Ruth Gavison[750].

Adjectives

The adjectives in the set are displayed at *Figure C*, immediately below.

Figure C

C1 Keywords (Adjectives)

	Close Relatives of Privacy	Evaluative Adjectives	Others
ATTRIBUTES (ADJECTIVES)	Confidential	Appropriate	Further
	Particular	Clear	General
	Personal	Confidential	Interim
	Private	Criminal	Present
	Public	Legal	Sexual
		Legitimate	Such
		Likely	
		Necessary	
		Personal	
		Private	
		Reasonable	
		Relevant	
		Statutory	
		Unlawful	

[745] For example, in: Nielsvan Dijka, Raphaël Gellert and Kjetil Rommetveit, 'A risk to a Right? Beyond Data Protection Risk Assessments' (2016) 32 Computer Law & Security Review 2, 286.
[746] Daniel Solove, *Understanding Privacy* (Harvard 2008) 101.
[747] Matthew Weaid, 'Harm, Consent and the Limits of Privacy' [2005] 13 Feminist Legal Studies 97.
[748] Julie Cohen, Turning Privacy Inside Out' (2019) 20 Theoretical Inquiries in Law 1, 1.
[749] Irwin Altman, *Environment and Social Behavior: Privacy, Personal Space, Territory, and Crowding* (Brooks/Cole 1975).
[750] Ruth Gavison,' Privacy and the Limits of Law' (1980) 89 The Yale Law Journal 89, 421.

The Online OED defines adjectives as: 'word or lexical unit which designates an attribute and qualifies a noun (or pronoun) so as to describe it more fully'[751]. Adjectives are of particular interest in linguistic studies since they often convey something of the speaker's attitude towards the thing being discussed. Ruth Breeze[752] for example has described a whole class of adjectives, which she terms 'evaluative adjectives', which can signify the application of 'disciplinary values' (or exercise of authority), within the legal professions. Michele Sala[753] describes a group of verbs, adjectives, and adverbs: 'episodic modality markers', which are: 'formulations used by writers to express or imply their attitude towards the content and the reader'. Evaluative words can signify the disapproval of those deemed morally lacking, or praise of those deemed worthy, and can therefore reflect wider, culturally based, values, as well as establishing the authority of the speaker. There is a significant number of implicitly, morally evaluative adjectives in the C1 keyword set such as, *appropriate*, *confidential*, *criminal*. There are also some adjectives which appear to express an evaluation by the judge of the strength of a particular argument, or line of thought such as, *likely*, *necessary*, *relevant*. The adjectives in the set form the smallest group, and no clear themes or patterns emerge in the set. Some adjectives appear to have a rhetorical function, such as emphasising, or clarifying, a particular matter (for example, *further*, *present*, *such*)[754]. As with the verbs and nouns in the set, there are also a few words which share a close semantic relationship with privacy and its lemmas.

The BNC2014-baby Keyword Set

[751] OUP, 'Adjective' (OED Online 2022) <https://www.oed.com/view/Entry/2426?rskey=cnkLiI&result=1&isAdvanced=false#eid> accessed 6th October 2022.
[752] Ruth Breeze, 'Disciplinary Values in Legal Discourse: A corpus Study' [2011] 21 Ibérica 93.
[753] Michele Sala, 'Plain Language in Legal Studies: A Corpus-Based Study' (2014) 16 European Journal of Law Reform 3, 661.
[754] These terms may fall into another category of words described by Sala, that is 'code glosses', which express 'alternative ways to make sense of the writers' meaning'. Ibid at 664

The methodology underlying the construction of the BNC corpus is intended to avoid significant bias towards a particular genre of writing, or linguistic style. This diversity is reflected in the keyword set generated from this corpus. Further, unlike C1 which is wholly composed of texts relating to the theme of privacy, the BNC2014-baby keywords reflect a multiplicity of themes and convey no particular meaning relating to the theme of privacy. It is anticipated that the presentation of the subject of privacy in BNC2014-baby should, however, become apparent when collocates of privacy are examined, at Part II of this Chapter. Whilst the Keywords extracted from BNC2014-baby may not provide any information regarding the theme of privacy, they signal some notable patterns within that corpus. Notably, there are differences in style, between the corpora, with the BNC2014-baby keyword set containing more slang terms and contractions, signifying a less formal, more 'conversational' tone. There are references to a broader range of social activities. The language is in general more descriptive, with more terms which focus on physical attributes than the C1 set. The keywords from the BNC2014-baby which relate to mental processes, tend to focus more to the speaker's emotions, rather than reasoning processes.

The keywords in the BNC set are displayed thematically at *Figure D*, immediately below:

Figure D

All BNC Keywords Arranged Thematically

	Sport	Fashion/ Lifestyle	Education/ Technology	Cognitive/ Interpersonal	Time/Space	People/ Body
ALL THEMES BNC	Ball	Bag	Book	Come	Christmas	Back
	City	Buy	Machine	Feel	City	Dad
	Club	Car	Project	Fun (n)	Day	Eye
	Cup	Design (n)	Protein	Gonna	Minute	Face
	Game	Dog	Research	Happy	Moment	Foot
	Goal	Eat	Student	Help	Month	Girl
	Hit	Food	Study	Hope	Morning	Guy
	League	Grow	University	Idea	Night	Hair
	Leg	Hair		Know	Park	Head
	Lose	Job		Laugh	Place	Kid
	Miss	Live (v)		Like (v/adj)	Road	Man
	Play	Model		Lol	Room	Mum
	Player	Money		Look (n/v)	Sea	People
	Round	Music		Love (v/n)	Season	Watch (v)
	Team	Park		Mean (v)	Space	
	Win	Shop		Please (v)	Street	
		Show (n)		Remember	Time	
		Star (n)		Say	Today	
		Train (n)		See	Tomorrow	
		Work (n/v)		Tell	World	
				Thank (v/n)	Year	
				Think	Yesterday	
				Wanna		
				Want		
				Wonder		

It is noted within the BNC2014-baby keyword set that there were some clear discursive themes, commonly discussed in the printed media, new media and fiction, such as sport, fashion and lifestyle. There are also some keywords on the themes of education and technology reflecting the inclusion of academic text in BNC2014-baby. There is a large group of words which orient the reader temporally and spatially. There are various non-specific references to people (*guy*, *girl*, *kid*, *man*), and the person, including body parts (*back*, *eye*, *face*, *foot*). There are words which refer to the writer's thoughts, and interpersonal actions, which focus largely on the writer's emotional state (*fun*, *happy*, *laugh*, *please*, *thank*, *wanna*, *wonder*). These themes (words which orient the reader in time and

location, or which convey the writer's emotional state) could reflect the purpose of some of the texts included in BNC2014-baby, to convey a narrative, as might be required of a work of fiction, or a media article. However, the clear variety of themes within this set underlines the value of BNC2014-baby corpus as a comparator corpus in this study. The absence of substantive thematic bias within BNC2014-baby is further confirmed by the presence of many common words within the keyword set which indicate no particular theme, or attitude. There are for example some common, unremarkable, verbs in the keyword set such as: *can*, *do*, *get* and *go*. Likewise, many of the adjectives in the set refer to simple, observable, characteristics, such as: *big*, *black*, *dark*, *few*, *high*, *little*, *long*, *many*, *new*, *next*, *small*, *top*, *white*. The evaluative adjectives in the set (*amazing*, *bad*, *beautiful*, *easy*, *fine*, *funny*, *good*, *happy*, *like*, *lovely*, *nice*, *non* (negating the following word), *okay*, *perfect*, *sorry*) are vague, and ambiguous, and the basis of the evaluation (whether aesthetic, or moral) unclear.

Conclusions

Having reviewed the nouns, adjectives, and verbs, in each keyword set it is possible to make some general observations regarding differences in style and theme of the 2 corpora.

Differences in Style

The keywords extracted from BNC2014-baby include a large range of colloquial, 'slang' expressions and contractions. The keywords in C1 tend to be more formal, and archaic in nature. Many of the keywords in BNC2014-baby are ambiguous, vague and imprecise. However, a significant proportion of the key adjectives in BNC2014-baby refer to physical characteristics, and many nouns refer to body parts and the senses. In contrast many of the keywords extracted from C1 are precise, and appear to be used in a specific technical sense. Some of the words from the C1 keyword set invoke normative characteristics or a normative evaluation of the matter being represented. This, perhaps, reflects the court's function (in respect of issues pertaining to privacy rights) as 'norm-broker'[755]. This association of privacy with normative characteristics could also reveal something

[755] Michael Hamilton and Antoine Buyse, 'Human Rights Courts as Norm-Brokers' (2018) 18 Human Rights Law Review 2, 205.

of the nature of privacy itself, since privacy is a normative, rather than technical-legal, concept[756].

Differences in Theme

As could have been anticipated from a corpus constructed from law reports, the words extracted from the C1 set, focus largely on themes of law, and litigation. There are also some themes associated with privacy, helping to contextualise the issue of privacy. This includes references to some of the key persons in the fields of privacy law, and law and litigation generally. There are many self-references, references to other courts, statutes, laws (including other areas of law), and conventions. Some of the antagonists to privacy are also revealed, including the press. Some of the qualities of privacy also appear to be referenced, specifically, its possible function in relation to risk, identity, protection and preservation. Some of the 'close relatives' of privacy are also present in the C1 keyword set. In contrast the BNC2014-baby keywords represent a wider range of themes such as sport, fashion, lifestyle and education. This range of themes perhaps reflects values and interests within society as a whole, which could have been anticipated from a corpus designed to reflect the generality of the English written language. The diversity of themes within the BNC2014-baby keyword set confirms that there is no significant bias in the corpus. This affirms its suitability as a comparator corpus for the next stage of this data extraction process, collocate analysis.

General Conclusions

Many of the differences noted in the 2 sets of keywords could have been anticipated. Studies have confirmed continued use of technical-legal expressions ('legalese') in litigation despite pressure from groups such as the 'Plain English Campaign' promoting the use of 'plain English' in legal communications. Examples of these studies include the study on the use of 'legalese' in legal communications by Maria Marin[757] and Michele Sala's[758] study on the adoption of 'plain English' by the legal professions. It has been argued that the use of technical, legal,

[756] Helen Nissenbaum, *Privacy in Context* (Stanford 2010) 72.
[757] Maria Marin, 'Legalese as Seen Through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' [2017] 6 International Journal of Language & Law 18.
[758] Michele Sala, 'Plain Language in Legal Studies: A Corpus-Based Study' (2014) 16 European Journal of Law Reform 3, 651.

terminology is a means of maintaining power differentials between legal professionals and lay 'actors' in the litigation process[759], and also maintaining a sense of the operation of the law being a 'magical' process which re-establishes the primacy of the juridical field, in respect of disputes[760].

The more formal style, absence of slang expressions and contractions, reflects the necessarily serious tone and highly structured nature of court discourse. With regard to privacy, there are some emerging themes regarding its characteristics. It appears that privacy is normative in nature, it is conceived of as a space or shield, it is personal. The presence of keywords relating to the media in the C1 corpus suggests an association between privacy and the field of traditional media. Legally, privacy is related to the fields of confidence, crime, harassment and defamation. There is also an emerging list of 'players' on the juridical field in the course of litigation including the Police, the press and the parties. These patterns echo observations made at Chapter 4 of this thesis, following review of privacy case law. However, some broader patterns within C1 are also emerging. Notably, there is also emergent evidence of a process by which claims are heard, evaluated and disposed of. As the corpora are interrogated further, in the following stages of collocate and concordance analysis, these initial observations are tested, with a more focussed examination of the presentation of privacy and its lemmas.

iii. Collocate Extraction and Analysis

A total of 150 collocates of the search-term (the 'node') "Priva*"[761] was extracted from C1. It was intended also to extract 150 collocates from BNC2014-baby. However, once the exclusion criteria were applied to the BNC2014-baby set, retaining only nouns, adjectives, and verbs, only 116 collocates in the BNC2014-baby set met the necessary confidence level of 99% ($\rho < 0.01$). These collocates have been selected through the application of a statistical measure of association (Mutual Information), which has established a consistent spatial association of those words with privacy and its lemmas. This spatial relationship assumes a

[759] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 Hastings Law Journal 805, 818-819.
[760] Ibid, at 830.
[761] The asterisk operates as a 'wild card' in #Lancsbox and this search term therefore combines the lemmas 'privacy', 'privately' and 'private'. It also prompted additional, unanticipated, lemmas 'privatized [sic]' and 'privatise'.

semantic relationship between the words. The collocational relationship can, however, be a superficial lexical relationship, a 'semantic preference'[762], or a richer, discursive relationship, (a 'semantic prosody'[763], or discourse prosody[764]), revealing of cultural attitudes. Unlike the keywords discussed at Part I of this chapter (which were derived from a comparative analysis of the 2 corpora) the collocates are extracted from each corpus independently of the other. It is therefore theoretically possible to generate identical lists of collocates from the 2 corpora. However, there are only 16 matches, including 'near matches' where the same word stem appears in both lists in different lemma forms. It is interesting to note that these shared collocates include the metaphorical descriptors of privacy: *space* and *sphere*. The collocates *family* and *home* are also present in both lists, confirming the continuing association of privacy with the domestic environment. It is also noteworthy that 3 of these collocates: *life*, *family*, *and home*, are cited in the phrasing of Article 8 ECHR[765]. Other shared collocates are ones which have a clear, lexical, relationship with the word 'private'*: citizen, detective, hire, individual, institution, keep*, *person ('s)*, *personal*, *sector*, t*hought*, *view(er)*.

Notwithstanding these shared collocates, the collocate lists are manifestly different. These differences do not merely lie in their composition, but also in the discursive themes that they invoke, and in their style and form. To explore these differences further, the 2 sets of collocates have been placed onto similar grids. These grids consist of a low number of broad groupings, to allow direct comparison between the 2 sets. The categories have been kept as broad as possible, whilst retaining their value as a means of distinguishing patterns in the data. It has been decided to group together all of the collocates (nouns, adjectives and verbs) in respect of broader categories based, initially, on whether they appear to be conveying information around privacy itself (Figure E with the C1 set and G with the BNC Set), or of socio-cognitive structures around the matter of privacy (Figures F and H). There are 2 grids for each set:

[762] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' 21 Text 3, 449; Tony McEnery and Andrew Hardie, *Corpus Linguistics* (Cambridge 2012) 135.
[763] Tony McEnery and Andrew Hardie, *Corpus Linguistics* (Cambridge 2012) 135.
[764] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' 21 Text 3, 449.
[765] Article 8 (1) ECHR reads: 'Everyone has the right to respect for his private and family life, his home and his correspondence'.

i. The first grid for each set (*Figure E* for the C1 collocates, *Figure G* for the BNC2014-baby collocates) arranges and categorises collocates which identify some of the *attributes* of privacy. This is intended to capture and distinguish those collocates which help to establish the scope of privacy conceptually and normatively, and the scope of privacy in terms of the 'things' that might attract privacy expectations. Those collocates which have family resemblances to privacy are also distinguished to provide an indication of the range of meanings invoked in privacy (a manifestly polysemous word) in the 2 corpora. The category, 'Other Properties' is intended to capture those collocates which appear to be describing any other property of privacy.

ii. The other grids (*Figure F* for the C1 collocates and *Figure H* for the BNC2014-baby collocates) arrange those collocates which identify the social-cognitive environment of privacy and its lemmas. With regard to the collocates extracted from C1, this is likely to include some of the activities associated with a privacy dispute (the cognitive processes, and utterance of evaluative (normative) statements. Some information on the wider 'juridical field' on which legal disputes are 'played', is also captured: a few collocates help to establish other fields (such as the media field) and associated (social) activities. There is a group of collocates which provide a 'cast list' of people and positions encountered in those fields in the context of a privacy dispute.

It was initially decided to use identical grids to arrange the collocates for the 2 corpora. It is noted, however, there are clear differences in the distribution of the collocates across the groupings in the 2 sets. These differences, ostensibly arising from differences in the presentation of privacy in the 2 corpora, renders some of the columns in the grids large and unwieldy. These differences in the distribution of collocates across categories could point to cultural differences in the status and meaning of privacy, which is valuable data. Accordingly, to explore these

differences, and to distribute the collocates in a more even manner, some of the categories have been further broken down. Specifically, with the C1 collocate set, the category of 'Scope/Limits' has been further broken down into the sub-categories of 'Private Zone' and 'Encounter Point' at Figure E. At Figure F, due to the large number of evaluative collocates in the C1 set, it was possible to sub-divide these into those which indicate a negative evaluation, and those collocates which indicate a positive evaluation of the subject of discussion. Regarding the BNC2014-baby collocate set, the category of 'Private Matters' in Figure G has been sub-divided into those matters relating to 'Wealth' and 'Other Matters'. Figure H differs slightly to the equivalent grid for the C1 collocates (*Figure F*) since there are no collocates relating to 'Judicial Activities'. However, due to the large number of collocates relating to affairs of business, those activities pertaining to this field have been distinguished from those collocates relating to other fields of activity (such as *care*, *health* and the *law*).

C1 Collocates of Priva*

The collocates extracted from C1 have been arranged in Figures E and F, immediately below. Some words, capable of appearing in multiple parts of speech with near identical meaning appeared more than once in their different forms. An example of this was 'Confidential', which appeared in its forms as a noun and as an adjective. Some words have also appeared in multiple (but semantically near-identical) lemma forms, such as *infringe* and *infringement*. These words have been entered on the grid once, with different parts of speech or lemma forms indicated in parentheses following that word for example, *Individual('s) (adj/n)*.

Figure E

C1 Collocates: Privacy (Attributes)

	Scope/Limits		Other Properties	Private Things	Family Resemblances
	Intrinsic	Encounter Point			
PRIVACY (ATTRIBUTES)	Ambit	Absent	Comfortable	Affair	Confidential (ity)
	Aspect	Attract	Enjoy(ment)	Applicant ’s	Distinct
	Breadth	Breach (n/v)	Expectation	Character	Individual(’s) (adj/n)
	Broad	Code	Guarantee n/v	Confidence	Intimate
	Circle	Countervail	International	Correspondence	One’s
	Component	Defeat	Keep	Diary	Personal
	Core	Degree	Preserve	Family	Person’s (adj)
	Default	Encounter	Protect(ion)	Hire	Secret
	Embrace	Expose	Right	Home	Standalone
	Encapsulate	Impact	Stake	Information (al)	
	Encompass	Outweigh	Tension	Invoice	
	Enshrine	Overlap	Traditional	Life	
	Essence	Qualified	Waive	Upbringing	
	Inner	Respect (n/v)		Worth	
	Realm	Setting			
	Scope	Trump			
	Sector				
	Space				
	Sphere				
	Stem				
	Touchstone				
	Universe				

Figure F
C1 Collocates: Privacy (Socio-Cognitive Environment)

	Cognitive Processes	Evaluative Negative/Positive		People & Positions	Institutions	Associated Activities
		Negative	Positive			
PRIVACY (SOCIO-COGNITIVE ENVIRONMENT)	Accuracy	Disruption	Comfortable	Assistant	Fashion	Anonymisation
	Categorise	Infringe (ment)	Entitle	Celebrity	Hearing	Acquisition
	Concept	Intrude/ Intrusion	Fresh	Citizen	Institution	Compensate
	Heading	Interference	Reasonable	Detective	Media	Dissemination
	Hear	Invade (Invasion)		Editors		Hearing
	Notion	Misuse		Everyone		
	Reiterate	Modest		Investigator		
	Relate	Purloin		Media		
	Listen	Unacceptable		Relation		
	Repeated/	Unjustified		Those		
	Repetition	Unwanted		Viewer		
	Revelation	Tort				
	Sense	Trivial				
	Sit	Violate				
	Thought	Wrongful				
	Yield					

Discussion

The C1 collocate sets, like the keyword sets, include a large proportion of technical-legal expressions (including those words in general use which have a specialised meaning in the context of the legal field). There is also a significant number of 'close relatives' of privacy, words which are near synonyms or antonyms of privacy. As observed with the Keyword sets of the corpora, the C1 collocate set stylistically reflects a more 'formal' manner of discourse, having fewer colloquialisms and contractions and more archaic sounding expressions than the BNC2014-baby set. There is a large proportion of collocates which are concerned with processes of measurement and comparison, establishing the scope and limits of privacy, leading to sub-division of this column into those collocates which seem to describe the 'intrinsic' scope of privacy and those collocates which seem to describe 'extrinsic' encounters of the 'private zone' with the external environment. Some of the collocates appearing in the latter column could have also been placed into the 'Evaluative' columns in *Figure F*, but it was considered that the element of moral evaluation implied in collocates in *Figure F* (such as *intrude*, *infringe*, and especially *violate*) is absent in the collocates listed in the Scope/Limits column in *Figure E* (that is, they are "morally neutral" descriptors of breaches). Some of the collocates listed in 'Other Properties' in *Figure E* such as *comfortable* and *enjoy(ment)* have also been listed as 'Evaluative' collocates in *Figure F*, since it is not clear whether these words are describing the experience of privacy, or the experience of the tribunal in relation to one of the party's submissions. The collocates *enjoy* and *enjoyment* may also have a technical-legal meaning, referring to a party having the benefit of (that is, 'enjoying') a particular legal arrangement.

In many cases the relationship between the collocate and the node is a simple lexical relationship, with the collocate immediately preceding or following the nodal word ('Priva*') and pairing with it to form a common idiom. Examples of this are (private) *space*, and *informational* (privacy). However, there are also some collocates which share a more nuanced, less clear, relationship with privacy and its lemmas. Examples of this are: *overlap* and *celebrity*. With no clear lexical, relationship between these collocates and the nodal word, the collocated

relationship could constitute a 'semantic prosody'[766] or 'discourse prosody'[767] carrying a 'covert message'[768] which is revealing of the speakers', or wider cultural, attitudes towards the subject of privacy. In the context of a court hearing this collocates could also point to the speaker is expressing a ruling which creates new meanings around privacy. These judicial rulings, which recreate meanings of legal terms are similar in effect to a 'performative utterance'[769] although they may not strictly conform to the structural criteria set out by Austin in his seminal article.

There follows a separate discussion of the 2 *Figures* (*E* and *F*).

Figure E Privacy (Attributes)

Within the collocate set, there is a large group which help to define the Scope/Limits of privacy. These have been sub-divided into those which define the ambit of privacy itself (under column heading 'Intrinsic') and those which convey meaning concerning the 'Encounter Point' between privacy and other concepts.

Looking at those collocates which represent the 'Intrinsic Scope/Limits' of privacy, some patterns can be observed. First, privacy seems to be represented as existing in a space (such as, *realm*, *sector*, *universe*). There is also a group of collocates which suggest that this space is operates as a circle (*encapsulate encompass*, *enshrine*, *circle*), or bubble (*sphere*, *embrace*) that surrounds something (the private *thing* or *person*). Whilst this sphere is 'conceptual' in nature there is a defined *touchstone* to measure it against. The metaphor *touchstone* is examined further through the KWIC ('keywords in context') application of the software to obtain some further context around the of this metaphorical term. There are 36 occurrences in which *touchstone* is collocated with the nodal term, 'priva*' In every case this *touchstone* is identified as *reasonable expectations of privacy*. Finally, a group of related collocates suggest that privacy has an essential nature (*core*, *default*, *inner*, *stem*), possibly imparting to it a special or 'sacred' status

[766] Tony McEnery and Andrew Hardie, Corpus Linguistics (Cambridge 2012) 135.
[767] Michael Stubbs, 'On Inference Theories and Code Theories: Corpus Evidence for Semantic Schemas' 21 Text 3, 449.
[768] Susan Hunston, *Corpora in Applied Linguistics* (Cambridge 2002) 119.
[769] John Langshaw Austin, *How to do things With Words* (Oxford 1962).

(suggested by the collocate, *enshrined*). The presence of such collocates could suggest that privacy holds metaphysical properties/functions. This could support Bourdieu's observation that the operation of the legal field is perceived by lay observers as 'magical' in nature[770].

Reviewing those collocates which refer to the 'Encounter Point' of privacy it is apparent that the margins of the 'privacy zone' are blurred; there is *overlap* and other issues render it *qualified*. The terms *countervail* and *outweigh* suggest process of weighing and balancing. The metaphorical word *trump*, suggesting a card game, could convey that privacy is in competition with other concepts (also suggested in the collocate, *defeat*). The collocates *expose* and *breach* further invoke the concept of privacy as a *bubble* but one which is at risk of being broken. Further contextual data is obtained regarding the word *tension* (which occurs 54 times in the corpus and is in collocation with 'Priva*' on 6 occasions). The collocate was therefore investigated further using the KWIC application of #Lancsbox. In most cases it refers to the tension between the rights conferred by Articles 8 and 10. The collocates *modest* and *trivial*, whilst evaluative in nature, were placed here rather than in *Figure F*, since they imply a very minor, perhaps purely 'technical' breach of privacy obligations and could therefore assist with establishing where the margins of privacy norms lie.

Reviewing the 'Other Properties' column in *Figure E* the collocates *protect*, *protection*, *guarantee* (appearing as both a verb and as a noun), *preserve*, *keep* suggest properties of privacy as something that preserves and protects. It is also something that can be *waived*. The collocates *comfortable*, *enjoy* and *enjoyment*, emphasise its qualities as something that promotes well-being. It is noted (through the KWIC application) that the collocates *enjoy* and *enjoyment* are largely being used in their technical-legal senses, referring to a party having the benefit of a particular right or obligation. The collocates *right* and i*nternationa*l could simply relate to the legal status of privacy as an internationally recognised 'Human' Right'. The collocate *expectation*, being part of the *touchstone* legal principle, 'reasonable expectations of privacy' is further analysed using the KWIC

[770] Pierre Bourdieu, *Outline of a Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) 35; Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38 Hastings Law Journal 805, 838.

application. The search term 'Expect*' capturing the word stem 'expect' in its various lemma forms ('expect', expected', 'expectation', etc) confirms that it appears a total of 1,791 times across 177 texts. The word 'Expectation' used in the phrase 'reasonable expectations (of privacy)' implies a normative obligation, which the US jurist Helen Nissenbaum (who approves the principle of 'reasonable expectations') aligns to her own concept of 'contextual integrity'[771]. The prominence of this collocate (in terms of both number, and 'spread') across the corpus confirms the normative status of privacy and/or the role of the human rights tribunal as 'norm brokers'[772]. The surprising appearance of the collocate, *stake* is further analysed using the 'KWIC' application of #Lancsbox. This reveals that the collocate appears on 59 occasions in 38 different texts. In most instances it is used a reference to gaming, possibly emphasising the risk (and the gamble) of privacy litigation. The word *traditional*, occurring 69 times in 28 texts, is also analysed further. It is used in a variety of senses, including references to a particular cultural tradition, referred to in one of the party's submissions, but also to *traditional scope of private life*, and *traditional breach of confidence*. This appears paradoxical. The references to 'traditional scope of private life' de-emphasise the 'newness' of developments in domestic privacy law, suggesting continuity with previous representations of privacy in law. This contrasts strongly with the previously observed, judicial emphasis on *differences* between the 'traditional' breach of confidence, and the newer concept of misuse of private information.

Looking at the collocates under the 'Private Things' column, most of these have a clear semantic relationship with privacy. The collocates *correspondence*, *life*, *family* and *home* directly reference the rights conferred by Article 8. A KWIC review of the collocate *affair* confirms its senses as both a euphemism for an extra-marital relationship, and to signify private matters generally. The collocates

[771]Helen Nissenbaum, *Privacy in Context* (Stanford 2010) 233; see also, Andrew Selbst, 'Contextual Expectations of Privacy' (2013) 35 Cardozo Law Review 2, 163 see also one of the definitions of expectation offered by the OED, that is: 'The action or fact of expecting something as rightfully due, appropriate, or as fulfilling an obligation: OUP, 'Expectation' (OED Online 2022) <https://www.oed.com/view/Entry/66455?redirectedFrom=expectation#eid> accessed 7th October 2022.

[772] Michael Hamilton and Antoine Buyse, 'Human Rights Courts as Norm-Brokers' (2018) 18 Human Rights Law Review 2, 205.

invoice and *worth* suggest a relationship between privacy and financial matters. The presence of the collocates *informational* (privacy) together with *code* and *setting* reference technological privacy 'shields' (contrasting with the 'normative' shield of 'reasonable expectations of privacy'). The collocate *upbringing* was reviewed using the KWIC application. It appears in the phrase: 'private life and upbringing' on 7 occasions, and it is strongly associated with medical cases involving minors[773]. The collocate *character* in most cases is immediately preceded by the nodal term 'private'. It is noted that there are also a 5 instances of the term *public character*. It seems that the collocate is used to signify someone who remains out of the public gaze. This is possibly the usual meaning of that phrase ('private character'). However, in C1 the phrase is also used as a means of distinguishing the 'public persona' from the 'private persona' of public figures.

Collocates sharing family resemblances with privacy, include the collocates *standalone*, *distinct* and *intimate* which could also describe attributes of privacy. It is interesting to note that the collocate, *secret* also appears. *Secrecy* and *concealment* are close relatives of privacy that have been described as holding negative connotations. The legal critic Amitai Etzioni, in her socio-legal exploration of the concept of privacy, *The Limits of Privacy*[774] describes these words 'secret' and 'concealment' as: 'terms that imply illicit, if not illegal, behaviour'. The collocates *one's*, *person's*, and *individual's* all of which signify ownership[775] are also prominent in C1.

Figure F: Social Environment

This grid is intended to capture and distinguish those collocates which are related to activities, institutions, people and positions and institutions associated with privacy, in the context of privacy litigation.

[773] Such as: *Great Ormond Street Hospital v Yates and Gard* [2017] EWHC 1909 (Fam).
[774] Amitai Etzioni, The Limits of Privacy (Basic 1999) 187.
[775] Michele Sala, 'Plain Language in Legal Studies' (2018) 16 European Journal of Law Reform 3, 658

The Cognitive Processes Column

These collocates relate to a range of mental processes which are concerned with judicial consideration of a case. It was noted that the keywords extracted from C1 suggested a process of judicial disposal of a claim in which a claim was first Declared, then a process of Concession and Exchange took place, followed, in turn, by processes of Consideration, Finding, and finally, Intervention. The collocates in the 'Cognitive Processes' column reflect those processes suggested by the Keyword set, suggesting processes of Listening (*listen*, *hear*, *sit*), Association (*relate*), Consideration of relevant principles (*premise*, *concept*, *heading*, *thought*, *notion*, *accuracy*, sense), and Finding/Deducing (*revelation*, *yield*, and the collocates located in the Evaluative column of Figure F). The collocates *reiterate* and *repeated/repetition* imply an additional process of Restating. The collocate, *revelation*, seems to be a strong term to describe an understanding or conclusion and is examined further using the KWIC and WHELK features of #Lancsbox. The WHELK tool establishes the 'spread' of the collocate *revelation*: it appears in 32/200 texts in the corpus, with 50 occurrences. KWIC confirms that it is used, on each occasion, to describe the act of publication of a person's private issues[776],indicating, perhaps, an emergent technical-legal expression.

The Evaluative Columns

It is noted that there is a significant group of collocates that suggest a moral stance towards the subject of consideration. The collocates suggesting a 'negative' moral evaluation of the subject suggest degrees of moral disapproval, with the collocates *purloin*, *infringe*(*ment*), *interference*, at the lower end of the continuum (suggesting a low degree of disapproval) and *invade/invasion* and *violate* at the higher end of the continuum (suggesting a high degree of disapproval). Some consideration was given to whether the collocates *modest* and *trivial*, are evaluative in the same manner (i.e. 'morally' evaluative) as the other collocates in this column, since they imply a minor, perhaps merely 'technical', breach of privacy obligations. Both collocates were analysed further,

[776] On 2 occasions each it was applied to an applicant's gender identity, an extra-marital affair, and the applicant's abuse of substances, on a single occasion each, an applicant's sexual preferences, and medical records, on the other occasions the nature of the private information could not be determined.

using the KWIC and WHELK features of #Lancsbox. Regarding the collocate *modest*, this appears in 51 occurrences across 36 texts, in the majority of cases referring to the size of the award of damages, although in 2 occasions it refers to the *degree of interference*. The collocate *trivial*, with 81 occurrences across 40 texts, largely refers to the status of the private information giving rise to the dispute. These data are consistent with the notion of a judicial function in measuring the degree of moral turpitude demonstrated by the tortfeasor in relation to a breach, and censuring parties found to be blameworthy[777].

The 'Positive Evaluative' collocates include *reasonable* (which was also placed into the 'Scope' column at Figure E) and 'Entitle' (which suggests a normative 'entitlement'). The KWIC/WHELK applications of #Lancsbox confirm that he word, *fresh* appears in 58 occurrences across 38 texts. Despite the word's usual, positive, connotations, within C1 it is overwhelmingly referring to new allegations of breaches or, for example, to a matter being referred to a high tribunal for 'fresh consideration'. The collocate *comfortable* was also placed into the 'Other Properties' Column at Figure E. It occurs 28 times across 15 texts. On 6 of those occurrences, it is preceded by 'not', but of the remaining occurrences the word is used to indicate the claimant's assent to an alleged breach, further suggesting a process of 'negotiation' (together with collocates such as *consent*, and *qualified*) which accompany privacy norms.

<u>The People and Positions Column</u>

These are fewer in number, but similar in content to those found in the keywords. The position of the roles of (private) *assistant*, *detective* and *investigator* in the field of privacy litigation is clear, as are the position of *editors* and the *media*. The collocate *celebrity* confirms the status of many privacy litigants, as persons in the 'public eye', as does the collocate *viewer*. The collocate *citizen* is interesting, since it suggests a relationship between discourses around governance and politics and legal discourses around privacy. The word also appears as a collocate of 'Priva*' in BNC2014-baby.

[777] This judicial function of admonishment is explored by Ruth Breeze; Ruth Breeze, 'Disciplinary Values in Legal Discourse: A corpus Study' [2011] 21 Ibérica 93.

The Institutions Column

These confirm the association of the fields of Fashion and the Media with privacy litigation. The collocate *hearing* refers to the judicial field, itself.

The Associated Activities Column

These collocates highlight some of the socio-economic activities associated with the field of privacy including the breach itself. The collocates *dissemination* and *acquisition*, were placed here rather than the 'Evaluative' Column, since they are 'neutral' descriptors of breaches (that is, they appear to convey no essentially negative connotations). The collocates *anonymisation* and *compensate*, relate to the exercising of judicial powers in relation to privacy disputes.

BNC Collocates of Priva*

The collocates extracted from BNC2014-baby have been arranged in Figures G and H, immediately below.

Figure G

BNC Collocates: Privacy (Attributes)

	Scope/ Limit	Other Properties	Private Things		Family Resemblances
			Wealth	Other Matters	
PRIVACY (ATTRIBUTES)	High	Control	Car	Call	Different
	Include	Create	Equity	Case	Individual
	Last	Interest	Fund	Concern	Own (adj)
	Least	Keep	Jet	Datum	Personal
	Many	Order	Land	Enterprise	Private
	Part	Purpose	Money	Family	Public (adj/n)
	Sector	Support	Pay	Hire	
	Small	Use	Residence	Home	
	Space	Will (v)	Rise	House	
	Sphere		Vehicle	Issue	
	Such			Life	
	System			Matter	
	World			Number	
				Party	
				Power	
				Rent (n/v)	
				Residence	
				Room	
				View	

Figure H

BNC Collocates: Privacy (Socio-Cognitive Environment)

	Cognitive Processes	Evaluative	People & Positions	Business	Other Associated Fields/ Institutions
PRIVACY (SOCIO-COGITIVE ENVIRONMENT)	Become	Like (v)	Citizen	Business	Bank
	Concern	Must	Detective	Firm	Care
	Find		Family	Own (v)	Company
	Give		Friend	Run	Education
	Issue		Group	Sell	Government
	Make		Investigator	Send	Health
	Matter		Investor	Service	Institution
	Provide		Landlord	Work (n/v)	Insurance
	Say		Member		Land
	Talk		Owner		Law
	Thought		Party		Market
	View		People		NHS
	Want		Person		Organisation
	Word		Secretary		Property
			Security		School
			Us		Security

Discussion

Stylistically, the BNC collocates are remarkably different to the keywords extracted from the BN2014 baby. There are no informal expressions or contractions and a few technical expressions such as *datum*, and *equity* are present. Most of the collocates have a clear lexical relationship to the nodal term 'Priva*', although there are a few such as *datum* and *power* which display a more complex relationship inviting further investigation. Within the BNC corpus, privacy is associated with a wide range of contexts. There is however, a large proportion of collocates relating to the topic of wealth and property, suggesting a strong discursive connection between privacy and wealth. Due to the large number of collocates relating to private matters in the BNC corpus, is has been decided to sub-divide the 'Private Matters' into 'Wealth' and 'Other Matters'. Some

collocates were common words with no particular semantic associations such as: *be*, *could*, *have*, *other* and *would*. It was considered that the modal verbs *could* and *would,* could not easily be categorised, but they provided little information regarding the presentation of 'privacy'. Accordingly, these collocates have not been included in *Figures G* and *H* that follow.

There follows a separate discussion of the 2 *Figures* (*G* and *H*).

Figure G Privacy (Attributes)

Figure G arranges those collocates which are concerned with attributes of privacy.

The Scope/Limit Column

It is of note that the collocates extracted from BNC2014-baby, include *space*, and *sphere*. These collocates are also in the C1 set. The presence of these collocates in the BNC2014-baby set suggests a commonality to the conception of privacy as a sphere which separates the 'private' from the 'public'. The phrase (private) *world* is interesting. It is reviewed using the KWIC and WHELK applications of #Lancsbox. Although the phrase *private world* could have pejorative undertones, sounding condescending, in the contexts in which it appears in BNC2014-baby the phrase refers to the life of famous persons away from the *public eye*. The collocate *system* is also reviewed further, it appears in various mundane contexts such as *private school system* and *private insurance-based system*; the word *system* is used here a general term for 'institution' or 'organisation'. The remaining collocates are unremarkable. The word *part* appears as a euphemism for genitalia (*private part*) and in mundane contexts (for example, 'private company, part-owned'). The collocate *sector*, also appears in the C1 set.

The Other Properties Column

These collocates include the collocate *control*. The relationship of this collocate with privacy is not immediately apparent. Further examination using the WHELK and KWIC applications establishes that it appears overwhelmingly in relation to discussions about *control over* or *control by* the private sector, although there are 2 references to *control* in relation to the *private means/private use of violence*. The relationship between the collocate *interest* with privacy relates to discussions

about the *private sector*. The collocate *order* is a reference to the influence of the field of law on privacy discourse, appearing as, for example: *the Order was granted in private by Mr Justice Parker*. The collocates (private) *will*, (private) *purpose* and (private) *use* could suggest a relationship between privacy, possession, and control over something. The collocate *create* is examined further and found to relate overwhelmingly to property and the home environment (occurring in, for example the phrase: *create a private space*). The collocate (to the lemmas 'private' and 'privately'), *support*, could suggest a discursive relationship between privacy and the field of politics.

The Private Matters Column

These collocates confirm the strong association of privacy with private property and wealth. The collocates in the 'Other Matters' sub-column, are consistent with an association between privacy and the domestic environment (*family*, *home*, *house*, *residence*, *room*, *rent*). The collocate *power* occurring, for example, in relation to 'private forces', like *citizen*, suggests a connection between privacy and governance, or citizenship. The collocate *life* occurs overwhelmingly in discussions about the personal affairs of celebrities. The collocate *view* occurs in connection with a private viewing of a *show*, and it also refers to the view from a residence (or in one occurrence from a spacecraft). The other collocates are unremarkable and relate to personal details (*call*, *number*), business (*enterprise*, *hire*, *rent*) or to unspecified issues (*matters*, *issue*, *concern*). The collocate *datum* has 5 occurrences in BNC2014-baby, exclusively within samples taken from academic texts. This suggests a discursive (or semantic) association with privacy which is particular to the field of education.

The Family Resemblances column

These collocates present a narrower conception of privacy than those in the C1 set. The prominence of the collocates *public* and *private* reflect the pervasive division that distinguishes the activities of governmental bodies from those of non-governmental bodies. The collocates, *individual*, *different*, and *personal*, which are semantically closely related to privacy, reflect the collocates *personal* and *individual('s)* (adj/n) in the C1 collocates. The collocate *own* is similar to *one's* in the C1 set, suggesting also a stake or 'ownership' of the private thing.

Figure H Privacy (Socio-Cognitive Environment)

Figure H arranges those collocates from BNC2014-baby, which relate to the socio-cognitive environment of privacy.

The Cognitive Processes Column

The collocates *concern*, *issue*, and *matter*, have been placed into other columns in *Figures G* and *H*, including 'Scope', and 'Private Things'. This reflects a general difficulty in categorising the collocates in the BNC2014-baby set, which is discussed later in this Chapter. The collocates in this column largely fall into 3 distinct semantic categories. There are those collocates which suggest a person's 'inner thoughts' (*thought*, *view*, *want*, *concern*, *issue*, *matter*). All of these collocates form common phrases, when preceded by the word, 'Private'. There is a smaller group of collocates (*say*, *talk*, *word*) which suggest a (private) meeting with someone, or a group. The last group of collocates in this column appear to refer to processes: *give* and *provide* relating to processes of exchange; *find*, *make* and *become* relating to processes of deduction or transformation.

The Evaluative Column

The modal verb-form *must* suggests normative obligations. The collocate *like* (verb) appears in phrases such as *I like having my privacy/some privacy*. It is therefore used to indicate personal preferences, rather than the speaker's aesthetic or moral approval of the matter.

The People and Positions Column

These collocates (*investor*, *landlord*, *owner*) further suggest a discursive connection between privacy and finance. The collocates, *citizen* and (private) *secretary*, could suggest a connection with the field of governance. The collocate *detective*, also present as its near synonym, (private) *investigator*, is also found in the C1 collocate set. The collocates people, *us*, *member*, *group* and *party* (used in the context of a private function), signify membership of a 'class' of people. The collocates, *friend* and *person* could relate to the distinction between a person's 'private' and 'public' lives.

The Business and Other Associated Fields Columns

The collocates in these 2 columns invoke a broad range of socio-economic activities: Finance, Education, Governance and Care/Healthcare. There is a single reference to the field of law (*law*).

Preliminary Conclusions Regarding Keywords and Collocates

Looking at the keyword and collocate data together, it is possible to draw some preliminary conclusions concerning the meanings and socio-cognitive structures around privacy.

Privacy is framed in more formal terms

The keywords and collocates extracted from C1 appear to be, stylistically, very similar. This can be anticipated from a corpus composed of court reports. There are clear stylistic differences in the keyword set and collocates of 'priva*' extracted from BNC2014-baby, however. The keywords in BNC2014-baby include a large proportion informal words (such as *dad*, *kid* and *lol*, and the words *amazing*, *great* and *stuff* which are likely used in their less precise informal senses. There are also contractions such as *gonna*, *wanna* and *can't*. Of the 200 keywords extracted from the BNC, 22 of them are informal terms or contractions. There are no contractions or informal/slang terms in the collocates of priva* extracted from BNC2014-baby. The language with which privacy issues are framed appears more 'formal' in nature.

Privacy is a Sphere

The collocates extracted from both corpora suggest a conception of privacy as existing in a space. This space is described as spherical, a 'bubble'. In both corpora there is an association of privacy with social obligations.

Privacy is Related to Wealth and Property

The ancient association with privacy and the home environment, a cornerstone of domestic privacy law since at least 1604[778], retains a powerful discursive influence. Both collocate sets included references to the home. The relationship

[778] *Semayne's Case* (January 1, 1604) 5 Coke Rep. 91

between privacy and property is also manifested in references to wealth and finance, particularly in the BNC2014-baby collocate set.

Other Related Fields

Other fields which are associated with privacy include the media, Government, healthcare and care, and education. Curiously, there were no collocates relating to the Internet, new media, or social media, in either set.

Cast List and Activities

Looking at the keywords and the collocates extracted from C1, it is possible to consider a 'cast list' of persons entering the juridical field in relation to privacy litigation. This includes: celebrities, journalists and legal professionals. The Keyword data and Collocate data also makes it possible to consider some of the activities which are associated with privacy once it Has entered the legal field, that is some of the 'rules' and 'values' exercised by the tribunal. It is noted, for example that the language chosen by the tribunal stresses particular activities, such as *listening* and *weighing*. The final stage of the judicial process involves a *finding*. It is noted that this finding can be accompanied with an expression of the tribunal's moral disapproval of the actions of the losing party, with various coded terms providing an indication of the degree of moral turpitude due to the tortfeasor.

These hypotheses will be tested and developed in the final stages of analysis, Cluster Analysis and Concordance Analysis.

iv. Cluster Analysis and Concordance Analysis

At these stages of the corpus analysis process, larger blocks of text are analysed, to gain an understanding of the semantic context in which prominent words appear, and to capture 'occurrences not immediately visible in collocates'[779]. It enables the observations from earlier stages of analysis to be checked and developed. The linguist, Stanisław Goźdź-Roszkowki[780] observed that: 'studies

[779] Stanisław Goźdź-Roszkowki, 'Discovering Patterns and Meanings. Corpus Perspectives on Phraseology in Legal Discourse' (2012) 60 Roczniki Humanistyczne 8, 60.
[780] Ibid, at 49.

show that recurrent multi-word expressions, due to their sheer frequency, play a significant role in constructing texts, albeit to a varying frequency'. Analysis of phrasal units should, therefore, capture valuable information regarding the cultural context underlying the authorship of the texts. Larger blocks of text could reveal, for example, acts of 'symbolic violence'[781] to (re) establish power differentials in the courtroom[782], 'topoi' (argumentation strategies)[783], or recurrent metaphors[784]. There follows a separate discussion of cluster analysis and concordance analysis, below.

a. <u>Cluster Analysis</u>

Recurrent word combinations ('clusters') of 3, 4, and 5 word tokens length were extracted from each corpus. These were selected according to their relative frequency. The 200 highest ranked clusters of each length (3, 4, and 5 word-tokens) were taken from each corpus. However, due to the limitations of time available for completion of the project only the 50 clusters with the highest Coefficient of Variation (a statistical measure of dispersion) were retained for analysis. This is to ensure that the clusters retained, had the largest 'spread' across the corpora. The purpose of the research is to interrogate the concept of privacy and only clusters taken from the C1 set are pertinent to this matter. The data from BNC2014-baby provides a 'base line' sample of recurrent idiomatic phrases with no particular association with the theme of privacy, or with the law. However, the eclectic nature of the clusters extracted from the BNC2014-baby corpus confirm that corpus' suitability as a comparator corpus since it reflects a wide variety of influences and genres. These include common idioms, and informal expressions, influences from 'textspeak' and online discourse (as well as a case law reference). Regarding these clusters, it is noted that these have low values for both Co.V. and relative frequency. This is particularly noticeable with the larger (4-5 word) clusters. It seems that the use of recurrent idiomatic phrases is more characteristic of juridical discourse, than discourse originating in other

[781] Pierre Bourdieu, *Outline of a Theory of Practice* (Richard Nice tr, Cambridge University Press 1977) 191.
[782] Magdalena Szczyrbak, 'Diminutivity and Evaluation in Courtroom Interaction: Patterns with Little (Part 1)' (2018) 135 Studia Linguistica Universitatis Iagellonicae Cracoviensis 1, 69.
[783] Ruth Wodak and Michael Meyer, *Methods of Critical Discourse Analysis* (Sage 2001) 11.
[784] Rebecca Moosavian, 'A Just Balance or Just Imbalance? The Role of Metaphor in Misuse of Private Information' (2015) 7Journal of Media Law 2, 196.

fields. There follows a detailed account of the C1 clusters. The full list of clusters extracted from both corpora are provided at Appendices iv, v and vi., at pages 294-322.

C1 Clusters 3-5 Words

The clusters in the C1 set were arranged into 3 broad, categories:

i. Clusters that identify the parties or other protagonists

A few of the clusters merely identify persons, who are associated with the course of events giving rise to the action. These are consistent with the 'cast list' to privacy actions highlighted at earlier stages of the analysis process. The persons identified are the parties (that is, the Claimant and the Defendant), arms of state (such as *secretary of state* and *the local authority*), the press (examples include: *the News of the World*, *News Group Newspapers Ltd* and *of the press*) and *members of the public*.

ii. Clusters that identify the circumstances

There is a group of clusters which identify some of the social phenomena and activities around privacy. In many of these the phenomenon or circumstances are not explicitly identified, since that part of the text does not form part of the recurring sequence of words. Examples of this are: *of the Claimant*, and *a course of conduct*. Some clusters, however, do identify particular social activities and themes around privacy. These are presented below, at *Figure I*. There are 4 clear themes within this group of clusters. The first 2 of these (Publication and Breach) relate to risks to privacy. The other 2 (Information and Identity) relate to private 'things', or values.

Publication

4 of the clusters in the set concern the social activity of publication. In each of these clusters there is reference to online publication, although in each case this is also coupled with *copy*, or *hard copy*, suggesting a discursive association of the activity of publication with 'traditional', printed, media.

Breach

2 of the clusters identify the act of breach (or interference).

Information

3 of the clusters refer to information.

Identity/Identification

2 clusters concern themes of identity or identification

Figure I.

Privacy Activities

Theme	Cluster
Information	Information relating to Information relating to the The information in
Breach	Interference with the A breach of
Publication	Of the article The publication of Copy and online headline Hard copy and online A copy of the Mirror hard copy and online Hard copy and online heading
Identity/Identification	The identity Lead to the identification of

iii. Clusters that identify an authority or principle

Some clusters seem to identify the authority or principle that empowers the judicial act, or which one of the parties is relying upon to support their claim. These clusters are arranged at *Figures J (i, ii, iii)*, below, according to the following categories:

a. Case Law

Some specific cases are cited, such as the pivotal case, *Campbell v MGN Ltd*, but there are also references to the higher courts, such as: the *House of Lords* although, and [the] *Court of Appeal in*.

Surprisingly, *the Supreme Court* is absent).

b. Statute/Convention

The Data Protection Act 1998 and Articles 8 and 10 ECHR are both referenced as authorities.

c. Other Legal Principles

Within the cluster set, a range of legal principles are cited, suggesting the range of normative 'rules' applied by the Court. These include the causes of action of *misuse of private information*, and *breach of confidence* as well as the principle of *reasonable expectations* [of privacy]. There are also some principles which relate to the Court's own role in respect of privacy disputes (such as, *the administration of justice* and *the principle of open justice*) and some principles which may be antagonistic to privacy claims (such as *the public interest in* and *the public domain*).

Figures J

Clusters that Identify an Authority or Principle

Figure J (i)

Authority/Principle	Cluster
Statute/Convention	Data Protection Act 1998/The Data Protection Act/of the Data Protection Act/Of the Data Protection/Of the Data Protection Act/The Data Protection Act 1998 Article 8 Rights/The Article 8 Rights/Article 8 Rights of/ Under Article 8/8 of the Convention/Article 8 of the Convention The Article 10 rights of/Right of freedom of expression The rights of

Figure J (ii)

Authority/Principle	Cluster
Case Law	House of Lords/The House of/of The House of/In the House of Lords/The House of Lord in Court of Appeal in/In the Court of Appeal/ In the Court of v Secretary of State/v Secretary of State for Campbell v MGN Ltd/In Campbell v MGN Ltd In re S a child v Newsgroup Newspapers Ltd

Figure J (iii)

Authority/Principle	Cluster
Other Principles	Misuse of private/For misuse of private/Misuse of private information/For misuse of private Information/Of misuse of private information /Of private information The terms of the/The contents of the/The terms of/The scope of/Within the scope of/The extent to/Extent to which Breach of confidence/For breach of confidence Reasonable expectation of/A reasonable expectation/Have a reasonable expectation/ Expectation of privacy in the/Expectation of privacy in respect/Of privacy in respect/Of privacy in respect of/Expectation of privacy in relation to/Has a reasonable expectation of/Have a reasonable expectation of The public domain/Already in the public domain/Available to the public/It is in the public The principle of open/Principle of open justice/The principle of open justice Respect for private life/To respect for private life The administration of justice A public interest in/In the public interest to/To a debate of general/The public interest in the/Is in the public interest/There is a public interest

d. Other Clusters

The remaining clusters are difficult to categorise because information regarding the identity of the speaker, or details regarding the subject, is missing. Some clusters, for example, clearly relate to an opinion, or decision, expressed by the tribunal. Examples of this include the phrases: *I do not accept that*; *I do not think that*; *it is common ground that;* and *the judgement of the court*. These clusters suggest that the tribunal could be expressing a performative utterance, however the subject is missing from the text. Other clusters identify the subject, but not the speaker (examples of this include, *it is common ground that*, and *publication should not be allowed*). In these examples, it is unclear whether the tribunal is expressing its own opinion or referring to the arguments of one of the parties. These clusters assist little in understanding privacy, or the socio-economic structures around privacy law. The cluster, *the nature of the information*, however, is interesting, since it could suggest that privacy norms attach to particular types of information, or they attach to particular social contexts.

b. Concordance Analysis

For the final stage of the extraction process concordance lines were extracted from both corpora. These are blocks of text of 5-word tokens length, either side of the nodal term: 'priva*'. There are 7,747 occurrences of this term ('priva*') in C1 and 750 occurrences in BNC2014-baby. Due to limitations imposed by the available time for completion of the research project, it was decided to take a smaller sample of concordance lines for analysis, than was originally intended: 50 concordance lines were selected at from each corpus. To avoid sample bias, these concordance lines were selected on a random basis, using the internal features of #Lancsbox. Each of the sets of concordance lines is discussed in turn, below.

C1 Concordance Lines

The full set of concordance lines extracted from C1 is displayed immediately below this paragraph, at *Figure K*. These have been assessed for their discursive significance. Those concordance lines which appear to provide new insights; or, which build upon insights gained from earlier stages of analysis, are considered further in the discussion which follows.

Figure K

Concordance Lines Extracted from C1

overarching "touchstone" of a reasonable expectation of	privacy.	The reason for adopting such an approach
story about some aspect of an individual's	private	life, whether trivial or significant. Rather, they
all-embracing cause of action for 'invasion of	privacy':	see Wainwright v Home Office [2003] UKHL
achieved with the consent of those whose	privacy	is in question, but in this field
the protagonists to a reasonable expectation of	privacy).	Here the sexual relationship was essentially a
trial of an action for misuse of	private	information and/or breach of confidence. In 2004
Hopkins' submission that DB's ' reasonable expectation of	privacy' was	that the Report would be supplied if
court at common law to sit in	private	or anonymise material deployed in open court
father, it is submitted it cannot become	private	by way of the subject's personal preference
the information in play is of a	private	nature. Lord Carswell, in his opinion, made
whether it followed that she had no	privacy	rights in relation to the details of
that there is a reasonable expectation of	privacy	in respect of the information it is
Highness's office to feel free to copy	private	and confidential documents and to pass them
or undermine a claimant's reasonable expectations of	privacy.	Here, the defendant seeks to rely on
stage of proportionality. Essentially, the touchstone of	private	life is whether in respect of the
There is a dispute as to the	privacy	settings. If the Court were to conclude
children, had already suffered damage to their	privacy	as a result of the Ahmeds' postings
upon the very foundations of public and	private	security." In criticising the closure of the
that the "other information" is not "core	private	information" but simply the story of a
is no general exception for cases where	private	matters are in issue. 1. (3)
it conflicts with "the protection of the	private	lives of the parties" or "would prejudice
as to whether the legitimate expectation of	privacy	has been lost. Privacy rights can survive
the way in which recent cases on	privacy	and confidential information do. Secondly, the Judge did
conclude that the Claimant's reasonable expectation of	privacy	extends to those allegations. Is the Claimant's
figures or public figures. Accordingly while a	private	individual unknown to the public may claim
complaint is of the wrongful publication of	private	information: "They are first, whether the information
that the Report's information about DB is	private	information, Mr Hopkins submits that he did
principle might yield to the right to	privacy	and protection of reputation on the basis
that he had a reasonable expectation of	privacy	in the contents of the Hong Kong
10 rights, so as to introduce potentially	private	or personal information into the public domain,
not there is a reasonable expectation of	privacy	in relation to the information:"… is a
because the issues arise under the heading	'private	and family life', part company with principles
public importance, but in relation to inherently	private	matters such as is the case here".
private information strengthens a claim for a	privacy	injunction in relation to that private information.'
Firsht's supposed sexual preferences, it is indeed	private	information which gives rise to a cause
(g) the hearing should be held in	private,	I continued that order for the duration
not the claimant directly or indirectly provided	private	information (generally and in relation to the
reliance on some of the more recent	privacy,	confidential information or blackmail-related authorities is misplaced.
be, was not an aspect of his	private	life that he was entitled to keep
on 17 March had to be in	private.	68. As I have already indicated,
and relate in various ways to the	"private	life" of the claimant. In the jargon,
sum. [695] Article 30 This invasion of	privacy	is relatively trivial. It merits compensation of
photographs can constitute an unacceptable intrusion into	privacy	even if a verbal report of the
excluded by the Judge, on grounds of	privacy,	or whether she was merely told that
Hong Kong journal, a reasonable expectation of	privacy	in respect of their contents. That said,
about not leaving details that were too	private,	but the fact that he was ringing
at large; (ii) private information or purported	private	information pertaining to or concerning the Claimant.
to explaining why the hearing was in	private,	why Sir Fred Goodwin was being granted
the source of so many articles was	private	information that was wrongfully obtained, and in
to the balancing exercise between the Claimants'	privacy	rights under Article 8 and the Defendant's

Discussion

Some notable features of these concordances are discussed below:

Overarching "touchstone" of a reasonable expectation of privacy/Essentially the touchstone of private life

The metaphor of a "touchstone" has been noted in the discussion of collocates, at Section ii of this Chapter. A review of the online version of the OED[785] confirms that a touchstone is: 'a fine-grained black stone (typically a type of chert) upon which objects made of gold or silver can be rubbed to determine their purity'; and (figuratively), 'anything which serves to test the genuineness or value of anything; a test, a trial; a criterion or reference point by which something is assessed, judged, or recognized'.

It seems that the principle of 'reasonable expectations of privacy' is intended by the judiciary to introduce a comprehensive or *overarching* (one of the prominent collocates) element of objectivity to the process of assessing whether, in any social situation, valid privacy norms are in operation.

> *Achieved with the consent of those whose privacy is in question/Hopkins' submission that DB's reasonable expectation of privacy was that the report is supplied if/ As to whether the legitimate expectation of privacy has been lost Privacy rights can survive/is no general exception for cases where private matters are in issue.*

These concordance lines develop the notion of privacy as something fluid, and highly contextual, which is subject to a process of negotiation. Within this negotiation process, *consent* may operate as a control mechanism to maintain normative distance between individuals[786], a 'bargaining tool', or a mechanism for impression management[787], regarding disclosure of private material. In the third concordance line, there is a suggestion of a stratified hierarchy of privacy rights. It is unclear whether *legitimate expectations of privacy* are similar, or greater than, 'reasonable expectations of privacy'.

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[785] OUP, 'Touchstone' (OED Online 2022) <https://www.oed.com/view/Entry/203901?redirectedFrom=touchstone#eid> accessed 13th October 2022

[786] Irwin Altman, *The Environment and Social Behavior* (Brooks/Cole 1975).

[787] Erving Goffman, *The Presentation of Self in Everyday Life* (Penguin 1959).

The Information in play is of a private nature/ but in relation to inherently private matters, such as is the case here/Firsht's supposed sexual preferences, it is indeed private information which gives rise to a cause

It seems that privacy is associated with 'information' and that certain kinds of information are inherently private. This includes suppositions regarding an individual's sexual preferences, however accurate those suppositions may be.

This invasion of privacy is relatively trivial. It merits compensational/ all embracing cause of action for 'invasion of privacy'

There is an apparent paradox in the first of these concordance lines, as the strongly evaluative term *invasion*, contrasts with the presentation of the breach as *relatively trivial*. The tribunal then rules that the *relatively trivial* nature of the breach justifies compensation (rather than other, more onerous, remedies).

One possible explanation for this ambiguity is that in the context of privacy litigation, the word 'invasion' carries less evaluative weight than is generally implied. This is suggested by the second of these concordance lines, which cites, *invasion of privacy* (placed within speech marks) as a generic term for the cause of action. The tribunal may also be seeking to distinguish between the 'serious' nature of the breach, and the 'relatively trivial' nature of the private material being misused.

figures or public figures/ Accordingly, while a private individual unknown to the public may claim

These concordance lines develop the binary distinction between the 'public' and the 'private' realm. This is an ancient distinction, which has informed conceptions of privacy rights since (at least) the original publication of John Locke's *Second Treatise of Government*[788] in 1690, and it is implied in the ruling in *Semayne's Case* of 1604. However, whilst originally conceived as something which is largely maintained by physical barriers (such as the walls and doors of a house), privacy

[788] John Locke, *Second Treatise of Government* (Hackett 1980).

seems to have transformed into something which is maintained by conceptual barriers. A significant body of case law is concerned with establishing the nature and extent of privacy norms (expressed in legal parlance as 'reasonable expectations of privacy'). However, it is suggested here that the court could be using the distinction between 'private' and 'public' in another sense, to distinguish a group of people who are within the public gaze. The notion suggested by the legal scholar, Kirsty Hughes[789] that there is an emergent doctrine of 'public figures' is discussed later in this chapter. However, these concordance lines from C1 are consistent with the court making such a distinction between the commonality of people who occupy the 'private realm' and a smaller, prestigious, group of people who are sufficiently recognisable to occupy the 'public realm'.

[Article] 10 rights, so as to introduce potentially private or personal information into the public domain/ To the balancing exercise between the Claimant's privacy rights under Article 8 and the Defendant's/ Public importance, but in relation to inherently private matters such as is the case here

These concordances suggest that the binary distinction between 'the public' and 'the private' realms does not merely apply to a person's social position, it is also used to distinguish types of information. Information can be private or personal, but it can also be in the private or the public domain'. Privacy rights exist in relation to the oppositional, Article 10, rights of 'Freedom of Expression'. These concordance lines suggest that rights can also be located in the private and public realms. Article 8 rights are located within the private realm and Article 10 rights are located within the public realm.

the protagonists to a reasonable expectation of privacy

The concept of *protagonists* is an interesting allusion to fiction (and drama). It evokes the notion of privacy as being rooted in social drama, and social interactions. This tends to reinforce the notion of privacy as something that is situational rather than personal and individual.

[789] Kirsty Hughes, 'The Public Figure Doctrine and the Right to Privacy' (2019) 78 The Cambridge Law Journal 1, 70.

photographs can constitute an unacceptable intrusion into privacy even if a verbal report/That the "other information" is not "core private information" but simply the story

These concordances relate a feature of judicially defined privacy that is noted in the review of case law at Chapter 4 of this thesis. That is, the notion that certain types of information (such as *photographs*, and *core private information*) are considered to present a higher degree of intrusiveness. This builds on the conception of the 'sphere' of privacy operating as a stratified series of layers.

principle might yield to the right of privacy and protection of reputation on the basis

This association of privacy with *protection of reputation* suggests the close relationship between judicially defined privacy and defamation.

BNC Concordance Lines

The full set of 50 concordance lines selected randomly from the BNC corpus are provided at *Figure L*, immediately below. Some of these concordance lines have been selected for further analysis.

Figure L

Concordance Lines Extracted from BNC2014-baby.

that wounded heart and sit with your	private	thoughts. Romance is all set to get
an alien turd. 'And this is your	private	room,' he said, opening the second door.
air of vague apology for invading your	privacy	they radiate as they hunker down to
24 to October 23 WHETHER in your	private	or professional life, here's your chance to
Schism? "But how could I experience your	private	vision?" he asked. "You did n't. Human
it, a clear vision forms: build your	private	victory by being proactive, have a set
jerked, all right. As he told you,	privately	he was most enthusiastic about the Rammie,
rule Pietersen out of that game, yet	privately	team officials confirmed they are unwilling to
attitude doesn't there? about whether it's yes	private	or whether it's something that you're going
with ballomol, before carrying them to Xaaael's	private	apartment- a seedy- looking cabin filled with
LUCAS. It's a wonder I haven't written	PRIVATE!	beneath it. Or KEEP OUT! Something has
thick, oily variety, and unfranked. The words	PRIVATE	& CONFIDENTIAL were written in large inked
B. Strike, and, underneath it, the words	Private	Detective. Robin stood quite still, with her
here in UK and for those without	private	insurance in the USA possibly) then this
it[.] yeah you can reform something without	privatising	it in the way they might want
of corruption, political gridlock, collu- sion with	private	corporate interests that disregard wider public interests,
Gainsborough is the country's only hotel with	private	thermal waters (packed full of natural minerals
2008). In zones of complementary governance with	private	illicit authority, these rules are defined by
a range from for- mal assent with	private	dissent to the more nuanced interaction between
capitalisation to EUR9.6bn. The US financier, whose	private	equity firm is now seeking $10bn for
11th Service or "Pioneers" Battalion, with whom	Private	Reginald Gale served, albeit briefly, until his
bank. You basically extend the privilege which	private	banks have with the central bank to
areas such as Bukhara and Samarkand, where	private	initiative was essential to the construc- tion
central bank to all citizens. Then, when	private	banks lend out money, they would physically
light tonight. Call me to hear when	privacy	pays. 0905 789 3704* Leo July 24-
me that three years ago you were	Private	Secretary to a certain junior minister. If
little padlock on yes because they were	private	and secret and confidential but nowadays people
leader Harriet Harman claimed Labour supporters were	privately	"relieved" the party lost last month's election.
rushing into the breach after midnight were	private	security personnel or Kings. Home owners were
enterprise by privatizing land. Once ecosystems were	privatized,	nature became a source or "energy," on
got an exhibition Which days?? all weekend	Private	View is on the 11th Amaze. The
and 98). 6. The former novel was	privately	printed in Chicago but, mirroring Minnelli's own
pressed her. A man's domestic life was	private,	after all. They were good friends, far
see the Head Teacher, how it was	private,	and really important. I didn't listen properly.
public sector, whilst the American institution was	private	liberal arts college, and a sample of
had he just experienced? Human consciousness was	private-	impossible to directly access another's thoughts, their
went on board a ship, but was	privately	re- sold by him to line his
and taste of the London air was	private,	reserved only for dogs and bitches, the
could use it though if you want	privacy	Yeah fair. Just need a bed and
world has a strong preference 'for voluntary,	private	and market- based responses to environmental challenges',
an existing public cloud with secured virtual	private	network(VPN) services. On the other hand, the
through contextualization mechanisms that support a Virtual	Private	Network (VPN) overlay and software license management
several of their student years renting various	privately	owned flats and houses found through letting
operator has been found guilty of using	private	hire vehicles without a proper licence. William
by Clayton, Dubilier & Rice, the US	private	equity firm, to Haversham Holdings, led by
centers are apparently respected. In the US,	private	prisons are marketed to cities as crucial
would dwarf the 18bn discussed in US.	Private	actions are likely to be far less.
cent. Pets at Home, owned by US	private	equity group KKR and headed by chief
electrically- operated memory driver's seat, leather upholstery,	privacy	glass, sunroof and rear parking sensors. At
state becoming a super- landlord buying up	private	property. This is very tricky as how

Discussion

In a similar manner to the preceding section, some of these concordances are considered in greater detail.

> *rule Pietersen out of the game, yet privately team officials confirmed/as he told you privately, he was most enthusiastic/a range from for-mal [sic] assent to private dissent to the more nuanced interaction between/Labour supporters were privately relieved the party lost last month's election*

These concordances appear to have been taken from newspaper articles. They appear to relate to very different subjects (the first seems to be an article about cricket, and the last 2 concordances are taken from the field of politics). However, in each case they seem to point to a sense of the words 'private' and 'privately', as referring to something said, 'off the record'. This is perhaps a sense of privacy which is particular to the field of media.

> *air of vague apology for invading your privacy they radiate as they hunker down/ It's a wonder I haven't written PRIVATE! Or KEEP OUT!*

It has been noted in the discussion of concordance lines from the C1 set, that privacy is represented as something that originates in micro-social interactions. These concordance lines from BNC2014-baby suggest that this conception of privacy is not unique to the juridical field; but has general currency. These concordances also confirm that an extensive variety of micro-social 'strategies' can be constructed around the concept of privacy. The first of these concordances, referring to *an air of apology* conveys that these interactions can be subtle, expressed silently through semantic gestures, or 'body hexis'[790]. The second of these concordance lines (in which the word 'private' is capitalised and followed by an exclamation mark) confirms that the interactions around privacy can also be expressed as a command.

> *The US financier whose private equity firm/You basically extend the privilege which private banks have with the central bank*

[790] Pierre Bourdieu, *Outline of a Theory of Practice* (Richard Nice Tr., Polity Press 1977) 87.

The association of the concept of privacy with wealth and exclusivity has been consistently noted in at all previous stages of the data extraction/analysis process for both corpora. The word *privilege* appears to expand on this, associating private financial institutions with distinctive treatment.

> *With ballomol, before carrying them to Xaaael's private apartment, a seedy-looking cabin/of corruption, political gridlock, collu-sion [sic] with private corporate interests that disregard wider public interests/in zones of complimentary governance with private illicit authority/went on board the ship but was privately re-sold by him to line his/Once ecosystems were privatized nature became a source or 'energy'*

In these 4 concordance lines (the first of which appears to have been taken from a work of fiction) the term 'private' (and its lemma form, 'privatized') is represented in language which connotes the speaker's disapproval. It seems that the association of privacy with finance, and power, can hold negative as well as positive connotations. In these concordance lines the concept of 'private' is represented as something hidden, outside public scrutiny, masking selfish interests which are antagonistic to public good.

> *Bukhara and Samarkand where private initiative was essential to the construction/World has a strong preference for voluntary private and market-based responses to environmental challenges/ a clear vision forms: build your private victory by being proactive*

In these concordances 'private' ventures are represented in terms that connote the speaker's approval. In the first of these concordance lines, the word *initiative*, itself, appears to hold positive connotations, but this is reinforced by the suggestion that it is *essential*. In the second of these concordances, *private and market-based responses* can meet environmental challenges, contrasting with a concordance line discussed in the preceding paragraph in which *privatized ecosystems* are treated as a *source or "energy"*. The notion of a *private victory*

connotes (with tacit approval) the success of an individual's will in relation to oppositional forces.

> *how could I experience your private vision? He asked/ Had he just experienced? Human consciousness was private impossible to directly access another's thoughts*

It has been noted, in the discussion on C1 concordances, that privacy is frequently represented as a *sphere*. The *touchstone* of privacy 'is reasonable expectations' a phrase which combines the subjective, internal beliefs of the individual ('expectations') with an objective, social, normative, standard ('reasonableness'). These concordance lines, extracted from BNC2014-baby, appear to touch on a similar conception of privacy. They locate privacy at the threshold of the individual's 'internal', cognitive environment, and the 'external' social environment.

> *Call me to hear when privacy pays/leather upholstery, privacy glass*

There appears to be a strong association of privacy with wealth and exclusivity. This is suggested by its representation as an investment (*privacy pays*) and the use of the term in the construction of a name for a luxury commodity (*privacy glass*).

> *WHETHER in your private or professional life*

The list of the most prominent collocates extracted from C1 included the word *celebrity*. It is suggested in the discussion of these collocates that the Court is drawing a distinction between a celebrity's public and private persona. In this concordance, extracted from BNC2014-baby, there is a suggestion that this distinction (between an individual's public and private persona) outside of the judicial field, is not exclusive to a particular legal entity (such as Kirsty Hughes's 'public figures'[791]), but can be present for all *professional* people.

[791] Kirsty Hughes, 'The Public Figure Doctrine and the Right to Privacy' (2019) 78 The Cambridge Law Journal 1, 70.

A man's domestic life was private after all/The words PRIVATE & CONFIDENTIAL were written in large inked/An existing public cloud with secured virtual private network/contextualization mechanisms that support a virtual private network

These concordance lines touch upon 3 manifestations of privacy which have been widely discussed in the domestic courts. The home (or *domestic life*), and correspondence, are both referenced in the phrasing of Article 8 ECHR. The other 2 concordance lines (referring to a *virtual private network*) relate to the fields of digital privacy and data protection.

Little padlock on yes because they were private and secret and confidential

The words private, *secret* and *confidentia*l are presented here as synonyms. There is also an interesting metaphor, *padlock*, which reinforces the notion of privacy operating as a normative shield or barrier.

PART II

Bourdieusian Analysis of the Data

Chapter 2 of this thesis proposes a holistic model which seeks to identify and locate the meanings of privacy within the context of the juridical field, but which also considers the relationship between juridical conceptions of privacy and conceptions of privacy outside the juridical field. The proposed model is derived from the writings of the sociologist Pierre Bourdieu, and it is based on the dynamic interaction of the 3 forces of habitus, field, and capital. Data has been extracted according to 4 processes of keyword analysis, collocate analysis, cluster analysis, and concordance analysis. Now that the data from each of the 4 stages of data extraction has been reviewed this can be pooled, and then arranged according to this proposed model. Each of the elements of field, habitus, and capitol will be considered in turn, in relation to the data. The purpose of this is to consider the insights this provides regarding the socio-cognitive position of the concept of judicially defined privacy.

Field

The term 'field' connotes, simultaneously, the notion of the area of influence of an external force (such as a 'magnetic field')[792], an area in which a resource is located (such as an 'oil field') and a space in which games are played (such as a 'football field'). Bourdieu, himself, likened the field to a sports field, commenting that:

> We can indeed, with caution, compare a field to a game (jeu) although, unlike the latter, a field is not the product of a deliberate act of creation, and it follows rules or, better, regularities, that are not explicit and codified[793]

So, a field is an environment in which competitions are 'played out', which is shaped by historical forces and the actions of the 'players' within it. In turn, it maintains a system of 'regularities' on its players, some of which are implicit, rather than codified. The field also has wider socio-economic properties, since it is:

> A critical mediation between the practices of those who partake of it and the surrounding social and economic conditions[794]

The field, therefore 'mediates' between the 'internal forces' working within the field, and the 'external forces' of other fields, and society as a whole. Regarding the 'juridical field', the internal forces which maintain this field rest on 2 factors[795]:

i. The power relations (and roles) which position the 'players' in relation to each other; and,

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[792] As Richard Terdiman observes in his introduction to his translation of the Force of Law: Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805, 806.
[793] Pierre Bourdieu and Lois Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992) 98.
[794] Ibid at 105.
[795]Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805, 816.

ii. 'The internal logic of juridical functioning which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions'.

Crucially, within the Bourdieusian model the influence of the juridical field is expressed through control of the language of the law[796]. This linguistic authority is structured around the rhetoric of impersonality and neutrality disguising wider socio-economic forces and conflicts influencing legal disputes[797]. The language of the law is recorded in the legal texts, which provide a bank of power[798] sustaining judicial authority. The texts also provide a historical record of the conflicts, victories and losses of wider social interests 'played out' on the juridical field[799].

Players

Looking at the data it is possible to consider a possible list of 'players' on the juridical field, in relation to privacy law. The data extracted from C1 has provided a 'cast list' of persons who encounter the juridical field in relation to privacy disputes. This includes, unsurprisingly, reference to the various legal professions who 'compete' on that field, including the 'judge', 'Lords', 'solicitor' and 'counsel' as well as roles 'played' in the context of a court hearing such as the 'witness', the 'claimant' and the 'defendant'. These 'players' are routinely engaged in any legal hearing and have no specific relevance to the subject of privacy. However, the prominence of these legal 'persons' within the corpus provides evidence of the self-referential, inward looking, nature of juridical discourse[800] There are, however, consistent references to persons and roles which have a particular bearing to the matter of privacy. The data extracted from both corpora include reference to the following persons/roles:

a) The journalistic professions (*journalist*, *press*, and *editors*)

[796] Ibid, at 818.
[797] Ibid, at 820.
[798] Ibid, at 823.
[799] Ibid, at 820.
[800] Shane Kilcommins, 'Doctrinal Method (Black Letterism): Assumptions, Commitments and Shortcomings' in Laura Cahillane and Jennifer Schweppe (eds). Legal Research Methods: Principles and Practicalities (Clarus 2016) 10.

b) The general public (*everyone*, *citizen*, *viewer*)

c) Persons in the public eye (*celebrity*)

d) Family (*relation*, *family*)

e) *Investigator* and *detective*.

The Position of Persons in the Public Eye ('Public Figures')

The position of celebrities in relation to privacy law is one which has attracted debate within legal scholarship. Kirsty Hughes (2019) describes the broadening of 'traditional' conceptions of 'public figures', who were holders of public office such as elected officials, to include all persons who are within the public eye, which includes 'celebrities' but also includes 'businessmen, journalists and lawyers, well known academics, as well as other persons who have a position in society'[801]. She argues that the court takes a particular approach to this disparate group of persons, attracting a 'more explicit moral slant'[802], from the court and a higher standard for privacy actions. She notes, for example, the House of Lords permitting publication of the details of Naomi Campbell's drug use as a 'correction' of earlier denials. Other legal scholars such as Paul Wragg (2017)[803] and Eric Barendt[804] (2016) have noted differences in the courts' approach to persons in the public eye, but they have commented that they (and in particular their families) enjoy additional protections from the law. Indeed, the decision in *Campbell* was seen by some scholars as a 'rebalancing' of celebrity rights in relation to the press[805] Paul Wragg notes emergent doctrines of 'rights to image', and a 'doctrine of intrusion', in the management of privacy claims by celebrities, and he suggests that cases such as *Weller* grant children of celebrities an 'unfettered' right to privacy. Whether persons in the public gaze enjoy special

[801] Kirsty Hughes, 'The Public Figure Doctrine and the Right to Privacy' (2019) 78 The Cambridge Law Journal 1, 73.
[802] Ibid, at 75.
[803] Paul Wragg,'Privacy and the emergent intrusion doctrine' (2017) 9 Journal of Media Law 1
[804] Eric Barendt, 'Problems with the "reasonable expectation of privacy" Test (2016) 8 Journal of Media Law 2
[805]Thorsten Lauterbach, 'Privacy law and press freedom: celebrity fight-back ''par excellence'' (2005) 21 Computer Law & Security Report 1.

privileges, or diminished privacy rights, is not something that can be determined from the data from this study. Neither can it be determined how such a group is constituted (and whether the courts have amalgamated 'traditional' notions of public figures with celebrities and media figures, such as sports stars and models). However, some of the data from this study supports the notion that the court makes a distinction between those who occupy the public realm, and *a private individual unknown to the public*. This distinction only appears in the data from C1, and it is of note that the text of a concordance line from BNC2014-baby (which presents a 'neutral' linguistic environment to contrast with the law based study corpus) attributes a 'public' and 'private' persona to professional people in general.

Relationship to the legal field

Bourdieu notes that the lay person entering the legal field 'becomes an observer' reliant on 'the technical expertise' of the lawyer[806]. However, the data from this study suggests that members of the journalistic professions occupy a position of prominence, in relation to privacy disputes. They appear both as regular 'antagonists' to Article 8 and MOPI hearings, and as 'protagonists' in Article 10 hearings. It is suggested that these individuals, whilst not 'players' in the juridical field, occupy a more dynamic position in relation to the 'linguistic field' of privacy than mere 'observers'.

In addition to this possible association of privacy with the media field, there is the suggestion of an association, particularly in the data from BNC2014-baby, of privacy with the fields of finance (including land, property, and wealth). There is also evidence of an association with the field of governance (including the NHS and education). Within the collocates extracted from the that corpus, there is a single reference each to the online environment (the collocate, *datum*) and to the association of the legal field with privacy (the collocate, *law*).

Influences by fields on meanings of privacy

[806] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805, 834.

On reviewing the data from BNC2014-baby, it is noted that there is a reference to a meaning, possibly particular to the media field: that is, the notion of 'private' or 'privately' signifying something said or done 'off the record'. There is evidence of a confluence of meanings and associations of privacy between the juridical field and other sectors of society. Specifically, the different manifestations of privacy invoked in the phrasing of Article 8, that is: ([private] family, life, home and correspondence) are all referenced in the data extracted from BNC2014-baby.

The scope of privacy jurisdiction

According to Pierre Bourdieu, the rules of the juridical field determine the scope of juridical authority in respect of a particular issue, such as privacy[807]. The meanings and attributes of privacy within the legal field are discussed below in the commentary on 'habitus'. However, it is considered here that although the concept of 'private' can hold 2 widely divergent semantic associations, the juridical field brings elements of both to its conception of Misuse of Private Information [MOPI]. The concept of privacy in its various lemma forms is manifestly polysemous. Of particular interest, however, are 2 emergent conceptions of the word 'private' and its antonym, 'public'. The first of these conceptions of 'private' (the 'wider' conception) appears to bring to conceptions of 'private' discourses around industry and finance. The second of these conceptions of the word 'private' (the 'narrower' conception) uses the word to signify things which are: 'restricted to one person or a few persons as opposed to the wider community[808]'.

The concordance lines extracted from BNC2014-baby contain examples of both the 'wider' and the 'narrower' conceptions of 'private'. Some of the concordances relating to the 'wider conception' of private convey some interesting discursive associations with the term. The word 'private' can be associated with 'undesirable' qualities such as opaqueness, corruption, and unrestricted forces of

[807] Pierre Bourdieu, (Richard Terdiman tr) 'The force of law: toward a sociology of the juridical field' [1987] 38 The Hastings Law Journal 805, 832.
[808] OUP, 'Private' (OED Online 2022) <https://www.oed.com/view/Entry/151601?rskey=uwQjNb&result=1#eid>accessed 16th October 2022

self-interest; but also, with 'desirable' qualities of *vision* and personal achievement.

The concordances extracted from C1 largely concentrate on the 'narrower' conception of privacy, as something that relates to a 'one person or a few people' However the discursive influences of the 'wider' conceptions of 'private' and 'public' seem pervasive and are influential in informing some key concepts in juridical privacy. In particular, the courts' approach to media 'intrusions' on family activities of celebrities appears to draw from both the wider and the narrower conceptions of 'public' and 'private' The cases of *Murray*[809] and *Weller*[810]*,* for example, appear to create conceptual boundaries between public activities and private activities conducted by public figures in the public arena, blurring distinctions between these ostensibly very different conceptions of private/privacy.

Concordance lines from both corpora suggest a distinction can be drawn between the private and public persona of individuals. However, the data from C1 suggests that the court applies this distinction to persons in the public gaze, to distinguish private (family) activities conducted in the public arena, from their 'public' role, whereas those from BNC2014-baby suggest a broadening of this distinction to include anyone who might be described as having a 'professional life'.

The dialectic of 'private' and 'public'

The preceding discussion on the scope of privacy notes the dialectical relationship between the concepts of 'public' and 'private'. The term 'private' is polysemous, and in a range of manifestations of the word it exists in relation to the notion of 'public'. The distinction between 'private' and 'public' arises in both the 'wider' and 'narrower' conceptions of the terms, but also in respect of the distinction between someone's 'private' and 'public' persona. This dialectic is reflected in other contexts in which the concept of privacy arises. The clusters and concordance lines from C1 confirm that privacy rights at law arise in relation to oppositional legal rights. The dialectic is manifested in the Article rights

[809] *Murray v Express Newspapers PLC* [2007] EWHC 1908 (Ch)
[810] *Weller v Associated Newspapers* Ltd [2014] EWHC 1163 (QB)

themselves: Article 8 rights to 'private and family life', exist in relation to Article 10 rights to 'freedom of expression'. This dialectic of 'private' and 'public' is also manifested in some common law principles. Privacy norms are, for example, considered in relation to oppositional normative principles, which appear in the list of clusters extracted from C1, such as the *public interest*, and (matters which are in) *the public domain*.

It is also noteworthy that, whilst the court is arbiter to privacy disputes, the court's activities are themselves constrained by principles such as *the administration of justice* and the *principle of open justice* (both of which principles were captured in the clusters extracted from C1), which could, themselves, be antagonistic to claims to privacy rights. Further, the court's activities are themselves subject to the provisions of the HRA 1998. This creates an interesting paradox, which is perhaps a peculiar feature of juridical activities in relation to privacy rights. That is that the court, which is subject to the provisions of Article 8, also rules on the scope and applicability of those provisions, even in relation to the processes by which it reaches its decisions. One manifestation of this paradox is that matters which a litigant alleges are covered by Article 8 privacy rights, lose their privacy by being discussed by the court in the course of the adjudication process. Although the court can issue Orders restricting or banning the reporting of privacy actions, the act of discussing and evaluating the litigant's conduct is, itself, a loss of privacy and potentially traumatising for the persons concerned[811].

Juridical processes

The juridical field is perhaps unusual in that many of the 'rules' which structure its activities are formally recorded and codified. The Civil Procedure Rules [the 'CPR'] for example regulate civil litigation. However, there are some informal, uncodified, patterns in the judicial process which are suggested by the data from this study. It cannot be determined whether these patterns reflect the juridical approach to civil hearings in general, or whether they particularly apply to privacy hearings.

[811] Matthew Weait, 'Harm, Consent and the Limits of Privacy' [2005] 13 Feminist Legal Studies 97.

The keywords from C1 suggested a 7-stage process by which privacy disputes are disposed consisting of distinct stages of:

Declaring, Conceding/Exchanging, Connecting, Considering, Finding, Intervening

The collocates from C1 name activities which are compatible with these processes such as *accuracy*, *listen*, *repetition*, *revelation* which invoke a process by which facts are carefully heard and applied to principles, to arrive at a conclusion. However, the keywords from the C1 set also include the words *balance* and *balancing*. The collocates of 'priva*' extracted from C1 expand upon this, adding an additional process of *repeating*/*reiterating*. There is also reference to *the balancing exercise between the claimant's privacy rights under Article 8 and the Defendant's* [rights]. These point to an additional juridical activity which appears to be characteristic of privacy disputes, and that is the judicial act of *balancing*. The balance metaphor has particular relevance to privacy disputes[812] where the tribunal may seek to demonstrate their neutral stance in relation to considering Article 8 rights against competing Article 10 rights, and against competing principles (such as the *principle of open justice*).

Juridical Powers

The courts exercise a wide variety of powers in relation to the enforcement of their rulings and some of these (for example *anonymisation*, *injunction*, *notice*, *order*) are named in the keywords from C1. The statutory authorities which empower the judicial act are also referenced in the keywords (*paragraph*, *section*), and in the clusters (*Data Protection Act*, *Article 8 rights*). Some of the common law principles applied by the court are referenced in the clusters from C1. Those which appear to pertain, particularly, to privacy disputes include the concepts of *public interest*, the *public domain* and the *principle of open justice*. Those principles which support applications for Article 8 rights include *breach of confidence*, *reasonable expectations*, and *misuse of private information*. There is also reference to case law, both tacitly (through such clusters as *Court of Appeal*,

[812] Rebecca Moosavian, 'A Just Balance or Just Imbalance? The Role of Metaphor in Misuse of Private Information' (2015) 7 Journal of Media Law 2, 196.

House of Lords) and by explicit reference to a case (for example, *in Campbell v MGN Ltd* and *in re S a child*).

Habitus

Bourdieu describes habitus as: 'systems of durable, transposable dispositions/structured structures predisposed to function as structuring structures[813]'. Habitus therefore represents a system of values, assumptions, habits, and mental schemas which are 'impressed' upon individuals through their interaction with their social and physical environment. Whilst these cognitive schemas, or 'durable, transposable, dispositions', may appear to relate to an individual's personal experience, they are shaped by broader socio-economic or 'structural' forces which create 'homogeneity of the conditions of existence'[814]. In this manner individuals sharing similar conditions of existence are likely to share similar cognitive schemas; or a 'parallelism of habitus'[815]. The habitus therefore provides a cognitive bridge between individual actors and their social environment (and the socialisation processes), which informs their interactions within a field, in relation to the accumulation and display of capital. These 'durable, transposable, dispositions' operate as 'the organizing principle of their [an individual's or a group's] actions'[816]. That is, that they inform (largely at an unconscious level) an individual's strategies in relation to other 'players' on the field.

Pierre Bourdieu considers, in some detail, the attributes of the 'juridical habitus'. It is not proposed here that a detailed summary of the attributes of the juridical habitus described by Bourdieu would assist in understanding the representation of privacy in the juridical field. However, it is noteworthy that Bourdieu relates juridical power to the 'canon' of legal texts, as legitimating judicial acts which would otherwise be deemed 'arbitrary violence'[817]. Competition in the legal field therefore arises around control over the authority to 'interpret' those texts[818]. It is

[813] Pierre Bourdieu, Outline of a Theory of Practice (Richard Nice Tr., Polity Press 1977) 72.
[814] Ibid, at 80.
[815] Pierre Bourdieu, (Richard Terdiman tr) 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 The Hastings Law Journal 805, 842.
[816] Pierre Bourdieu, Outline of a Theory of Practice (Richard Nice Tr., Polity Press 1977) 18.
[817] Pierre Bourdieu, (Richard Terdiman tr) 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 The Hastings Law Journal 805, 824.
[818] Ibid, at 827.

also noteworthy that Bourdieu considers that juridical authority is exercised though control over the syntax and language of law. He suggests that the language of litigation is structured to maintain both the appearance of impersonality (the 'Neutralization effect'), and the generality of the normative principles applied by the court (the 'Universalisation effect')[819]. In this manner the court controls the language of the law to foster acceptance and universal conformity to its normative rulings.

The Judicial Habitus

Whilst the data from this study does not provide direct evidence of the operation of the judicial habitus in relation to privacy, there is a clear difference in the syntax and style of the texts in C1, compared to BNC2014-baby, reflecting normative control over the language of law. The data extracted from C1 confirms a formal style of discourse with frequent use of technical-legal expressions and archaic terms. In the data from C1 there is a large proportion of terms which relate to the court and to juridical processes, reflecting the self-referential nature of legal discourse.

The data from C1 provides no indications of prejudices arising from structural factors such as social class on the tribunal, a reflection of the care with which the judicial task undertaken and the care with which decisions are expressed. It has been noted at Chapter 4 of this thesis that there appears to be a contrast between the court's approach in the case of some of the 'kiss and tell' cases concerning footballers (such as *Terry*[820]) and the approach in the case of , for example, *Mosley*[821]and *PJS* (in which it was also suggested that compensation would not be an effective remedy due to the claimant's wealth)[822]. Whilst each judicial decision is justified according to its own facts, there is a risk that, without sufficient guidance, or standardisation of approach, decisions could appear to be based on judges' idiosyncrasies (and unconsciously applied prejudices) The principles circumscribing the 'freedom to criticise' (a legal principle frequently invoked to justify publication, successfully in the case of *Terry*) appear unclear.

[819] Ibid, at 820.
[820] *LNS v Persons Unknown* [2010] UKSC 26.
[821] *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB).
[822] *PJS v News Group Newspapers Ltd* (2016) [2016] UKSC 26.

This has attracted some criticism in legal scholarship. Paul Wragg (2017), for example, suggests a review of the rules to avoid 'judges..[making] determinations based on personal taste'[823]

Attributes of Privacy

The discussion of the scope of privacy is discussed above in the commentary on 'field'. Reviewing the data as a whole, some observations can be made regarding possible properties of privacy, both within and outside the juridical field.

Privacy is a sphere or circle maintained by the actions of oppositional forces

Both corpora present the image of privacy as a sphere. It separates the private space from the public space. It is associated (collocated) with terms which convey themes of protection and preservation as well as themes of risk and identity. It therefore seems to act as a shield or barrier which protects and preserves that which it envelopes. It seems that the margins of this sphere overlap or blur with oppositional forces, but its scope can be perceived objectively, or through empirical means, by reference to the *touchstone* of reasonable expectations. This sphere can be stratified, presenting layers of privacy protection. The sphere is also blurred at the margins, with some overlap of the inner and outer worlds.

Like a bubble, privacy is maintained by the actions of oppositional forces. This conception of privacy (in its various lemma forms) is pervasive and is encountered in ostensibly diverse manifestations of privacy). The forces which oppose privacy norms, can also have the force of judicially recognised norms supporting them (such as *Article 10*, the *freedom to criticise*, *public interest*, etc). These oppositional principles are only found in the data from C1, and they perhaps have little currency outside the juridical field.

Privacy safeguards against crime

If privacy is a protective shield, or barrier, this raises questions around the nature of the threat that privacy is safeguarding against. The function of privacy as something that protects information is has previously been discussed in this

[823] Paul Wragg,'Privacy and the emergent intrusion doctrine' (2017) 9 Journal of Media Law 1, 22; see also Paul Wragg, 'A freedom to criticise? Evaluating the public interest in celebrity gossip after Mosley and Terry (2010) 2 journal of Media Law 2.

Chapter. In C1 privacy is associated with themes of breach of confidence, crime, harassment, and defamation, highlighting ways in which information may be misused to further unlawful activities.

Privacy is personal and distinct

Whilst privacy is frequently conceived as a relational right (arising in opposition to other rights such as Article 10 rights to freedom of expression), it is also represented as something that is *standalone*, *distinct*, *intimate*, and *personal*.

Privacy is normative (but is not only 'moral') in nature

The data extracted from C1 includes a wide range of morally evaluative terms in association with privacy. Additionally, the principle of reasonable expectations, 'has a built in but not immediately obvious normative requirement'[824], which is applied by the Court. The data from BNC2014-baby suggests that outside the juridical field, there is a normative component to some manifestations of personal privacy, but the 'inner world' maintained by the privacy 'bubble' (or *sphere*) contains ideational, and aesthetic, values as well as moral/ethical values.

Privacy arises and is maintained through micro-social interactions

Privacy is highly contextual[825]. The data from C1 suggests that judicially recognised privacy norms arise in relation to particular social situations (such as in relation to an individual's sexual behaviour). However, privacy also seems to be highly variable, maintained through processes of micro-social interactions. Individuals maintain control over private material through strategies constructed around the mechanisms of *consent* and *waiver*. The data from the BNC2014-baby suggests a related discursive association between privacy and issues of *control* and *possession*.

Much juridical attention is given to explaining the processes by which privacy norms can be identified. The clusters extracted from C1 include a range of juridical principles which are applied to privacy disputes. One of these principles, 'reasonable expectations' is described as a *touchstone* providing a test for

[824] Helen Nissenbaum, *Privacy in Context* (Stanford 2010) 233.
[825] Ibid.

determining whether privacy norms apply to a particular social context. However, concordance lines from both corpora confirm that a diverse range of social strategies are associated with privacy. These strategies can be complex, involving distinctions between types of information, and the operation of overriding principles such as *consent* and *public interest*. Privacy norms can operate as a unilateral command, such as *keep out*, or as a negotiated process.

Juridical privacy is closely associated with information and protection of reputation

Data from C1 consistently suggests a relationship between privacy and information. This seems to be a particular feature of juridically defined privacy since this association with information is not prominent in the data from BNC2014-baby. There is also an association between privacy and protection of reputation in juridical discourse. It is interesting to note that one concordance line from the C1 set refers to the: *right of privacy and protection of reputation*, as though they were the same concept.

It is suggested that this conception of privacy (as something that protects information) facilitates a commodification process of privacy. This is not something which can be directly inferred from the data from this study (although there is evidence of discourses on wealth and finance). However, it has been suggested at Chapter 4 of this thesis, following case law review, that this notion of private information (including one's own image) as a marketable commodity has been a discursive theme in privacy law since (at least) the House of Lords ruling in *Douglas v Hello!*[826]. The basis for this is understandable, information has a clear economic value and, due to likely levels of interest, information on the private lives of famous individuals is likely to attract a greater value than information on the lives of less recognisable persons. Equally, the reputational risks caused by loss of privacy may be greater for those for whom maintenance of a public persona forms an essential part of their career. However, this presupposes that the 'harms' of privacy loss are mainly economic, rather than psychological in nature, which may not be a safe presumption to make. - Informational privacy may be merely one manifestation of privacy which sits alongside other

[826] *Douglas v Hello!* [2007] UKHL 21.

manifestations of privacy such as: 'social privacy, psychological privacy, and physical privacy'[827]. Favouring this one manifestation of privacy over the others could work to the detriment of the rights of most citizens, for whom personal information may have a very low market value.

Privacy is a metaphysical phenomenon

It is suggested that privacy is located at the threshold of a person's inner 'cognitive' environment and the outer 'social' environment. This conception of privacy is consistent with the data extracted from both corpora. This notion of privacy seems to be at the centre of juridical representations of privacy: the *touchstone* for the presence of privacy rights, 'reasonable expectations of privacy' invokes the individual's cognitive expectations, measured against a social standard of 'reasonableness'. The notion of privacy as being at the threshold of the inner and outer worlds is also explored in some of the concordances extracted from BNC2014-baby:

> *how could I experience your private vision? He asked*

> *Had he just experienced? Human consciousness was private impossible to directly access another's thoughts*

This conception of privacy, as existing at the threshold of the 'personal' experience (or 'vision') and the 'social' or 'shared' experience suggests a metaphysical status, akin to the *human consciousness* which lies within it. This conception of privacy seems to be incongruous with the discursive association of privacy with property, wealth, and exclusivity, and with commercially valuable 'information' encountered in the data from both corpora.

Common discursive thread between narrower and wider conceptions of 'private'

The binary division of 'private' and 'public' can be used in ostensibly very different senses: a 'wider sense' referring to divisions of industry and finance, and a 'narrower sense' distinguishing the 'private' and 'public' lives of individuals.

[827] Cory Hallam and Gianluca Zanella, 'Online Self-Disclosure: The Privacy Paradox Explained as a Temporally Discounted Balance Between Concerns and Rewards' [2017] 68 Computers in Human Behavior Volume 217.

However, it has been noted that both 'senses' of these concepts are associated with notions of wealth, exclusivity, and property. This is a common discursive theme which pervades privacy 'meanings', and there is a suggestion that privacy, or 'the personal' has become commodified.

Capital

The notion of capital, for Bourdieu includes 'economic capital', but the concept is expanded to include the intangible, abstract, 'resources' of 'social capital' and 'cultural capital'[828]. There are different 'sub-species' of these primary forms of capital, including the 'sub-species' of cultural capital: 'linguistic capital'[829], and 'juridical capital'[830]. Capital cannot exist in isolation, but in its relationship to a field. Within the field, it operates as an organising force, as the 'players' compete for accumulation and display of whichever species of capital are valued within that field[831]. The rules of the field, determine which species of capital are valued, and the rules for accumulation, display and exchange of capital[832]. This includes setting the 'entry fee' (such as required academic qualifications) for that field[833].

The preceding discussion of the juridical field considers data relating to the 'players' on the juridical field, and some of the judicial activities associated with privacy litigation. This includes consideration of judicial powers in relation to privacy disputes and the legal and normative principles which empower exercise of those judicial powers. Regarding the 'players' in the juridical field it has been noted that the various legal professionals (for example, *judge*, *solicitor*, and *counsel*) encountered in the juridical field are referenced in the data extracted from corpus C1. These professionals are likely to be encountered in any legal dispute and not only those concerning the matter of privacy. However, it has also

[828] Pierre Bourdieu, *Outline of a Theory of Practice* (R. Nice tr, Cambridge University Press 1977) 184.
[829] Pierre Bourdieu, 'The economics of linguistic exchanges' (1977) Social Science Information 16(6) 645; also, Pierre Bourdieu, *Language and Symbolic Power* (John Thompson tr, Polity Press 1991).
[830] Pierre Bourdieu, *Outline of a Theory of Practice* (R. Nice tr, Cambridge University Press 1977) 823.
[831] Pierre Bourdieu, (Richard Terdiman tr) 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 The Hastings Law Journal 805, 827.
[832] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992) 101.
[833] Ibid, at 119.

been noted that there is consistent reference in the data to 2 groups of persons who are not legal professionals: the journalistic professionals and persons in the public eye ('celebrities'), whose personal information, having value, attracts the activities of journalists. This dynamic, between journalists and famous persons is discussed by Richard Posner as long ago as 1978, and he references earlier debates around that matter in the USA dating back to the 19th Century[834]. . The dynamic continues to be a factor in driving privacy debate in domestic common law, and it has attracted input from legal scholars in the UK such as Kirsty Hughes (2019)[835], Paul Wragg (2017, 2010)[836], and Thomas Lauterbach (2005)[837]. It is proposed that the special position which this dynamic appears to hold in the in relation to privacy is a particular characteristic of privacy law, which warrants closer analysis.

Informational and Informational Capital

Bourdieu himself, suggests that cultural capital can be 'otherwise termed informational capital'[838]. 'Information' in this sense includes any knowledge which is valued within a field. This includes practical knowledge of the values and practices of a particular field, and the ability to construct 'strategies' around this knowledge, which are: 'oriented towards the satisfaction of material and symbolic interests and organized by reference to a determinate set of economic and social conditions[839]'. The notion of informational capital as an organising force for both the media field, and for the juridical field (both, of itself, and in relation to privacy rulings) is an attractive one because it explains some of the features of privacy in the preceding discussion of the 'privacy habitus'. Notably, it would explain the prominence of the media within the field of privacy litigation. The media field, or the journalistic players within it, have a clear commercial (and reputational)

[834] Richard Posner,'The right of privacy' (1978) 12 Georgia Law Review 3.
[835] Hughes K, 'The Public Figure Doctrine and the Right to Privacy' (2019) 78 The Cambridge Law Journal 1.
[836] Wragg, P, 'Privacy and the emergent intrusion doctrine' (2017) 9 Journal of Media Law 1.
Wragg, P,' A freedom to criticise? Evaluating the public interest in celebrity gossip after Mosley and Terry' (2010) 2 Journal of Media Law 2.
[837] Thomas Lauterbach, 'Privacy law and press freedom a celebrity fight-back ''par excellence''' (2005) 21 Computer Law and Security Review 1.
[838] Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Oxford 1992) 101.
[839] Pierre Bourdieu, *Outline of a Theory of Practice* (R. Nice tr, Cambridge University Press 1977) 36.

interest in acquisition of informational capital and the transfer of this into economic capital through the act of publication. In this respect newspapers can appear as the 'protagonists' in privacy hearings through exercise of Article 10 rights to freedom of expression (and the journalistic privileges which are deployed in respect of those rights). Newspapers can also appear as antagonists to claims for Article 8 claims.

As sources of commercially valuable information famous persons have a particular interest in the acquisition and exchanges of information by the media field. The minutiae of their private lives have a clear commercial value to the media. A succession of rulings by the court (discussed at Chapter 4 of this thesis) have restricted the activities of the media in relation to the acquisition and publication of personal information of individuals, including suppressing publication of photographs of persons engaged in mundane and family activities in a public environment. Further, novel judicial remedies have been developed by the courts in the management of intrusive activities by the media (such as the development of the 'super-injunction'). The court is required to take a cautious approach in relation to this dynamic in order to not be seen to take a position in relation to the media (who frequently appear as defendants to actions) and their readership (who might claim to have a valid interest in the stories). However, the wide discretion given to judges in the management of privacy claims (which is considered below), could create apparent inconsistencies in approach, render controversial decisions difficult to objectively justify, and attract criticism of the judicial position.

Private Things

It seems that the privacy 'bubble' surrounds the person, as well as private 'things' such as the details of an individual's sexual behaviour, their image, and their correspondences. It is noted that the concept of private life, the domestic environment, family life, and private writings[840], being *essentially private* could have general cultural currency since these things are closely associated with privacy in both corpora. It seems that the phrasing of Article 8 HRA ('the right to respect for' an individual's 'private and family life, his home and his

[840] All of which terms are named in the phrasing of Article 8 (HRA 1998).

correspondence') reflects broader, societal, conceptions of privacy shared with the juridical field.

Final Observations: Privacy and the Juridical Influence

Many of the attributes of privacy described in the preceding sections to this chapter appear at first glance to be inevitable and 'common sense'. However, on closer analysis, it is suggested that other qualities could have been attributed to privacy, and that court rulings (or wider social forces that underlie them) have constrained potentially beneficial discourses on privacy.

Privacy as information

One example of this is the close association of privacy with 'information' and its lemma, 'informational'. Both of these words are absent in the data from each stage of extraction from BNC2014-baby. The terms are also absent from the list of prominent keywords in the C1 set, confirming that they are not prominent in that corpus in their own right, but through their strong collocational relationship with privacy and its lemmas, in the context of privacy litigation. This discovery is perhaps unsurprising and can be explained though its use in the principle 'misuse of private information'. However, the collocated relationship between the terms extends beyond this particular idiom, with information/informational regularly appearing within a 5 words span of private/privately/privacy. It is considered that this data suggests a strong 'discourse prosody' between the 2 concepts in the context of privacy litigation (and the juridical field), This discursive association between the 2 concepts at law (privacy and information) has been criticised for being reductionist, excluding and devaluing harm caused by loss of other forms of privacy such as 'physical privacy'[841].

Privacy and privacy rulings as something individual and personal

The conception of privacy as something 'individual' and 'personal' also warrants further examination. It is noted that privacy is a bubble, which encircles the inner, 'private' world, separating it from the outer, 'public' environment. This model of

[841] For example in the writings of: Nicole Moreham, 'Beyond Information: Physical Privacy in English Law' [2014] 73 Cambridge Law Journal 350; see also, John Hartshorne, 'The Need for an Intrusion Upon Seclusion Privacy Tort Within English Law' [2017] 46 Common Law World Review 287.

privacy, like the notion of 'privacy as information' deserves further analysis. The court has chosen the touchstone of 'reasonable expectations of privacy', rendering each context in which privacy expectations arise, potentially unique to its circumstances. This brings the risk that the presence of privacy norms can only be determined by a retrospective review of the circumstances around their breach, a model which seems to encourage litigation and fails to provide citizens and organisations with clear guidelines for correct conduct. Furthermore, it has been noted that judges are given a wide discretion in the management of privacy claims, with scholars suggesting that further guidance should be provided on key issues such as: determinations of 'public interest', the level and basis for compensatory awards for privacy breaches and the decision whether to make an award of compensation or order another remedy such as an injunction. Without such guidance there is a risk that privacy rulings are inconsistent or are based on contentious factors such as the wealth of the applicant (which was a consideration in the decision to award an injunction in *PJS*). Other models of privacy, such as one proposed by Daniel Solove[842] which focusses on the 'harms' caused by different types of intrusive conduct, or one proposed by Eric Barendt[843] which focuses on a closed list of essentially private 'things', may facilitate enforcement of universally applicable (and understandable) privacy norms and thereby assist with protecting the privacy rights of all citizens.

Whilst the notion of privacy as a personal right may appear to be 'common sense', it should be noted that there are other ways in which privacy could be represented. Not all privacy theorists agree that privacy is an individual value, Paul Schwartz (2006) and Julie Cohen (2018) both stress the 'social' value of privacy as a collective political shield, protecting individuals from exploitation by government agents and corporate bodies, Ruth Gavison (1980) considers the 'social' value of art forms, created in an environment of personal artistic freedom, made possible by enforcement of privacy norms. Anita Allen (2000) and Amitai Etzioni (1999) criticise the 'individual' nature of current privacy laws and call for a reconfiguration of privacy laws, in accordance with collective needs. Anita Allen (2013) builds upon this notion of privacy being a communitarian right suggesting

[842] Daniel Solove, *Understanding Privacy* (Harvard 2008).
[843] Eric Barendt, 'Problems With the 'Reasonable Expectation of Privacy' Test' (2016) 8 Journal of Media Law 2, 129.

that there is a positive moral duty on individuals to maintain collective privacy values by mindfully affirming their personal privacy rights at each opportunity[844].

The moral basis to privacy

The issue of whether privacy is an individual or collective (or 'communitarian'[845]) right perhaps relates to differing conceptions of the moral basis to privacy. That is to say that privacy could have been conceived not as something rooted in the specific circumstances of individual claimants, but in a manner which protects larger groups of people, or society as a whole, from common threats such as the acts of government or large corporations. Further, as has been conveyed through some of the concordance lines from BNC2014-baby, the danger with this model of privacy rights (that is, the conception of privacy as being a personal 'expectation') is that it is morally ambiguous. The moral legitimacy of privacy rights can be undermined through their use by individuals, or private organisations, to cover illegal, or immoral acts. In such circumstances moral (normative) authority could be said to rest, not in those claiming privacy rights over particular issues, but in those who oppose those rights to bring those matters under public scrutiny.

It is noteworthy that the data extracted from C1 overwhelmingly conveys a conception of privacy which is related to personal obligations; but there is an absence of terms which convey the less attractive manifestations of privacy. There is a consistent association of privacy with confidentiality and confidences, a conception of privacy which, as Normann Witzleb[846] points out, places the focus on personal obligations between individuals creating obligations of trust, rather than (correctly) the nature of the private 'thing'. The term *secret*, a word which can bring negative connotations to the concept of privacy, appears amongst the statistically most prominent collocates in the C1 set, but is contextually framed in terms of something intimate that is shared between friends. Within the data from the C1 set, the moral ambiguity of the concept of privacy is largely absent. Juridical discourse on privacy, however, consistently frames privacy as a moral

[844] Allen A, 'An ethical duty to protect one's own information privacy?' (2013) 64 Alabama Law Review 4.
[845] Amitai Etzioni, *The Limits of Privacy* (Perseus 1999).
[846] Normann Witzleb, 'Monetary Remedies for Breach of Confidence in Privacy Cases' (2007) 27 Legal Studies 3, 432.

concept. This is underlined by the wide range of evaluative terms in the C1 set which connote judicial moral disapproval of breaches of privacy. Furthermore, privacy is associated in the C1 data with desirable qualities such as *protection* and *preservation*.

The morally ambiguous nature of privacy (and its lemma forms) can however, be seen in some of the data extracted from BNC2014-baby, where privacy is associated with evaluative terms connoting the speaker's disapproval (for example in the concordance line: *zones of complimentary governance with private illicit authority*). Privacy can be something concealing, and sinister as well as something socially desirable. However, this moral ambiguity is not represented in the data from the C1 set.

The court's construction of privacy as something both 'personal' and as something 'moral' can have the effect of narrowing discourses around privacy which could have supported the communitarian, social, benefits of privacy. Alternatively, the concept of privacy could have been freed of its moral associations altogether. It could, for example, have been defined in purely technical terms that allows it to be coded into algorithms protecting large groups of internet users against online threats, a suggestion made by Mireille Hildebrandt[847]. However, the court's approach is to retain the position of human rights judges as 'norm-brokers', making individual judgements based on the individual circumstances of claimants. The result of this is that individual decisions can appear to reflect the idiosyncrasies of the judicial habitus rather than the application of clear, universal normative rules, for example in the contrasting approaches in the cases of *Moseley* and in *Terry*[848], both of which cases invited the court to make moral appraisals of the acts of both parties to the dispute.

'Public' and 'Private'

Early conceptions of privacy rights, such as those described by John Locke suggest a division between 'the public' and 'the private' based on physical boundaries. These physical divisions have retained their symbolic status in informing modern

[847]Mireille Hildebrandt, 'Law as Information in the Era of Data-Driven Agency' (2016) 79 Modern Law Review 1, 1.

conceptions of privacy. In both corpora privacy is conceived as a protective sphere which distinguishes the public and private persona of individuals. It is suggested here that these boundaries between the public and the private worlds of individuals point to deeper metaphysical distinctions, with privacy lying at a point where the 'inner' cognitive environment meets the 'outer' social environment. This sense of privacy as a metaphysical phenomenon underlines the fundamental importance of privacy as both an individual right and a collective right simultaneously.

Personal Article 8 Rights and Collective Article 10 Rights

The tension between privacy rights and oppositional rights to freedom of expression seems to permeate juridical discourse on privacy. The data from C1 shows a marked difference in the representation of Article 8 and Article 10 rights. There are a broad range of principles cited in support of Article 10 including the concept of 'the public domain', 'the principle of open justice', and the concept of 'public interest'. All of these concepts were strongly represented in the clusters extracted from C1. They convey the sense that Article 10 rights are associated with concepts of fairness and (loosely) with the functioning of democracy, with the public, and that the right itself is a public right. This contrasts with the overwhelming representation of privacy in the data from C1 as an individual ('standalone') right, rooted in a person's personal, moral 'expectations'.

Chapter 7
Concluding Comments

The aims of this research were ambitious and wide ranging. Privacy is an 'essentially contested' term which, in addition to being manifestly polysemous, is highly contextual. It was conceived at the outset of this research that it would be possible to determine which meanings, from a large universe of possible meanings, the judicial system has attributed to the concept of privacy and which contexts, from a wide range of possible contexts, the court system would recognise as capable of generating privacy norms. Furthermore, it was anticipated that it would be possible to gain an understanding of the meanings and associations of privacy outside the juridical field, to allow comparison with the meanings and associations within the juridical field. It was considered that this would be revealing of the relationship that the legal system (the 'juridical field') has with other institutions and with wider society as a whole. It was anticipated that close scrutiny of the language of privacy both within and outside the juridical field, would reveal some of the wider socio-economic processes underlying the production of meanings around privacy. It was decided to adopt a sociological perspective derived from the writings of Pierre Bourdieu, in order to understand and explain these wider social processes surrounding the processes of production of privacy meanings. Bourdieu was, himself, a keen proponent of the use of the techniques of reflexivity as an integral part of the study process. Accordingly, it is proposed that this chapter (Chapter 7), the final chapter of this thesis, will consider the research as a whole, looking first at some of the insights gained from this research, then turning to the applications, suggestions for future studies, study limitations, and recommendations suggested by the study findings. Each of these issues is considered, in turn.

Research Insights

Meanings of privacy

The data from C1 suggests a process of narrowing of juridical discourse around privacy. The research data has identified some meanings and associations brought to the concept of privacy by the juridical field. Specifically, some properties of privacy are consistently represented in the data from C1:

Privacy is represented in the language of morality

It is discussed on the conclusion to the preceding chapter (Chapter 6) that juridical privacy is closely associated with language suggesting desirable characteristics of protection and preservation. Privacy is collocated with the words: *embrace*, *comfortable* and *fresh*. Breaches of privacy are frequently described in terms that underline judicial moral disapproval of the act of breach (for example, *disruption*, *unacceptable*, *wrongful*, *violate*. The possible political forces underlying this presentation of privacy as a moral issue are considered later in this conclusion.

Privacy is a personal right

Privacy is conceived overwhelmingly as a personal right, in the data from C1.

Privacy is about information and protection of reputation

The association of privacy discourse with information, and protection of reputation is discussed in the conclusion to the preceding chapter (Chapter 6).

Privacy rights (and the principles which support them) exist in a state of tension with oppositional rights to freedom of expression

These oppositional rights, unlike privacy are conceived as collective rather than personal rights, and they are supported by principles suggesting collective rights such as '[matters of] *public interest*, and '[information in the] *public domain*'.

These properties of privacy represented in the data of this research could have been anticipated. They largely conform to understandings of privacy following the case law review at Chapter 4 of this thesis. They are not matched however by the data extracted from the BNC2014-baby. The data sets from that corpus suggest broader conceptions of the nature of privacy. For example, in the BNC set, the data conveys that privacy can be a *system*, a *matter* or a *concern*, suggesting that privacy can be a process or an existential state, as well as a normative expectation. The data from BNC2014-baby also supports a conception of privacy as a conceptual space where the internal conceptual environment, meets the external social environment. Some data from BNC2014-baby conveys that privacy is represented as a moral concept. However, this association of privacy with the

language of moral approval and disapproval is more characteristic of representations of privacy in the data from C1. Further, the representation of privacy as being *about* information appears peculiar to C1. This association of privacy with information is absent in the data extracted from BNC2014-baby.

Juridical processes in relation to privacy

The study data has provided some insights regarding the juridical processes in relation to privacy including a method of disposal of privacy claims and some of the metaphors and symbolic representations of privacy that inform juridical conceptualisations of privacy.

Method of disposal of claims

The keyword and collocate data from C1 suggest a process of disposal of privacy claims. This process consists of the following stages:

Declaring|Conceding/Exchanging|Connecting|Considering|Finding|Intervening

These processes could describe the activities which constitute the twin practices of 'universalisation' and 'neutralisation'[849], being applied to a set of facts as it becomes assimilated into the juridical field. These practices are designed to establish the universality of the norms applied by the court, as well as the judiciary's 'neutral' stance in relation to the facts. These practices, argues Bourdieu, have the effect of maintaining the status of the juridical field, and the potency of judicial rulings. Accordingly, the process being described may not be particular to the field of privacy law and it could describe juridical processes in relation to any social activity to which the judiciary has claimed (or been conceded) authority. However, an examination of juridical processes in relation to privacy seems to be particularly pertinent, in the light of the data from this study, since the study data here suggests a process of norm-construction in relation to privacy, which accentuates the moral element of the concept of privacy. The processes by which those norms are constructed could warrant further scrutiny.

[849] Pierre Bourdieu, (Richard Terdiman tr) 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] 38 The Hastings Law Journal 805, 820.

Metaphors and symbolic representations

Privacy is a sphere, which protects (information and reputation) and preserves

The word 'sphere' appears as a collocate of privacy (and its lemmas) in both corpora. However, in C1 the sphere is represented as something that protects and preserves. The *touchstone* of 'reasonable expectations of privacy' provides a juridical measure for the presence of this sphere (and the protection it provides). It is noted that the senses in which the term 'sphere' is being used differs in the 2 corpora. In C1 the term arises in judicial discourse to refer to a personal space which symbolically surrounds successful claimants and provides a shield against intrusion. In BNC2014-baby, the term is principally used as a synonym for 'sector', distinguishing 'the public' from 'the private' in sectors of finance or governance. The symbolic importance of the image of the sphere in the texts of C1 is emphasised by the prominence of a range of terms closely semantically associated with *sphere* in the collocates extracted from the C1 set including *circle*, *encompass*, *ambit*.

The metaphor of the balance

A particular feature of juridical discourse in relation to privacy is the image of the balance. The use of the metaphor of the 'balance' by courts in relation to privacy disputes has been noted, and it has been described by Rebecca Moosavian in her corpus-based study of metaphor[850]. There are frequent references to oppositional forces in the data extracted from C1. The words *balance* and *balancing* appear in the most prominent keywords and the terms *outweigh* and *countervail* appear amongst the most prominent collocates. It has already been noted that Article 8 rights and Article 10 rights exist in a state of dialectic opposition in relation to each other. It is suggested that this use of metaphor may be part of the neutralisation process undertaken by the juridical field in relation to those dialectic forces. Perhaps the prevalence of this metaphor is evidence that the domestic judiciary sense a requirement to be seen to demonstrate balanced consideration of these opposing rights, and a balanced approach towards the oppositional social forces with a stake in those rights.

[850] Rebecca Moosavian, 'A Just Balance or Just Imbalance? The Role of Metaphor in Misuse of Private Information' (2015) 7 Journal of Media Law 2, 196.

Influences of other social fields on privacy

In the data from the C1 the majority of references to people relate to the job titles of the various legal staff encountered in the juridical field, as well as roles played in the context of litigation (for example *claimant*, *defendant*). There were also however, references to the media, in the data from both corpora, and a reference to *celebrities* and *public figures* in C1. The data from BNC2014-baby pointed also to a connection between privacy discourse and the fields of medicine, education, governance, and law.

There were signs of a connection between juridical discourses on privacy and wider society since the 4 elements of privacy cited in the phrasing of Article 8 (private Life, Home, Family and Correspondence) are found in the data extracted from BNC2014-baby. One of the concordance lines taken from BNC2014-baby also suggests an influence on the language of privacy by the media.

Surprisingly, only the data from BNC2014-baby contained explicit references to online discourse and privacy threats, although contextually there was a single reference to online privacy in the data from the C1 set.

Wider socio-economic processes

Reviewing the data as a whole, the recurrent references to the press and to information are consistent with a hypothesis that there is a central dynamic in privacy law around the media field and the acquisition of information It is considered that this dynamic lies at the intersection of Article 8 rights to private life, and Article 10 rights to freedom of expression.. The juridical field acting through its senior judges establishes its neutral position in relation to the tension this creates, and this is evidenced in the use of language stressing its balanced approach in respect of privacy hearings. The metaphor of 'weighing' and 'balancing' is a recurrent linguistic feature of the C1 corpus supporting the findings of a linguistic study by Rebecca Moosavian (2015)[851] suggesting that this is a particular feature of privacy actions. Amongst the significant words identified

[851] Rebecca Moosavian, 'A just balance or just imbalance? The role of metaphor in misuse of private information' (2015) 7 Journal of Media Law 2, 196.

in C1, a large number point to the methodical, reasoned, process taken by the tribunal in respect of the management of privacy claims (although it is assumed that the tribunal takes such a methodical approach in the management of all claims, and this is not particular to privacy). Whilst judges may not be cognisant of this, it is suggested that the use and repetition of words which emphasise the reasoned, neutral, approach taken by the court in relation to this dynamic, also has the effect of re- re-affirming the neutrality and universality of court rulings.

However, it is also considered that this illustrates the significance of the manner in which concepts and issues are linguistically framed on the way that those legal processes are understood. It is considered that one aspect of privacy law that renders it problematic is the degree of discretion offered to judges in the management of privacy claims. This has been noted in case law, and literature, reviews in respect of decisions on such issues as public interest, size of awards etc, which rest on the facts of individual cases. This brings the risk that the rationale behind decisions can appear opaque and (particularly for non-lawyers) difficult to comprehend. The legal canon as a whole, without delving deeper into the details of a case, could appear contradictory, with superficially similar cases attracting different outcomes from the Court. When does *Khuja* apply and when *Sir Cliff Richard*? When does *Terry* apply and when *PJS*? *Sir Elton John*, or *Murray*? Although this is outside the scope of this study, it is suggested that there is value in rationalising, standardising, and simplifying privacy laws in a way which allows them to be more easily understood, and for them to be applied as a normative guide to behaviour in respect of privacy, outside of the juridical field. It is considered that the expense of privacy claims, makes enforcement of personal privacy rights less available to those of limited means. It is suggested that a rationalisation of privacy laws and procedures could allow uncomplicated privacy actions to be managed as a simplified process at County Court, or a tribunal, reducing the cost of privacy actions.

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Applications of this Research

It is intended that this research would allow developments in privacy law to be critically evaluated from a sociological perspective. The research applies both the black-letterist approaches of 'traditional' legal scholarship and a range of socio-linguistic techniques. The intention of this is to explore juridical meanings of privacy within their own environment, but to place these juridical activities in relation to privacy within a broader socio-economic context. Accordingly, this thesis presents a review of privacy case law (at Chapter 4 of the thesis) followed by a linguistic analysis of 200 law reports using automated concordancing software (the processes of which are discussed at Chapter 5 and applied at Chapter 6). The data from the law reports is compared to data obtained from a 'neutral' corpus which contains texts from a variety of genres and sources of British, written, English. The whole is then evaluated through the application of a critical perspective derived from the writings of Pierre Bourdieu.

Original Contribution

This PhD research constitutes an original contribution to the study of privacy in 2 respects:

i. The construction and analysis of a corpus consisting of law reports through the application of concordancing software, as a means of exploring juridical privacy meanings.

ii. The application of a sociological perspective derived from Pierre Bourdieu, as a means of interpreting and understanding the wider social processes underlying those juridical findings.

Benefits of this Research

It is considered this analysis has revealed some meanings around privacy as well as juridical processes in relation to the creation of these meanings. These are summarised in the preceding discussion of research insights. Further, whilst the research was unable to provide details regarding the nature of the broader social divisions influencing developments in privacy law, the data has suggested some possible social forces behind privacy laws inviting further research in this area. It is

suggested that these findings provide a proof of concept, establishing that this application of socio-linguistic techniques to a legal question, can create valuable insights into that question. Further investigation of some of the issues indicated by this research is considered later in this chapter.

The Bourdieusian Perspective

It is considered that the Bourdieusian perspective applied to this research has allowed data to be located into its broader social context. This perspective has also informed the conduct of this whole research process. Regular periods of reflexive analysis have punctuated each stage of this study resulting in periodic adjustments made to the research process. Primarily, however, , the adoption of this perspective has allowed the Researcher to apply a broader epistemological lens to this issue, and to consider laws in the context of the social forces around them. It is considered that this has fostered a habitus in the researcher in which the legal structures are not assumed to be fixed, but responsive to the activities of its 'players' and in relation to wider social forces. One of the risks of traditional, doctrinal, legal approaches, which assume an 'epistemologically internal way of knowing'[852] is that this approach can focus on the legal problem, whilst missing the wider social consequences of the legal 'solutions' to those problems. The methods applied in this study include a review of case law, but this is used as a starting point in the research process, to consider broad developments in privacy law, before delving deeper into the linguistic (and social) structures around those laws. From this it is also possible to consider developments that could be made to privacy and juridical processes in relation to possible social consequences arising from management of privacy claims. Some suggestions in this regard are considered later in this conclusion.

Positioning of this Study

The researcher came to the issue of privacy from a professional background in the law, but an academic background in the field of Law and Society, having attained an MSc in socio-legal studies from Bristol University. In those studies, the researcher developed an interest in debates around 'legal consciousness', the

[852] Shane Kilcommins, 'Doctrinal Legal Method (Black Letterism): Assumptions, Commitments and Shortcomings' in Laura Cahillane and Jennifer Schweppe (eds) *Legal Research Methods: Principles and Practicalities* (Clarius Press 2016), 10.

ways in which laws are understood outside of legal structures, and the application of social theory to understand substantive 'legal' issues. It was perceived that privacy laws have been in a process of transformation, from around 2004, in which some key cases have considered privacy rights in relation to the HRA and Article 8. Some key Article 8 cases have been widely discussed outside of legal structures, since they concern matters of general interest (such as *Gard*), or touch upon the personal lives of persons who are widely recognised (sports stars, models, entertainers, etc), and their lives 'followed' in the media, in social media and general discourse. The issue of privacy is therefore one which, it is considered, is widely discussed, and holds a cultural significance outside of the field of law. Considering discussions of privacy in popular discourse (including the 'comments' section of online blogs and journals) it is discernible that privacy is a complex concept which can attract a diverse range of emotional responses within popular discourse, including fear and suspicion of 'secretive behaviour', and a sense of having been 'violated' when privacy is lost. Responses towards privacy can be varied, privacy issues have been widely discussed and reported on the Internet, but it has also been widely suggested that privacy values, and privacy itself, are obsolete. It is considered that the discursive complexity around privacy within popular culture and the media, combined with the development of novel legal principles, renders the matter appropriate for a 'legal consciousness-based' study which considers those 'newer' developments in privacy law in relation to understandings of privacy in wider society. It is further considered that relatively rapid developments in surveillance technologies (including surveillance technologies embedded into the online environment, itself), create a dynamic discursive environment around the issue of privacy and present novel threats to privacy, requiring judicial consideration.

Like the study itself, the specific area of study, selection of methods and methodology, arose as an iterative process as a product of the literature reviews, reflexive processes, and discussions, which followed. Earlier study topics and methods which were considered included a review of privacy and the Internet, conducted through internet survey. However, it was considered that the semantic and discursive richness of the issue of privacy invited linguistic analysis, to disentangle some of these meanings and discursive themes. A corpus composed

of ‘twitter’ feeds was considered but then dismissed as potentially too partial and unrepresentative of cultural views as a whole. An examination of the issue of ‘reasonable expectations of privacy’ through linguistic analysis was then considered. From ‘reasonable expectations of privacy’, it was decided to widen the scope of study to privacy itself, on the consideration that any narrowing or structuring of discourses around this semantically rich subject, could bring a greater risk of confirmation bias. Accordingly, it was decided to come to the subject with (as far as possible) no preconceptions and to allow the themes within the field of privacy to arise through examination of the data (a process described at Chapter 6 of this Thesis

The application of corpus techniques to legal issues is unusual, but not unknown, in legal scholarship and it has been used in studies, particularly in the USA[853], where it has been adopted by some state Appellate Courts as a means of determining the ‘ordinary meaning’ of concepts. Corpus techniques have a wider currency in socio-legal studies in continental Europe, for example corpus methods have been applied in a range of socio-legal studies by the Polish academic Stanislaw Goźdź-Roszkowski.). It was noted that the call for social theories and survey methods to be applied to legal issues is an occasional, but recurrent, theme in legal scholarship[854]. Further, sociological theory can underpin the practice of discourse analysis, and some discourse analysis studies concern socio-

[853] See Friedemann Vogel, Hanjo Hamann and and Isabelle Gauer, ‘Computer-assisted legal linguistics: corpus analysis as a new tool for legal studies’ (2018) 43 Law and Social Inquiry 4, 1340.

[854] For example, David Mead’s quantitative study of MOPI claims: David Mead, ‘A socialised conceptualisation of individual privacy: a theoretical and empirical study of the notion of the ‘public’ in UK MoPI cases’ (2017) 9 Journal of Media Law 1, 100.
See also:

[854] Urska Sadl and Henrik Olsen, ‘Can quantitative methods complement doctrinal legal studies? Using citation network and corpus linguistic analysis to understand international courts’ (2017) 30 Leiden Journal of International Law 2.
Laura Nielson, ‘The Need for Multi-Method Approaches in Empirical Legal Research’ in Cane P and Kritzer H (eds) *The Oxford Handbook of Empirical Legal Research* (OUP 2010); Denis Galligan, ‘Legal theory and empirical research’ in Peter Cane and Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 4; Darren O’Donovan, ‘Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls’ in in Laura Cahillane and Jennifer Schweppe (eds) Legal Research Methods: Principles and Practicalities (Clarius Press 2016) 109.

legal topics[855] . The decision to apply a model derived from Pierre Bourdieu arose as a matter of discussion and consideration of some socio-legal studies which usefully applied Bourdieusian concepts[856]. Bourdieusian concepts are also applied in sociological studies on issues relating to privacy such as Zizi Papacharissi's and Emily Easton's neo-Bourdieusian account of digital cultures and online disclosures[857]. The influential legal philosopher, and privacy scholar, Helen Nissenbaum, has acknowledged the influence of Pierre Bourdieu on her model of contextual privacy and 'flows' of information.

The literature reviews that were undertaken during these studies covered 3 distinct areas, each of which required periodic updating. Literature pertaining to the following areas were reviewed:

1. Review of case law relating to privacy, review of articles, studies, and discussions of privacy case law in legal journals, legal theory and methods (including socio-legal methods), discussions of law and language, privacy and legal philosophy.

2. Review of corpus theory and methods, and related linguistic theory, review of corpus-based studies and legal/socio-legal studies which involve linguistic analysis of legal text (including corpus-based studies).

3. Review of theories from other branches of the social sciences (sociology, social-psychology, economics) in relation to the issues of privacy, legal culture and legal structures, review of research methods, and studies pertaining to the issue of privacy.

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[855] For example, the neo-Gramscian, discursive analysis of legal structures and issues of Danish nationalism by Anne Lise Kjær and Lene Palsbro, 'National identity and law in the context of European integration: the Case of Denmark' (2008) 19 Discourse and Society 5.

[856] For example, Cory Hallam and Gianluca Zanella,'Online self-disclosure: the privacy paradox explained as a temporally discounted balance between concerns and rewards' (no 24); also, Andrea Matwyshyn, 'Privacy the hacker way' (2013) 87 Southern California Law Review 1; See also the study of privacy issues and the internet Gabe Ignatow and Laura Robinson, 'Pierre Bourdieu: theorizing the digital' [2017] 20 Information, Communication and Society 950.

[857]Zizi Papacharissi and Emily Easton, 'In the Habitus of the New' (no 86).

Corpus techniques are increasingly being used to examine issues of law, legal language, and legal cultures. Stanislaw Goźdź-Roszkowki, has used corpus techniques to examine various socio-legal issues including comparison of legal cultures of different jurisdictions[858], interrogation of the word 'discovery' in a corpus composed of US Supreme Court decisions[859], and a cluster-based examination of the language of law[860]. Magdalena Szczyrbak[861] and Tatiana Tkačuková[862] have applied corpus techniques to legal texts to consider issues of language and social positioning in the management of court hearings. Maria Marin has applied corpus techniques to examine the use of 'legalese' in legal discourse[863] and Rebecca Moosavian has used corpus techniques to consider the use of metaphor in misuse of private information[864]. Ursk Sadl and Henrik Olsen combine a conventional doctrinal approach with corpus methods, to examine the linguistic impact of legal structures in the field of international relations[865]. In social research, corpus techniques have been in a variety of cultural studies including Geraldine Mauntner's[866] use of corpus techniques to interrogate the word 'elderly'. It is intended that this study sits within a developing movement of the application of corpus-based studies on 'legal consciousness', 'legal cultural', and 'law and language' themes. However, with the aim of examining the impact of laws and legal structures in relation to the matter of privacy. It is considered that

[858] Stanisław Goźdź-Roszkowski and Gianluca Pontrandolfo, 'Evaluative patterns in judicial discourse. A corpus-based phraseological perspective on American and Italian criminal judgements' (2013) 3(2) International Journal of Law, Language and Discourse 9
[859] Stanisław Goźdź-Roszkowki, 'Discovering patterns and meanings. Corpus perspectives on phraseology in legal discourse' (2012) 60 Roczniki Humanistyczne 8
[860] Goźdź-Roszkowski S, 'Recurrent word combinations in judicial argumentation: A corpus-based study' [2006] Language, Law, Society, 139
[861] For example, Magdalena Szczyrbak, 'Diminutivity and evaluation in courtroom interaction: patterns with little (part 1)' (2018) 135 Studia Linguistica Universitatis Iagellonicae Cracoviensis.
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[863] Maria Marin, 'Legalese as Seen through the Lens of Corpus Linguistics: An Introduction to Software Tools for Terminological Analysis' (2017) 6 International Journal of Language and Law 18
[864] Rebecca Moosavian, 'A just balance or just imbalance? The role of metaphor in misuse of private information' (2015) 7 Journal of Media Law 2.
[865] Urska Sadl and Henrik Olsen, 'Can quantitative methods complement doctrinal legal studies? Using citation network and corpus linguistic analysis to understand international courts' (2017) 30 Leiden Journal of International Law 2.
[866] Geraldine Mauntner, 'Mining large corpora for social information: The case of elderly' (2007) 36 Language in Society 51.

the matter of privacy is unusual in that it is ostensibly a 'personal' right which is in an oppositional relationship with another (ostensibly 'communitarian') right, Article 10 rights to freedom of expression, creating a dynamic around the 'stakeholders' to those rights. Legal developments around Article 8, therefore have a potentially powerful resonance outside of legal structures. It is considered, therefore, that there is practical benefit in examining privacy using a combined approach which combines review of the laws, with a corpus-based investigation of language and meaning, since this allows developments in privacy law to be considered in relation to their wider impact, and it facilitates critical evaluation of the effectiveness of legal structures in relation to this dynamic.

It is considered that this study has provided a 'proof of concept' in respect of the use of corpus methods to investigate privacy issues. The study has also indicated further avenues of study, which are considered next.

Suggestions for Future Studies

The ambit of this research has been ambitious and wide ranging. Privacy, itself, holds a large variety of meanings and associations. The rights conferred by Article 8 cover a diverse range of contexts: the home, the family, correspondences. There is a wide range of legal principles which surround these rights. Furthermore, there are various processes and strategies which could have been deployed by the judiciary in the course of processing privacy claims. Some of these processes may be particular to privacy claims and some may more generally reflect the juridical function in relation to any legal claim. It was inevitable that, whilst the research has captured some of these processes and developments the findings would be partial and incomplete, raising further questions and issues to explore.

Accordingly, it is considered that one of the primary applications of this research is that the data points to future, more focussed, areas of research. Some suggested studies are considered below.

<u>Privacy the Judiciary and the Media</u>

it is considered that further research could be undertaken on the relationship between the juridical field and the media field, in relation to privacy. There

appear to be wider social forces in operation in relation to privacy with the media and the juridical field both having an interest in the discursive construction of privacy. The approach taken in this study could be revealing of some of the features of this relationship between the juridical field and the media field in relation to privacy.

It is considered that a corpus could be made from media cuttings related to privacy, and cross analysed against a corpus constructed from juridical text. The press cuttings could be collected from a selection of printed and online journals reflecting a range of political opinion and demographics of readership, in order to examine any differences of the presentation of privacy within the media field. The press cuttings could also be arranged according to date so that historical development of significant discursive themes could be discerned. A large corpus would be prepared capturing media discourse on a range of privacy issues.

One of the stylistic features notable in the C1 corpus in this study was the prevalence of repeated idiomatic phrases. It is anticipated that analysis of larger phrasal units combined with collocate analysis according to a variety of nodal terms, from these 2 privacy corpora, arising from different linguistic environments, would reveal significant differences in the presentation of privacy. Further the media corpus could be revealing of cultural attitudes toward the court and legal structures in relation to privacy issues. This would allow the dynamic around the press, Article 8 and Article 10 to be further examined.

Whilst this study focused on MOPI claims, it is intended to interrogate other manifestations of privacy, for example, in relation to mass 'intrusions' by government bodies and corporations. A focussed study reflecting presentations of privacy in both the media and legal fields would use a variety of search terms to obtain data relating to a variety of forms of privacy.

As noted below, one of the limitations of the present study is that the comparator corpus could only be accessed through #Lancsbox. A comparative study of 2 bespoke corpora however could be conducted with a free choice of the most appropriate concordancing application from the wide range available.

Accordingly, software applications could be applied to these corpora which allow linguistic themes to be visually modelled in charts and diagrams.

An Examination of Juridical Processes

The research findings of this study also indicate that there is value in undertaking further research on juridical processes generally. Bourdieu suggests a process by which social contexts are abstracted and reconstituted as legal norms. Some of the data from this study hints at a pattern of processes by which this function of the court is executed. It was not possible within this study to consider any differences in the judicial presentation of privacy and other areas of law.

A larger corpus could be constructed, based on a selection of texts from a range of common law issues. These could be divided into separate files according to the area of law to which they pertain (including privacy law), and cross analysed. This could assist in establishing whether significant differences exist in the in the language used (and the court's approach) in different areas of law. This corpus should be sufficiently large to generate significant data on those different areas of law. The files within this corpus should be sufficiently large to allow cross analysis, but the whole could also be cross analysed against a base corpus to obtain data pertaining to common law proceedings, generally.

It is proposed that such a study should be conducted once the process of updating the BNC has been completed and the full BNC2014 corpus is available to provide comparative data on emergent linguistic themes.

Other Developments in Privacy Law

The discussion of the findings of this research has focussed on some of the developments in privacy law and their possible societal consequences. These include the development of legal principles such as 'public interest' and 'the right to criticise'. Each of these could become the object of more focussed research its own right. The corpus approach is flexible and can be applied to any key term or concept within privacy law, and law generally. There are other developments within privacy law, which have not been discussed in the context of this thesis,

but which could be the focus of future corpus-based studies. The notion of consent in privacy law is an example of an interesting development which could be explored through the application of corpus techniques.

It may assist to arrange the texts within the corpus according to date to establish the historical progression of these themes. In order to generate sufficient amounts of data on these themes, it would be advantageous to construct a larger corpus and to apply a range of search terms.

Study Limitations

It is proposed that this thesis has provided a proof of concept of the value of corpus methods, and the application of a Bourdieusian perspective in relation to the examination of privacy, and in socio-legal studies generally. However, it is necessary to explore the limitations of this study brought by the availability of resources, and through errors in the research process.

<u>The Scope of the Study</u>

When this study was initially devised it was conceived that it would be necessary to capture as much data as possible relating to privacy. Accordingly, it was conceived that this should be a 'corpus led' study, with broad study aims. These broad aims were coupled with a perspective which allowed the data to be contextualised. The data was then ordered according to broad categories which emerged from observed patterns within the data.

This approach generated a large amount of data which presented difficulties in processing. Whilst the data was selected according to statistically derived measures, the ordering of the data drew on the intuitions of the researcher. Furthermore, whilst it was technically available to check all of the contexts in which a particular word is used (through the application of the KWIC tool in #Lancsbox) time constraints prevented this. Many of the collocates appeared hundreds of times, and a few appeared in the context of several thousand collocated occurrences. Accordingly, it was not possible to carefully review each instance in which a collocate appears. It is considered therefore, that the sheer scope of this study presented difficulties and introduced a risk of confirmation bias, that may have been avoided in a narrower study, with more focussed aims.

The study has, however, indicated some potentially fruitful areas for such a focussed study.

'Privacy' or Misuse of Private Information?

It is noted that the collocates extracted from C1 overwhelmingly relate to the legal principle of misuse of private information. There is an absence of data relating to other manifestations of privacy law, such as informational privacy in the online environment, and the various claims taken against state institutions such as the Police and the NHS under the provisions of Article 8. The intention of this study was to capture data relating to all manifestations of privacy law including data protection and actions concerning interference by government institutions on a citizen's Article 8 rights. However, there was insufficient data relating to these other manifestations of privacy to identify patterns and regularities in respect of the juridical approach to these issues.

It is not considered that the absence of data on these other manifestations of privacy is reflective of biases in the study corpus. The texts which were used to construct this corpus were carefully reviewed to ensure that a broad range of contexts and manifestations of privacy were represented in it. Rather, it is considered that the 'nodal' term deployed to extract the collocate data from C1 ('priva*') tended to favour certain constructions of privacy over others. Due to time constraints, it was not possible to deploy other nodal terms (such as 'Article 8') which may have captured these other constructions of privacy.

The impact of this is that insufficient data was obtained on other manifestations of privacy. Accordingly, it is not possible to draw general hypotheses on the matter of privacy as a whole. However, it is not considered that this choice of nodal term impacts upon the validity of the data relating to MOPI, or the validity of conclusions drawn from that data. Further, notwithstanding any biases introduced by the choice of nodal terms, the absence of data on online privacy and governmental institutions could also reflect the relative importance accorded by the juridical field to MOPI in comparison to these other manifestations of privacy. It is noted that the same nodal term (priva*) applied to the BNC corpus attracted collocates relating to these other manifestations of privacy (the *NHS*,

government, *data*). Intriguingly, the term 'priva*' also attracts the collocate, *control* in BNC2014-baby.

Privacy Outside the Juridical Field

It was originally conceived that this study would generate a significant volume of data relating to conceptions of privacy outside the juridical field. It was anticipated that this data would allow conclusions to be drawn about the relationship between the juridical conceptions of privacy and conceptions of privacy outside the juridical field. However, the study data obtained from BNC2014-baby was less extensive than anticipated. An example of this is in the collocate data from the BNC corpus. In total there were only 116 collocates of 'priva*' in that corpus which were nouns, verbs or adjectives.

It was anticipated when the study was first devised, that the full version of the BNC2014 would be available to use from 2020. However, the corpus was not published in time to be used in this study and remains unpublished at the time of writing this thesis. Accordingly, it was only possible to access the shortened form of the BNC2014. Whilst this corpus is balanced, it is inferred that the larger version of the BNC would have generated more data on the matter of privacy. The data obtained in this study is of sufficient quantity to provide a benchmark against which some of the observations from C1 can be measured. However, the data generated from BNC2014-baby is insufficient to establish some broad patterns regarding conceptions of privacy outside the juridical field.

Issues With Visualisation of Data

The issues with the volume of data from C1, were compounded with issues locating a suitable application for visualisation of the data. There are some useful graphical features within #Lancsbox which allow connections between words to be visually represented. However, the large volume of data in the C1 meant that the graphs generated were overpopulated with data and impossible to read. Attempts to filter the data failed to bring it within acceptable limits. It is considered that other concordancing applications have features that allow larger volumes of linguistic data to be graphically represented. However, these other

applications could not be used for this study because the BNC2014-baby was only available for use through #Lancsbox.

Recommendations

This study has been conducted over a period of nearly 6 years. The research process has consisted of (in addition to a corpus linguistic analysis of 200 law reports), a comprehensive law report review, substantive review of textbooks, journals and various papers, as well as reflexive analysis of the researcher's own position in relation to the data and on the processes of knowledge formation. Based on this research process on the concept of privacy it is possible to make some tentative recommendations for future developments in the field of privacy law.

One of the practical issues with the management of privacy claims is that the expense of a court action takes access to justice out of the reach of persons of limited financial means. If large sectors of society have limited recourse to enforcement of their privacy rights, this is a matter of concern. Whilst the nature of the normative basis to privacy rights can be debated, it is axiomatic that privacy rights are vital to the functioning of a progressive society. Privacy rights have been considered sufficiently important by the various European powers for their inclusion in the European Convention of Human Rights at Article 8. It is crucial therefore that society should introduce structures which make access to enforcement of privacy rights available to the greatest number of citizens.

Moreover, in addition to financial barriers to access to privacy rights (that is, the expense of taking a privacy claim to Court), subtle processes could aggravate the problem. It is noted in this thesis that privacy is largely represented by the judicial system as a personal right, which arises from the particular social context in which that right is claimed. It is further noted that the common law process, through the doctrine of precedent, generates principles and rules in relation to legal issues, as judgements group around cases presenting similar facts. Looking at these matters together there is a risk that the principles and rules generated by privacy rulings based on the particular circumstances of individual claimants, reflect the needs and experiences of those claimants. If claimants are overwhelmingly drawn from a

narrow, more economically privileged sector of society then developments in privacy law may reflect their needs. These needs may not coincide with the needs of the majority of citizens. Accordingly, legal developments in privacy law, may progressively ideologically alienate privacy rights from the experience of those of modest economic means. According to Raymond Williams (1983) there are historic discursive associations of privacy with themes of wealth and exclusivity, dating back to'C17 and especially C18, [when] seclusion in the sense of a quiet life was valued as privacy'[867] and significant words associated with discourses on wealth are found in the data from both corpora. There is a risk of adding to a sense that 'privacy is for the wealthy', that is that privacy is a privilege, or commodity, rather than a civil right. It is proposed therefore that radical changes are made to the management of privacy claims which broaden access to justice in relation to privacy rights, and which ideologically 'democratise' privacy. These recommendations are discussed, in turn.

Structures for the Management of Privacy Claims

It is proposed that structures for disposal of privacy claims are reorganised. In many cases privacy rights are claimed by individuals in relation to powerful forces such as media organisations and governmental bodies. To address this imbalance, two recommendations are made, the second (appointment of a privacy commissioner) in the alternative to the first.

a. Establish a Tribunal System

The first of these 2 recommendations and the one favoured by the researcher is that a tribunal system be introduced, such as exists in respect of benefits claims or employment claims, to provide a 'first instance' ruling. The principles underpinning privacy rulings may require review and simplification so that privacy claims can be cheaply, and swiftly, disposed of. More complex claims which introduce novel points of law, or which concern allegations of criminal conduct such as blackmail, could continue to be managed by the Higher Court; being referred there by the panel through a triaging process.

[867] Raymond Williams, Keywords: A vocabulary of Culture and Society (Fontana Press 1983) 242.

b. Appoint a Privacy Commissioner

Another suggested structural development in the field of privacy law, which could help to democratise privacy rights, is the appointment of a privacy commissioner, with investigative powers similar to that of the Information Commissioner. It is considered that this would be most appropriate for disposal of claims against government bodies.

Suggested Reforms on the Approach to Privacy Law

Article 8 establishes privacy as a universal right, albeit one which is qualified by various derogations and by oppositional rights, such as Article 10 and the principle of open justice. It seems absurd therefore that it is necessary to establish a 'benchmark' of 'reasonable expectations of privacy'. before a privacy claim can be brought to court. It is noted that many privacy claims require individuals to establish their rights in relation to powerful institutions such as the media and governmental bodies (such as the Police, and the NHS). An approach to privacy based on an *ab initio* assumption of privacy rights, may help to address these power imbalances. Individuals would not be required to establish their rights to privacy at court, but rather the burden would be placed on the institutions threatening their rights to establish that the matter falls within one of the permitted derogations from those rights.

In order to facilitate this reform, it would be necessary to review the range of common law principles and rules which have been constructed around privacy rights, to reduce the number to a few, easily understood, universal rules. It is also considered that the representation of privacy as a moral issue may also require reviewing since this could interfere with the process of development of these universal rules in relation to privacy. The presentation of privacy in the language of morality could hamper developments in privacy law in relation to the online environment. As Mireille Hildebrandt points out[868] morals cannot be programmed into algorithms with the same ease as simple universal rules (such as the presence of a written consent). The association of privacy with the language of morality can

[868] Mireille Hildebrandt, 'Law as Information in the Era of Data-Driven Agency' (2016) 79 Modern Law Review 1, 1.

also accentuate disparities in the manner in which privacy norms are treated, and it can introduce an unhelpful emotive element to the disposal of privacy claims.

Suggested Changes to Privacy Law

Journalistic privileges enjoyed by the traditional media could be extended to the new media, in recognition of its importance as a source of information and to preserve the independence of its journalists. This would entail an overruling, or reversal, of the decision in *Nightjack*[869].

[869] *Author of a Blog v The Times Newspaper* [2009] EWHC 1358 (QB).

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i. Cases in Corpus C1

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SOJ v JAO [2019] EWHC 2569 (QB)
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X (Residence and Contact Rights of the Media to Attend) [2009] EWHC 1728

X v Persons Unknown [2006] EWHC 2783 (QB)

X, Y and Z (Children) (anonymity; identity of expert) Re [2011] EWHC 1157 (Fam)

XW v XH [2019] EWCA Civ 549

YZ v Google Inc. [2015] NIQB 103

ZXC v Bloomberg LP [2019] EWHC 970 (QB)

ii. All Data (Keywords)

Key Word BNC	Rel Freq. C1	Disp C1	Rel Freq BNC	Disp BNC	Stat	Key Word C1	Rel Freq. C13	Disp CV C1	Rel Freq. BNC	Disp CV BNC	Stat (LL)
air_n	0.081748	4.019192	1.693845	0.759113	550.4134	conclude_v	3.639735	0.960182	0.322448	1.168537	1241.894
amazing_adj	0.035035	8.309312	1.773462	1.324424	654.6312	solicitor_n	3.390599	1.464546	0.117435	1.415488	1497.052
back_n	0.210209	2.979336	1.938666	0.629165	498.205	claimant's_n	1.887991	3.995127	0	0	1051.241
bad_adj	0.502167	2.059749	3.883304	0.57652	923.8998	witness_n	5.932574	1.459567	0.302543	0.955619	2409.361
bag_n	0.093426	5.043498	2.032216	2.141206	666.7392	newspaper_n	4.480573	1.505327	0.415997	0.705509	1500.453
ball_n	0.023357	6.878567	1.148471	0.854869	422.7259	importance_n	3.308855	0.994996	0.589164	1.349672	777.5349
be|n't_v|adv	0.112889	4.698488	10.81792	1.007801	4190.242	claimant_n	23.30209	1.457777	0.117435	3.298888	12359.73
beautiful_adj	0.003893	14	1.4331	1.104647	581.6966	satisfy_v	3.721484	1.012473	0.228662	1.055617	1337.23
big_adj	0.2218	2.7943	6.1842	0.5521	2118.9	be_v	453.61	0.1156	340.96	0.1157	5533.0

	88	82	27	85	41		23	79	25	94	75
bit_n	0.1829 6	3.0933 05	8.2681 94	0.9012 18	3017.0 88	judgment_n	13.414 47	0.8366 74	0.1253 96	0.9701 18	6889.8 89
black_ adj	0.1206 76	4.2868 61	1.8331 74	0.4979 82	554 .59 56	present _adj	5.6717 59	0.8687 83	1.1086 62	1.1491 41	1242.8 89
book_ n	1.2301 14	6.7222 98	6.3155 94	1.8086 41	1185.3 88	disclose _v	5.9092 18	1.3555 47	0.0537 41	1.4021 37	3040.5 16
british _adj	0.1751 74	3.0050 88	1.6938 45	0.7330 46	443 .50 97	prevent _v	3.5502 02	1.0691 89	0.5612 98	0.8555 98	904 .31 61
build_ v	0.2802 79	2.4134 76	2.6532 26	0.5100 66	688 .97 25	defendant|'s_n|other	2.8144 69	2.3189 6	0	0	1567.1 08
buy_v	0.4593 46	4.2523 2	4.3749 37	1.4191 45	1138.7 83	refer_v	8.2954 83	0.7380 3	0.7006 27	0.8703 77	2882.8 08
ca|n't _v|adv	0.1051 05	4.8561 99	6.8291 22	0.7169 16	257 6.5 48	publication_n	13.990 6	1.0457 63	0.4279 4	1.5389 47	6313.9 44
can_v	16.762 25	0.4571 21	26.036 65	0.3708 49	673 .02 44	expectation_n	4.8854 2	1.6132 52	0.5493 55	0.9094 86	1503.5 05
car_n	0.5372 02	4.0211 63	3.5210 48	0.6383 16	769 .68 32	provision_n	4.5272 86	1.3158 81	0.2209 36	1.3545 83	1858.6 92
cell_n	0.0583 91	6.7636 34	2.5238 49	2.8843 17	916 .53 33	concern _v	6.9446 93	0.6510 41	0.6190 2	1.0831 14	2363.8 69
cent_ n	0.0934 26	10.817 69	1.6420 94	1.6436 39	514 .95 07	interim_ adj	2.3629 08	1.7605 2	0.0597 13	1.3377 12	1098.5 57

change_n	1.04333	2.057356	3.497163	1.188269	468.3698	include_v	11.12552	0.623046	4.607816	0.673323	992.6256
christmas_n	0.108997	4.502962	1.727682	0.561782	528.4226	further_adj	5.959824	0.67996	1.33358	0.844147	1166.585
city_n	0.443775	3.373025	4.569998	0.763914	1225.301	hearing_n	7.026441	1.323785	0.222927	0.839782	3151.368
club_n	0.342563	5.060677	2.563658	0.963467	600.3943	reference_n	4.854278	1.296845	0.630962	1.191658	1387.876
come_v	6.033786	0.706579	17.58932	0.477019	1905.229	claim_n	12.48441	1.317567	0.861851	1.711811	4652.8
cos_n	0.023357	14	7.143608	2.935227	2888.626	Evidence_n	18.14029	0.824096	1.279838	0.826978	6713.686
could|n't_v|adv	0.035035	7.779703	2.714929	0.900092	1037.675	allegation_n	5.823577	1.886431	0.159233	1.855082	2675.9
cup_n	0.019464	6.855578	1.801328	1.018297	696.315	offence_n	4.320969	1.980645	0.228662	1.104911	1630.766
dad_n	0.062284	6.242891	1.934686	0.654892	673.8307	question_n	10.39368	0.623252	3.049319	0.677097	1539.48
dark_adj	0.050606	5.660672	1.257944	0.837238	422.9344	sexual_adj	2.868968	1.994812	0.406045	0.824947	782.0085
day_n	4.309291	1.209512	12.90189	0.475297	1447.183	purpose_n	9.919098	0.856711	0.798157	0.781652	3505.25

design_n	0.22569 23	5.596762	1.966532	1.272279	465.59	accordance_n	2.257804	1.222808	0.087578	2.310969	975.3019
do_v	40.74557	0.351179	56.60548	0.636113	867.1489	justice_n	6.166614	1.772918	0.4777	0.961569	221 1.112
do|n't_v|adv	0.595593	4.292734	33.24395	0.898995	12383.34	court_n	37.59243	0.680789	1.265905	1.234143	16683.78
dog_n	0.081748	7.098137	1.397273	1.181398	435.3221	complaint_n	2.904003	1.707851	0.346333	0.853808	868.3508
door_n	0.607271	4.670821	3.093109	1.525869	577.3019	counsel_n	2.592582	1.331514	0.027866	0.915318	1318.688
easy_adj	0.653985	1.871867	2.788575	1.391639	453.2723	identification_n	2.503048	1.832208	0.183118	2.231219	915.3573
eat_v	0.050606	4.916965	2.308884	0.676113	843.37	such_adj	16.517	0.437013	5.338299	0.870945	2166.774
everything_n	0.397062	2.356412	3.122965	0.525697	748.9415	police_n	8.72758	2.255266	1.872983	1.355699	1771.858
eye_n	0.544987	2.319662	3.795726	1.174807	857.2545	should_v	20.59662	0.533238	7.651164	0.379818	2209.632
face_n	0.833052	2.328963	3.174716	1.083838	466.0358	reporting_n	2.292839	2.042222	0.09355	1.175328	980.1693
feel_v	1.759533	1.394953	8.188577	0.518321	1429.305	relevant_adj	8.922218	0.746029	0.557317	1.142998	3428.963
few_a	1.0	1.3	5.3	0.3	975	submit_	6.2	0.9	0.3	1.3	256

dj	7051	9995	18395	7507	.0443	v	47888	81329	02543	70844	9.905
fine_adj	0.077855	4.235214	1.630152	0.887724	530.8295	involve_v	7.049798	0.75355	1.807299	0.687193	1211.654
finish_v	0.097319	4.55115	1.679912	0.745869	524.5979	statutory_adj	2.292839	1.781595	0.035828	1.420601	1129.414
food_n	0.136247	4.706685	2.939846	0.673532	963.007	section_n	8.700333	1.500328	1.158423	0.777939	2455.009
foot_n	0.151818	4.557539	1.819241	1.055999	513.7833	justification_n	2.312303	1.328708	0.053741	1.854037	1087.675
front_n	0.175174	2.859114	1.731663	0.607493	457.2662	risk_n	5.885861	1.653943	1.584372	0.99601	960.9929
fuck_v	0.042822	8.489124	1.2420 2	1.715272	428.2052	investigation_n	3.398384	2.332446	0.557317	1.167106	845.2004
fun_n	0.042822	5.100999	1.496794	0.927939	529.8548	distress_n	2.596474	2.171325	0.071655	1.233513	1191.365
funny_adj	0.003893	14	1.731663	1.396501	705.2117	justify_v	4.141902	0.862233	0.222927	0.871291	1659.049
game_n	0.190745	3.207965	5.183047	0.714216	1768.729	lord_n	11.30848	0.926485	0.656838	0.891727	4437.467
get_v	2.526405	1.725654	40.0253	0.707861	12240.47	information_n	39.06001	0.891152	2.428309	0.918707	15032.37
girl_n	0.4282	3.0157	4.0863	0.8565	1064.4	authority_n	8.6146	1.4015	0.8339	0.9903	2835.3

	04	12	27	06	76		89	16	85	47	9
glass_n	0.015571	8.441767	1.220126	0.921672	466.6985	respect_v	2.853397	1.131005	0.246812	0.582904	982.6542
go_v	6.781197	0.889657	35.27219	0.638703	6680.785	case_n	42.71531	0.397325	4.255512	0.705088	13888.39
goal_n	0.038928	7.950892	1.892887	1.251908	695.9567	plaintiff_n	2.853397	5.059011	0.001919	3.464102	1574.414
god_n	0.027249	5.506982	2.700996	0.788317	1048.219	submission_n	5.644451	0.987493	0.009554	1.434879	2757.781
gonna_v	0	0	4.239589	2.051832	1759.287	paragraph_n	8.599118	1.187295	0.105492	1.038375	4329.157
good_adj	5.002203	1.221291	22.78431	0.765481	3910.322	public_adj	24.31421	0.772072	1.787395	0.726241	8877.239
great_adj	2.491337	1.037388	7.953708	1.254882	965.8713	trial_n	7.174366	1.228933	0.585183	1.005473	2525.643
grow_v	0.315314	2.161224	2.267085	0.476122	520.4634	defendants_n	2.035916	3.613367	0.001919	3.464102	1119.911
guy_n	0.035035	6.392408	2.633322	1.083982	1004.359	document_n	6.578773	2.343026	0.383071	0.889612	2666.072
hair_n	0.093426	4.667855	1.522669	0.955113	468.9643	contain_v	4.784208	1.006762	0.909509	0.995127	997.1348
half_n	0.2141	3.1876	1.7575	0.5531	429.81	consent_n	2.1721	1.4892	0.1273	1.5843	850.07

	02	56	39	63	64		63	61	87	62	43
happy_adj	0.2 56923	2.9 88167	2.9 5776	0.8 84952	824 .46 47	particular_adj	8.2 76019	0.5 67183	1.3 79359	1.0 15626	203 6.1 42
have|n't_v|adv	0.0 4282	7.6 56122	4.6 49615	0.8 46298	181 3.3 42	law_n	14. 07235	0.8 57532	1.3 91302	0.7 52055	459 0.4 89
head_n	1.0 82189	4.1 55155	4.1 958	0.9 16787	626 .14 74	report_n	6.4 34741	2.1 33741	1.2 10174	0.8 35546	145 2.5 02
help_v	1.1 4058	1.3 41516	5.1 63143	0.3 6018	881 .75 6	apply_v	8.6 03011	0.6 56405	1.3 23628	0.8 95222	222 9.5 78
high_adj	1.9 26919	2.1 8717	4.9 97938	0.6 70716	457 .51 75	clear_adj	6.1 54462	0.6 51632	1.7 21711	0.4 94484	963 .09 44
hit_v	0.0 73963	5.7 53819	1.3 99263	0.7 43705	446 .10 65	shall_v	4.3 17077	1.0 0883	0.8 91707	1.0 90314	905 .05 39
hope_v	0.4 3599	2.2 60032	2.8 66201	0.6 56072	627 .57 06	anonymity_n	3.2 11531	2.2 73201	0.0 9554	1.1 85886	145 6.0 58
hour_n	0.7 78553	2.4 61235	3.8 45486	0.5 91879	702 .02 63	personal_adj	6.8 2791	1.1 87339	1.1 68375	0.4 34719	164 9.9 53
idea_n	1.0 39368	1.3 16038	3.4 27499	0.3 89246	432 .23 71	nature_n	5.0 21667	0.7 45436	1.3 05714	1.0 29	850 .55 64
job_n	0.6 92912	2.6 90926	3.4 21527	0.4 58813	624 .50 29	would_v	37. 53794	0.3 85714	22. 02795	0.5 57739	142 9.9 63
kid_n	0.0 467	6.1 236	1.8 709	0.5 925	673 .59	provide_v	10. 856	0.7 230	3.3 080	1.0 927	153 6.0

	13	38	92	14	35		92	37	74	38	09
know_v	9.5684 17	0.7775 96	30.254 34	0.8678 97	363 1.934	defendant_n	15.613 88	1.6316 49	0.0537 41	1.8417 42	839 1.939
last_adj	1.3235 4	1.4202 51	8.9210 5	0.5631 95	198 0.087	application_n	13.651 93	0.9076 84	0.9832 66	1.2643 57	501 8.478
laugh_v	0.0233 57	8.7458 93	1.3256 18	0.9542 35	494 .5231	restrain_v	2.2033 05	1.4660 38	0.0517 51	1.0078 8	103 4.921
league_n	0.0506 06	6.4522 02	2.1456 7	1.4049 05	777 .5366	conclusion_n	5.7612 93	0.8215 94	0.5812 02	1.3570 98	186 3.075
leg_n	0.0272 49	5.6997 45	1.2460 01	0.7628 53	455 .2353	position_n	5.4849 06	0.8043 67	1.4191 68	0.4894 4	933 .771
let_v	0.6539 85	1.8622 97	3.6962 05	1.1094 58	739 .8568	duty_n	4.9866 32	1.9154 95	0.4239 59	0.6092 45	172 8.615
like_adj	0.1012 12	4.1373 34	2.8124 6	2.2270 31	963 .1957	accept_v	8.2526 62	0.6931 71	0.9792 85	0.4759 64	247 3.914
like_v	0.6695 56	1.6300 45	10.234 73	0.9580 33	310 1.377	proceeding_n	14.185 24	1.1436 42	0.1035 02	1.1575 03	739 4.649
little_adj	1.1678 3	1.4170 97	5.8597 89	0.5789 42	108 2.04	decision_n	11.596 55	1.1574 48	1.9247 34	0.9868 74	286 1.116
live_v	1.7906 72	1.5566 67	5.0039 09	0.4994 96	511 .5175	relationship_n	6.2751 38	1.8448 73	1.6381 13	0.7804 59	105 8.486
load_n	0.0233	9.2680	1.1544	1.0217	425 .14	conviction_n	2.1682	3.9935	0.1532	1.1336	801 .98

	57	63	42	57	19		7	05	62	3	6
lol_n	0.0038993	14	1.783414	2.727306	726.6266	confidence_n	5.726258	1.451699	0.676742	0.668642	1720.05
long_adj	1.25347	1.436366	4.91235	0.231348	740.5243	press_n	5.73015	1.635058	0.648876	0.596939	1757.565
look_n	0.097319	3.881282	2.410395	0.75574	809.8917	grant_v	4.768637	1.134082	0.244821	0.619959	1933.399
look_v	1.810136	1.565602	14.7888	0.505924	3608.976	right_n	28.1953	0.706946	4.030595	0.659731	7640.509
lose_v	0.992655	1.752706	3.316035	0.416823	424.3503	tribunal_n	1.860742	3.746488	0.081607	2.408521	783.1167
lot_n	0.564451	1.820941	6.060821	0.640578	1649.616	matter_n	13.04855	0.636619	1.365426	0.516914	4151.812
love_n	0.202424	3.556086	2.772651	1.007846	815.4004	protect_v	6.539846	0.782007	0.724512	0.593386	2026.943
love_v	0.217995	4.559077	4.81681	1.050875	1585.097	fact_n	16.11216	0.587498	2.774642	0.523538	3876.386
lovely_adj	0.015571	10.54919	1.464947	0.977617	566.8319	legal_adj	4.47668	1.283115	0.581202	1.089242	1280.726
machine_n	0.062284	4.712929	1.307704	0.925953	426.0633	balance_n	3.055821	1.272365	0.459786	0.671746	802.9962
man_n	1.9697	1.8621	7.8482	0.7469	1201.3	seek_v	9.3582	0.7648	0.8936	0.6994	3097.7

	39	64	16	37	84		08	11	97	07	38
many_adj	3.176496	0.864415	6.872911	0.322061	455.1963	detail_n	5.422622	1.206296	1.411206	0.538904	917.6309
mean_v	3.748733	0.778864	8.384582	0.751067	585.2186	engage_v	4.955497	0.967477	0.698636	0.891213	135 3.789
minute_n	0.595593	3.013634	3.477259	0.677081	710.3722	appellant_n	3.090856	3.333336	0.005971	2.764545	168 3.997
miss_v	0.291957	3.033743	2.215334	0.628652	522.3098	notice_n	3.277708	2.258044	0.28463	0.903962	112 7.075
model_n	0.284172	3.483969	2.521859	1.670441	637.9112	obtain_v	4.601248	1.107274	0.481681	1.970698	146 3.765
moment_n	0.459346	2.209689	3.190639	0.413431	719.5818	state_v	4.971061	1.091493	0.435901	0.797144	170 2.933
money_n	1.560999	1.915117	4.281388	0.626127	426.1604	identity_n	3.846052	1.454902	0.782234	2.052012	816.5654
month_n	1.401395	1.336066	4.448242	0.534255	545.551	report_v	6.263459	1.438117	1.383334	1.179033	124 0.286
more_adj	4.472787	0.805442	11.00104	0.261703	924.0917	may_v	17.24495	0.493133	5.264654	0.480478	243 3.932
morning_n	0.474917	2.673302	2.681092	0.859787	536.2745	obligation_n	3.009108	1.492931	0.153262	1.571833	122 2.457
move_v	0.871979	1.713039	4.060451	0.315385	709.0719	view_n	8.458979	0.756998	1.861044	0.423767	168 0.734

mum_n	0.019464	7.189695	1.855069	0.656653	718.3231	relation_n	6.465883	0.82981	0.985257	2.009609	1685.846
music_n	0.167389	5.436442	1.671951	1.147995	443.2327	effect_n	6.434741	0.709111	1.978475	1.088968	900.1724
name_n	5.060595	1.269008	16.7832	1.952388	2130.226	privacy_n	11.42916	0.962429	0.121415	0.838096	5818.306
need_v	4.161366	0.794161	9.987914	0.470003	804.6162	confidentiality_n	3.655307	1.686585	0.019904	1.579276	1932.598
new_adj	1.884098	1.322355	10.18497	0.666152	1980.316	disclosure_n	9.759162	1.444012	0.059713	1.161339	5132.822
next_adj	1.167833	1.497634	5.366165	0.703424	927.3752	conduct_n	5.196842	1.500539	0.121415	1.335497	2442.79
nice_adj	0.007007	4.061396	4.48242	0.965945	1689.074	circumstance_n	9.782519	0.589928	0.401026	0.888253	4158.09
night_n	0.346456	2.758703	5.214893	0.729747	1573.876	judge_n	9.463217	1.5395	0.4777	1.396181	3837.257
non_adj	0.085641	3.984882	1.646075	1.037459	526.5932	legitimate_adj	2.666544	1.22367	0.107483	0.921028	1142.827
okay_adj	0.035035	7.288232	2.394472	1.950747	906.9489	damage_n	7.610356	2.208911	0.853889	1.539856	2344.571
old_adj	1.008226	1.966109	6.429048	0.378564	1383.863	claimant|'s_n|other	6.045464	2.101587	0.039381	3.464102	3337.169

open_v	0.517738	2.467468	2.830373	0.496189	554.4403	misuse_n	2.386265	2.833146	0.017914	1.656052	1242.003
park_n	0.120676	4.139652	1.528641	0.712612	439.285	regard_v	4.025119	0.90894	0.788205	1.256907	880.8137
people_n	4.612927	1.117708	13.6881	0.439037	1517.715	protection_n	8.377231	0.807702	0.374198	0.882705	3511.211
perfect_adj	0.035035	5.570196	1.2422	1.153089	440.4747	balancing_n	1.782886	1.45072	0.021895	1.119231	897.5043
pick_v	0.276386	2.723757	2.139699	0.415608	509.336	harm_n	2.783327	1.638891	0.181128	1.017503	1056.632
place_n	4.332648	0.902162	10.02175	0.766334	755.6277	require_v	8.346089	0.720094	1.691855	1.048202	1776.756
plate_n	0.011678	10.67541	1.176337	1.928088	456.9277	litigation_n	1.8296	2.081744	0.013933	1.228272	951.511
play_v	0.942049	2.302941	6.122524	0.551267	1332.075	consider_v	13.48454	0.669896	2.33476	0.716566	3232
player_n	0.198531	6.715771	2.693035	1.059789	789.7812	basis_n	5.846933	0.691086	0.587173	0.890188	1894.502
please_v	0.182956	3.889495	1.902839	0.878078	512.0278	material_n	7.112082	1.123921	2.060082	1.47344	1069.382
project_n	0.284172	4.173508	2.085957	0.717385	483.8898	establish_v	4.309291	1.034661	0.750387	1.440144	1028.751
protei	0	0	1.3	2.8	541	extent_	4.1	0.8	0.4	1.4	123

n_n			03723	5886	.002	n	26331	78589	91633	40044	4.447
pull_v	0.081748	5.802449	1.76351	1.0202086	577.6484	newspapers_n	2.600367	1.278853	0.027866	2.754018	1322.94
remember_v	0.615057	2.952421	3.919132	0.74219	843.2534	freedom_n	6.232317	0.983782	0.529451	1.137365	2161.071
research_n	0.330885	2.685677	2.760709	1.354664	680.0515	consideration_n	4.176937	0.883479	0.28662	1.132299	1559.739
road_n	0.167389	3.172264	2.732843	0.986007	842.0427	party_n	10.78685	1.140075	2.362625	0.670609	2151.648
room_n	0.689019	4.300319	3.606636	0.69083	686.1112	arise_v	3.990084	0.813631	0.232879	1.391724	1563.613
round_n	0.221888	3.254416	2.163584	0.545361	568.3376	general_adj	5.461555	0.907908	0.967343	0.68438	1288.244
run_v	0.825266	1.456022	4.321196	0.363406	822.2275	claimants_n	3.655307	3.918887	0	0	2035.289
say_v	24.50106	0.72631	42.66659	0.67989	1643.413	act_n	12.25832	0.830502	1.216145	0.755749	3992.82
sea_n	0.038928	6.065945	1.220126	0.699922	425.5084	journalist_n	2.993536	2.144415	0.435901	1.390175	802.3913
season_n	0.058391	6.717779	2.436271	1.10708	881.2451	reason_n	10.56886	0.598946	2.187469	0.379275	2212.001
see_v	10.856	0.6135	21.590	0.3604	1187.7	necessary_adj	8.5524	0.6660	0.6667	1.0938	3059.9

	92	94	06	32	44		05	07	9	02	61
shop_n	0.147925	5.8138 2	1.598305	1.184335	435.9789	lords_n	1.969739	1.605768	0.065684	1.676278	875.7263
show_n	0.342563	4.548132	2.557686	1.148449	598.3133	likely_adj	6.399706	0.810119	1.2878	0.705648	1370.502
side_n	1.265149	1.404664	4.175896	0.543852	527.1716	tort_n	2.059273	2.848244	0	0	1146.611
sit_v	0.747411	1.772337	3.608627	0.797567	647.7954	harassment_n	2.950716	2.768312	0.033837	1.458813	1493.519
size_n	0.089534	4.074773	1.590343	1.430308	499.9334	retention_n	2.113772	4.944066	0.029856	1.389413	1051.264
small_adj	0.755196	1.635988	3.881563	0.654632	708.0772	entitle_v	4.067944	0.755708	0.197051	1.260804	1673.101
something_n	1.642747	1.120173	8.353782	0.621782	1557.38	injunction_n	6.929122	1.495538	0.075636	2.262402	3520.389
sorry_adj	0.077855	5.113951	1.582382	1.130059	512.1812	respondent_n	2.822255	2.167094	0.181128	2.003022	1075.925
sort_n	0.817481	1.948677	3.047329	1.29487	437.786	relief_n	3.005215	1.696211	0.374198	0.635112	879.0182
sound_v	0.105105	3.791663	1.789385	1.172102	556.9603	exercise_n	4.932134	0.923937	0.782234	1.706693	1253.793
space_n	0.2686	2.8446	2.3566	0.6585	593.27	regard_n	3.6669	0.8784	0.2567	1.2594	1360.4

	01	33	54	85	37		85		64	59	76
star_n	0.1 868 53	4.7 893 14	1.7 854 04	1.0 996 1	465 .32 54	secretar y_n	3.3 711 35	3.0 110 24	0.4 359 01	1.2 234 06	966 .55 01
start_ v	1.6 661 04	1.2 948 41	5.8 995 97	0.2 666 34	804 .29 39	jurisdicti on_n	3.6 514 14	1.8 263 06	0.0 238 85	1.6 404 71	191 4.2 68
stay_v	0.5 527 73	2.5 979 11	2.5 318 11	0.5 933 37	436 .43 42	context_ n	5.3 253 03	0.9 156 16	1.4 231 48	1.8 187 02	876 .25 83
stop_v	0.7 707 68	2.1 105 17	3.2 364 19	0.4 906 32	519 .16 09	appropri ate_adj	3.9 550 49	0.8 425	0.5 334 32	1.1 233 67	110 8.0 6
street _n	0.9 342 64	3.1 171 2	3.4 712 88	0.9 341 26	497 .07 7	action_n	6.1 077 49	1.3 028 94	1.5 684 49	0.7 258 11	104 7.9 21
stude nt_n	0.3 425 63	10. 427 94	2.1 337 27	1.1 581	453 .14 15	intrusio n_n	1.8 179 21	1.8 961 37	0.0 238 85	1.4 502 9	909 .95 77
study_ n	0.1 985 31	5.5 054 53	3.5 011 44	1.8 848 45	109 8.7 87	reasona ble_adj	6.8 940 87	1.1 832 01	0.3 204 57	1.1 596 14	286 3.3
stuff_ n	0.0 467 13	5.6 368 35	2.8 502 78	1.0 684 71	106 9.9 12	stateme nt_n	7.9 996 33	1.0 897 78	0.6 289 72	0.6 616 83	285 3.6 65
sure_a dj	0.4 243 11	2.5 911 42	3.4 175 47	0.9 035 25	828 .62 38	interfere nce_n	4.2 937 2	1.3 907 06	0.0 716 55	1.6 263 45	210 0.9 28
table_ n	0.1 245 68	5.0 025 4	2.5 616 67	0.9 360 86	831 .13 95	criminal _adj	5.1 618 07	1.7 901 24	0.2 607 45	0.6 996 13	210 1.3 21
talk_v	0.5 955 93	2.4 543 59	3.6 484 35	0.5 214 35	767 .29 51	relate_v	6.8 629 45	0.8 115 88	0.9 971 99	1.0 606 38	184 1.9 11

team_n	1.300184	2.481371	3.939036	0.964593	448.563	contend_v	1.989203	1.410081	0.057722	1.232065	905.527
tell_v	4.741388	1.283748	9.255441	0.523226	486.9741	give_v	20.65891	0.446475	11.08065	0.242084	1032.711
thank_n	0.089534	5.037626	2.454185	1.808122	838.6719	identify_v	8.019096	0.892509	1.176337	1.358863	2139.978
thank_v	0.101212	6.556257	3.031406	1.613993	1050.187	respect_n	8.100844	0.781007	0.692665	0.762867	2802.09
thing_n	2.000881	1.225052	13.47513	0.576718	2989.531	private_adj	17.68873	0.842664	1.134538	0.711448	6744.705
think_v	5.543298	0.888517	27.68472	0.798926	5094.921	article_n	29.51495	0.783783	0.957391	1.531497	13186.56
time_n	10.10562	0.676517	21.69356	0.171048	1413.622	person_n	13.66361	0.806912	2.273057	0.478696	3365.875
today_n	0.5917	2.001909	3.558866	1.079603	740.3489	argument_n	5.699008	0.989972	0.654847	0.811007	1735.716
tomorrow_n	0.081748	9.099874	1.805309	1.374446	594.0214	behalf_n	3.316636	1.080504	0.161224	0.704013	1362.943
top_adj	0.108997	3.923682	1.964542	0.784131	619.6242	must_v	12.5161	0.544659	4.329158	0.375376	1392.651
train_n	0.035035	6.819498	1.240043	0.928529	439.6773	allege_v	1.989203	1.677683	0.067674	1.693149	8811.844
try_v	1.8	1.3	7.4	0.4	116	issue_n	12.	0.6	2.3	0.5	289

	21814	58355	48142	26466	7.032		61256	67185	20827	43457	3.742
turn_v	1.603819	1.154287	4.934245	0.631222	572.8527	account_n	6.092178	0.791212	1.230078	0.735216	1301.09
university_n	0.136247	3.433063	1.671951	1.026649	475.7642	remedy_n	2.078737	1.900884	0.031847	1.2776	1025.94
use_v	6.586559	1.058792	13.21438	0.715412	742.2041	restriction_n	4.289827	1.706223	0.208994	1.08944	1761.923
wait_v	0.210209	2.689045	2.888096	0.67348	850.0927	public_n	6.664414	0.959464	0.640914	0.615185	2199.605
walk_v	0.245244	2.799162	2.927904	0.738166	825.9029	applicant_n	4.114653	1.843002	0.057722	1.21933	2047.657
wanna_v	0	0	1.361445	2.1091	564.9538	unlawful_adj	2.401836	2.927049	0.013933	1.604508	1266.349
want_v	2.46412	1.648705	14.1459	0.439542	2859.676	order_n	20.68226	1.133088	2.249172	0.690811	6466.048
war_n	0.050606	6.075379	1.819241	0.680719	646.3426	rights_n	3.316636	0.908973	0.105492	1.529951	1486.867
watch_v	0.264708	5.016089	4.177886	0.850397	1276.453	convention_n	6.699449	1.022157	0.147291	0.824525	3174.567
water_n	0.073963	5.125322	3.278217	0.726601	1193.747	breach_n	6.259566	1.237287	0.103502	1.477848	3065.762
week_n	1.1211	1.6039	6.7096	0.7653	1391.6	appeal_n	8.4628	1.2280	0.4737	1.3689	3354.6

	16	56	97	29	45		72	3	19	75	47
weekend_n	0.1089997	5.229344	1.757539	1.176027	539.8678	publicity_n	2.631509	1.648876	0.063693	1.297861	1230.945
white_adj	0.042822	7.022401	1.624181	0.532201	580.9313	individual_n	5.25134	1.355695	0.837966	1.139515	1329.677
win_v	0.1985317	3.639718	3.851458	1.037192	1234.559	publish_v	10.32751	1.057908	1.174346	1.074993	3161.349
wo|n't_v|adv	0.097319	6.970394	2.348692	0.700076	785.5697	child_n	15.09614	1.479352	5.083526	0.513434	1872.937
wonder_v	0.1245768	3.829889	1.576411	1.125216	452.8763	defamation_n	1.650532	2.649442	0.001989	3.464102	905.7479
work_n	2.378488	1.696371	6.439	0.549822	628.8705	medium_n	6.232317	1.520336	1.116624	0.751008	1457.988
work_v	2.094308	1.462215	8.437379	0.644987	1304.679	principle_n	8.622475	0.986782	0.611058	1.202141	3186.523
world_n	1.343004	2.030632	6.622118	0.612727	1207.413	confidential_adj	6.065325	1.646618	0.053741	1.384714	3119.426
would|n't_v|adv	0.050606	5.502028	2.643274	0.888826	978.6326	photograph_n	7.493573	2.364125	0.636934	0.945014	2597.896
year_n	4.733603	1.098902	16.23583	0.453016	2139.281	interest_n	18.53735	0.853931	1.652046	0.731883	6310.272
yes_n	0.404848	8.586797	2.846297	1.301728	645.9751	rely_v	4.426074	0.953759	0.408036	0.959042	1486.469

yester	0.1	4.6	1.6	0.8	459	rule_n	5.0	1.6	1.1	0.7	965
day_n	323	046	182	981	.93		099	758	405	679	.59
	54	36	09		79		89	73	09	66	35

iii. All Data (Collocates of Priva*)

BNC21014-Baby

Rank	Position L/R	Collocate BNC (MI)	Stat	Frequency (Collocate)
25	R	bank_n	7.033271	15
150	L	be_v	3.328906	257
97	L	become_v	4.295835	7
64	R	business_n	5.060807	6
105	M	call_v	4.128263	8
78	R	car_n	4.7281	7
38	R	care_n	6.071804	7
100	M	case_n	4.23238	6
22	L	citizen_n	7.277618	6
21	R	company_n	7.367071	28
39	R	concern_n	6.058412	6
48	L	control_n	5.486427	5
114	L	could_v	3.907613	17
53	L	create_v	5.373435	7
85	L	datum_n	4.565825	5
9	R	detective_n	8.936873	9
119	M	different_adj	3.852519	6
27	R	education_n	7.006891	13
7	R	enterprise_n	9.228335	6
1	R	equity_n	11.51964	32
108	R	family_n	4.017471	7
156	R	find_v	3.238659	0
17	R	firm_n	8.070423	12
107	L	friend_n	4.053396	5
24	R	fund_n	7.124501	7
168	L	give_v	3.074134	0
51	L	government_n	5.433339	8
84	R	group_n	4.603929	7
134	L	have_v	3.584658	102
46	R	health_n	5.668195	7
72	R	high_adj	4.874849	11
2	R	hire_n	9.986988	5
71	R	home_n	4.882426	13
66	R	house_n	4.98526	11
87	L	include_v	4.532667	8
32	R	individual_n	6.576749	6

33	R	institution_n	6.552959	6
14	R	insurance_n	8.272059	9
44	R	interest_n	6.012496	8
8	R	investigator_n	8.965301	5
15	R	investor_n	8.165143	6
74	L	issue_n	4.84404	5
10	R	jet_n	8.694515	6
90	L	keep_v	4.443145	10
41	M	land_n	6.053635	6
3	R	landlord_n	9.902109	13
163	M	last_adj	3.164499	0
47	L	law_n	5.582243	5
79	L	least_adj	4.690429	5
153	L	leave_v	3.254547	0
49	R	life_n	5.445021	24
161	R	like_v	3.188705	0
173	L	make_v	3.00889	0
125	L	many_adj	3.763184	7
50	M	market_n	5.434891	6
45	R	matter_n	5.872361	6
60	R	member_n	5.228875	5
102	L	money_n	4.223634	6
92	L	most_adj	4.414843	5
83	M	must_v	4.622664	8
13	R	nhs_n	8.377949	15
99	R	number_n	4.286698	6
69	R	order_n	4.889285	5
29	R	organisation_n	6.732184	5
76	R	other_n	4.744834	5
68	L	own_adj	4.90587	12
16	R	own_v	8.084973	15
31	R	owner_n	6.622	6
116	M	part_n	3.896217	6
56	R	party_n	5.303714	7
59	M	pay_v	5.238601	10
166	L	people_n	3.131825	0
62	R	person_n	5.137079	6
36	M	personal_adj	6.09721	6
73	L	power_n	4.866485	5
19	L	private_adj	7.461536	15
20	R	property_n	7.44972	16
95	L	provide_v	4.332687	5
11	L	public_adj	8.599331	52
28	L	public_n	6.963509	6

34	L	purpose_n	6.383932	5
169	L	put_v	3.062365	0
18	R	rent_n	7.831719	5
5	R	rent_v	9.263207	10
4	R	residence_n	9.330954	5
37	R	rise_v	6.084973	6
70	R	room_n	4.886096	8
67	L	run_v	4.947248	10
172	L	say_v	3.022155	0
30	R	school_n	6.629549	31
23	R	secretary_n	7.256606	5
6	R	sector_n	9.25943	28
42	L	security_n	6.048873	6
43	R	sell_v	6.019466	8
65	L	send_v	5.004695	8
63	R	service_n	5.066329	10
58	L	small_adj	5.26426	11
55	R	space_n	5.307365	7
12	R	sphere_n	8.571959	5
115	R	such_adj	3.905333	6
57	L	support_n	5.274835	5
75	R	system_n	4.81378	7
81	L	talk_v	4.676827	7
54	R	thought_n	5.351911	5
40	L	us_n	6.056021	6
141	L	use_v	3.472145	11
26	R	vehicle_n	7.020165	5
52	R	view_n	5.425604	6
35	R	visit_n	6.157948	5
112	L	want_v	3.914439	16
157	R	will_v	3.23373	0
91	M	word_n	4.416375	6
93	R	work_n	4.371842	10
122	L	work_v	3.82988	9
149	R	world_n	3.331386	5
137	R	would_v	3.523415	19

Corpus C1

Index	Position	Collocate	Stat	Freq (coll.)	Freq (corpus)
48	R	absent_v	6.23192	11	49
111	L	acquisition_n	5.361664	7	57
137	R	affair_n	5.112837	37	358
145	L	allegedly_adv	5.052215	11	111
105	L	ambit_n	5.430268	17	132
96	R	anonymisation_n	5.516835	16	117
94	R	appendix_n	5.525906	15	109
18	L	applicant's_adj	7.387208	11	22
49	L	aspect_n	6.225849	150	671
126	L	assistant_n	5.194553	7	64
101	L	attract_v	5.468627	41	310
117	L	belong_v	5.271723	6	52
156	L	breach_n	4.886468	144	1630
154	L	breach_v	4.895347	16	180
85	L	breadth_n	5.621666	5	34
76	R	broad_adj	5.707289	49	314
89	L	categorise_v	5.579846	6	42
131	R	celebrity_n	5.146192	11	104
136	R	character_n	5.114181	21	203
103	L	circle_n	5.456459	8	61
153	L	claimant's_adj	4.898913	9	101
88	R	code_n	5.595994	77	533
52	L	comfortable_adj	6.164804	6	28
119	R	compensate_v	5.24672	11	97
72	L	component_n	5.754931	5	31
61	L	concept_n	5.944681	39	212
149	L	confidence_n	4.933523	137	1501
107	R	confidential_adj	5.404262	202	1597
118	R	confidential_n	5.257916	8	70
110	R	confidentiality_n	5.379887	123	989
102	L	core_adj	5.466637	7	53
155	R	correspondence_n	4.89366	38	428
116	R	countervail_v (Should be 'countervailing_v' bug	5.28566	12	103
124	L	default_n	5.217273	14	126
122	R	detective_n	5.217277	5	45
35	R	diary_n	6.609596	7	24
36	L	disruption_n	6.602928	9	31
42	L	dissemination_n	6.443781	26	100
162	R	distinct_adj	4.817342	8	95
109	M	editors_n	5.387196	6	48

139	R	embrace_v	5.089517	6	59
43	L	encapsulate_v	6.423726	10	39
87	L	encompass_v	5.614608	6	41
41	R	encounter_n	6.448598	6	23
86	L	enjoy_v	5.617125	28	191
84	L	enjoyment_n	5.626384	9	61
148	R	enshrine_v	4.949795	6	65
143	R	especially_adv	5.065271	22	220
129	R	essence_n	5.156902	13	122
58	L	essentially_adv	6.001141	44	230
78	R	everyone_n	5.702701	42	270
128	L	exclusively_adv	5.164804	6	56
6	L	expectation_n	8.026692	1011	1298
142	R	expose_v	5.065271	21	210
157	R	extend_v	4.838037	34	398
62	R	family_n	5.912437	451	2507
120	L	fashion_n	5.244245	6	53
127	L	fresh_adj	5.190804	6	55
151	R	furthermore_adv	4.921535	21	232
160	L	guarantee_n	4.819515	7	83
66	R	guarantee_v	5.880238	19	108
158	L	heading_n	4.826483	5	59
112	L	hear_v	5.340506	95	785
159	L	hearing_n	4.820973	155	1836
25	R	hire_n	7.065266	6	15
132	R	home_n	5.145026	119	1126
99	R	impact_v	5.480312	6	45
93	L	in_adv	5.537094	19	137
163	R	individual_n	4.810625	115	1372
13	L	individual's_adj	7.802237	26	39
37	L	individual's_n	6.579846	6	21
81	R	information_n	5.668276	1557	10251
19	L	informational_adj	7.387194	5	10
100	L	infringe_v	5.480309	34	255
44	L	infringement_n	6.367517	91	369
47	L	inherently_adv	6.306281	13	55
29	L	inner_adj	6.901783	5	14
56	R	institution_n	6.027302	15	77
115	L	interference_n	5.304889	132	1118
152	R	international_n	4.906072	6	67
70	L	intimate_adj	5.793675	28	169
31	L	intrude_v	6.749767	9	28
45	L	intrusion_n	6.343946	115	474
2	R	invade_v	8.151135	45	53
5	L	invasion_n	8.028406	170	218

7	R	investigator_n	8.022789	87	112
28	R	invoice_n	6.965735	28	75
97	L	keep_v	5.496589	101	749
16	R	life_n	7.634831	1677	2825
138	R	listen_v	5.098954	13	127
9	L	misuse_n	7.984781	488	645
32	L	misuse_v	6.699142	27	87
140	R	modest_adj	5.065273	5	50
38	L	notably_adv	6.545894	12	43
82	L	notion_n	5.639967	14	94
30	L	one's_adj	6.802236	6	18
79	L	outweigh_v	5.702701	35	225
22	L	person's_adj	7.299734	24	51
57	L	person's_n	6.024628	14	72
67	R	premise_n	5.863635	16	92
134	L	preserve_v	5.135281	19	181
104	L	protect_v	5.434696	220	1703
164	L	protection_n	4.810186	182	2172
63	L	purely_adv	5.909153	14	78
11	L	purloin_v	7.901757	5	7
150	L	qualified_adj	4.927769	10	110
14	L	realm_n	7.709132	5	8
21	L	reasonable_adj	7.367985	895	1814
4	L	'reasonable_adj	8.039287	11	14
114	L	reiterate_v	5.309198	9	76
161	R	relation_n	4.81927	142	1684
113	L	repeated_adj	5.328308	6	50
144	R	repetition_n	5.065271	8	80
90	R	respect_n	5.569507	298	2101
8	L	respect_v	8.001829	565	738
75	R	revelation_n	5.714775	16	102
39	L	right_adv	6.534757	90	325
80	L	right_n	5.676384	1119	7326
121	L	scope_n	5.235536	53	471
40	R	sector_n	6.533051	13	47
108	R	sense_n	5.40344	67	530
20	R	setting_n	7.368823	39	79
50	L	sit_v	6.213551	43	194
73	R	space_n	5.738105	11	69
27	R	sphere_n	6.997254	29	76
12	L	standalone_adj	7.802257	6	9
60	R	stem_v	5.954246	5	27
141	L	subject-matter_n	5.065273	5	50
23	R	systematically_adv	7.217273	8	18
125	L	tension_n	5.217273	6	54

34	L	those_n	6.650228	9	30
106	R	thought_n	5.420367	11	86
69	L	tort_n	5.820853	91	539
92	L	totally_adv	5.545894	6	43
24	L	touchstone_n	7.147733	36	85
123	R	trivial_adj	5.217276	9	81
68	R	trump_v	5.851149	5	29
147	L	unacceptable_adj	4.972162	9	96
15	R	unavoidably_adv	7.650228	6	10
65	L	unjustified_adj	5.8847	12	68
26	R	unwanted_adj	7.043242	13	33
59	R	upbringing_n	5.985104	7	37
165	L	usually_adv	4.739953	17	213
77	R	viewer_n	5.702704	7	45
146	R	violate_v	5.01216	8	83
53	L	waive_v	6.128464	14	67
91	R	worth_n	5.557123	9	64
64	L	wrongful_adj	5.895347	24	135
71	L	wrongfully_adv	5.762711	6	37
3	R	yield_n	8.124153	10	12

iv. All Data: Clusters (3)

C1	Rel. Freq.	Co.V.	BNC	Rel. Freq.	Co.V
in relation to	5.889768	0.869768	i don't know	3.355861	1.764518
the fact that	5.286182	0.891467	one of the	3.282215	0.298677
in respect of	5.197759	0.999352	a lot of	2.691058	0.65283
there is no	4.69413	0.769777	it was a	2.107863	0.617215
the court of	4.451927	1.481877	as well as	1.882945	0.783185
in this case	4.436549	0.940159	the end of	1.787404	0.518905
the public interest	4.30968	1.465205	i don't think	1.765509	1.226109
there is a	4.082855	0.785945	out of the	1.667978	0.605802

court of appeal	3.798362	1.521939	a bit of	1.482869	0.739411
it is not	3.686872	0.781287	to be a	1.44505	0.212454
expectation of privacy	3.613827	1.613809	be able to	1.44505	1.593135
in the public	3.460047	1.274395	there was a	1.44107	0.80353
reasonable expectation of	3.290889	1.657967	some of the	1.39529	0.44995
i do not	3.271666	0.947525	i was like	1.375385	3.19859
the right to	3.237066	0.937604	you have to	1.281835	0.85568
freedom of expression	3.171709	1.199921	part of the	1.240036	0.491993
that it is	3.167865	0.873221	a couple of	1.216151	0.890137
the publication of	3.121731	1.626937	it would be	1.144496	0.958612
that it was	3.087131	0.907064	there is a	1.140515	0.494382
public interest in	2.944884	1.470317	end of the	1.132553	0.453161
in order to	2.887217	0.931814	and it was	1.110659	1.103098
part of the	2.867994	0.922697	and i was	1.046965	1.648409
as to the	2.86415	1.118714	at the end	1.02308	0.626469
the protection of	2.852616	0.954369	yeah yeah yeah	1.011137	3.457269
that there is	2.848772	0.902701	in order to	0.991233	1.163382
publication of the	2.78726	1.503041	going to be	0.9773	0.504637
a reasonable expectation	2.78726	1.623761	it was the	0.967348	0.726467
a number of	2.71037	0.932914	you want to	0.955405	0.7472
secretary of state	2.652702	3.263864	in terms of	0.937491	0.997277
of the information	2.595035	1.440386	what do you	0.925549	1.110351

on behalf of	2.587346	1.279981	the rest of	0.909625	0.510037
that the claimant	2.575813	1.896235	it is a	0.909625	0.47845
of the court	2.468167	1.112948	this is a	0.903654	1.116041
it would be	2.356676	1.079629	i think it's	0.899673	1.47715
the present case	2.341298	1.397932	i want to	0.891712	0.576042
on the basis	2.333609	0.924513	in front of	0.88375	0.916691
in my judgment	2.295164	1.245504	i think i	0.879769	1.272742
in the case	2.275942	1.101026	the fact that	0.859865	0.564027
so far as	2.268253	1.083043	i think it	0.851903	1.283102
article 8 rights	2.268253	1.474663	but it was	0.833989	0.738359
of private information	2.237497	2.494763	do you want	0.814085	1.831353
in accordance with	2.210585	1.221256	in the world	0.808114	0.714694
nature of the	2.206741	1.032675	i have to	0.798161	0.854154
relation to the	2.199052	1.224938	to have a	0.784228	0.837366
as a result	2.199052	1.191142	do you know	0.782238	1.470585
in which the	2.195207	0.908324	the first time	0.774276	0.619051
a matter of	2.187518	1.025481	in the uk	0.764324	0.570532
the subject of	2.168296	1.115807	back to the	0.760343	0.564162
one of the	2.13754	0.95058	this is the	0.750391	0.421799
the course of	2.110628	1.143234	you know what	0.74243	1.392954
set out in	2.102939	1.108061	at the same	0.738449	0.498449
the secretary of	2.079872	4.314598	do you think	0.734468	1.336011
of the public	2.076028	1.344714	a number of	0.730487	0.914701

to respect for	2.037583	1.260851	a little bit	0.730487	1.082143
the purpose of	2.033739	1.165598	you need to	0.714564	0.582874
is that the	2.018361	1.001765	when i was	0.706602	0.714384
the public domain	2.018361	1.696531	the same time	0.69864	0.544457
that there was	2.014516	1.071357	to go to	0.692669	0.850701
of the claimant	1.995294	1.969458	there is no	0.688688	0.61269
should not be	1.991449	0.943959	at the moment	0.684707	0.808805
in the present	1.991449	1.325286	to do with	0.682717	0.537101
to do so	1.98376	0.909936	bit of a	0.678736	0.915206
the local authority	1.979916	3.819038	have to be	0.672765	0.602438
the court to	1.972227	1.087958	it was like	0.654851	2.277794
the interests of	1.968382	1.459646	there was no	0.65286	0.818186
the purposes of	1.968382	1.454252	we need to	0.646889	0.45372
the nature of	1.964538	1.079762	i need to	0.642908	1.371689
is likely to	1.960693	1.226225	don't want to	0.640918	0.588005
there was no	1.953004	1.397237	i have a	0.628975	1.103098
that he was	1.941471	1.703193	no no no	0.626985	2.830348
fact that the	1.941471	1.100754	in the first	0.624994	0.447912
that he had	1.937626	1.561738	i had to	0.623004	0.837907
breach of confidence	1.933782	2.147336	side of the	0.623004	1.000985
in my view	1.929937	1.517735	all the time	0.621013	0.850596
seems to me	1.926093	1.419026	if you want	0.619023	1.134164
for the purposes	1.926093	1.437948	to do it	0.619023	1.025851

to the public	1.918404	1.247771	the back of	0.619023	0.761691
at the time	1.918404	1.1482	would have been	0.617033	0.452862
the context of	1.90687	1.027348	it will be	0.617033	0.53944
is to be	1.826136	1.120458	most of the	0.617033	0.252113
it seems to	1.814602	1.418171	i'm going to	0.615042	1.232768
respect of the	1.806913	1.390193	was going to	0.613052	0.905405
would have been	1.799224	1.554154	to be the	0.613052	0.376011
right to respect	1.787691	1.300052	at the time	0.611061	0.574943
in the context	1.787691	1.023912	it is not	0.611061	0.726424
of the convention	1.768468	1.300328	for the first	0.609071	0.73673
any of the	1.760779	1.261153	as soon as	0.597128	0.555309
misuse of private	1.749246	3.122739	i don't want	0.595138	0.95349
to the court	1.749246	1.836801	on the other	0.595138	0.821423
the house of	1.737712	1.64892	need to be	0.583195	0.453768
a result of	1.730023	1.119502	don't know what	0.583195	1.320891
to have been	1.726179	1.263419	is one of	0.569262	0.575365
of the case	1.706956	0.896154	that would be	0.567272	1.062469
the case of	1.703112	1.469162	but i don't	0.565281	1.297612
there was a	1.699267	1.146516	and i think	0.55732	1.058875
regard to the	1.695423	1.063782	the number of	0.555329	1.022955
house of lords	1.691578	1.657311	it was just	0.551348	1.561019
behalf of the	1.59931	1.640853	that it was	0.551348	0.534177
the exercise of	1.59931	1.003747	in the middle	0.549358	0.630926
the court is	1.583932	1.145788	and he was	0.547368	1.300246

members of the	1.576243	1.667665	you have a	0.543387	0.780386
in any event	1.572399	1.190941	a long time	0.535425	0.747552
that the court	1.549332	1.13614	one of those	0.531444	0.837685
in the light	1.541643	1.435616	as much as	0.527463	0.448401
the claimant and	1.53011	1.811147	but i think	0.527463	1.092674
the light of	1.526265	1.419378	up to the	0.525473	0.460787
that the information	1.499354	1.6086	yeah i think	0.517511	2.078294
rights of the	1.476287	1.489855	as long as	0.509549	0.698751
the human rights	1.45322	1.165223	and then i	0.507559	1.618535
for the protection	1.445531	1.40901	of the most	0.505569	0.729449
a breach of	1.445531	1.625989	it is the	0.503578	0.795616
the claimant was	1.441686	1.88196	to see the	0.501588	0.58896
to freedom of	1.441686	1.456225	of the world	0.495616	0.427983
likely to be	1.422464	1.230857	i know i	0.493626	1.229374
it was not	1.403241	1.26084	i wanted to	0.489645	0.660885
it does not	1.387863	1.080442	i had a	0.489645	0.636026
as i have	1.387863	1.553575	rest of the	0.489645	0.536689
human rights act	1.384019	1.213831	but it is	0.487655	0.545926
accordance with the	1.372485	1.313573	in the same	0.487655	0.558481
the issue of	1.372485	1.362832	name and name	0.487655	1.83367
of privacy in	1.368641	1.670846	for a while	0.485664	0.829105
would not be	1.341729	1.083424	mm mm mm	0.485664	3.464102
the basis of	1.341729	1.331759	would be a	0.485664	0.688589
on the other	1.341729	1.344817	a series of	0.483674	0.822351

whether or not	1.33404	1.351651	i used to	0.477703	1.221512
the identity of	1.330196	1.614813	in the past	0.475712	0.720011
as to whether	1.330196	1.215076	what are you	0.475712	1.354012
relating to the	1.330196	1.321703	the use of	0.473722	1.680186
that the defendant	1.326351	2.634132	because of the	0.469741	0.442443
and that the	1.318662	1.068265	he was a	0.46775	1.02631
in favour of	1.314818	1.450511	not going to	0.46775	0.759598
the rights of	1.314818	1.780766	one of them	0.46775	0.85229
for the purpose	1.314818	1.395487	to get a	0.461779	0.597834
the basis that	1.310973	1.172474	oh my god	0.459789	2.154761
of this case	1.303284	1.225174	it in the	0.455808	0.714765
the importance of	1.29944	1.259884	go to the	0.449837	0.848722
the decision of	1.29944	1.581224	you know the	0.449837	2.265668
some of the	1.295595	1.46824	and it is	0.447846	0.72959
so as to	1.291751	1.070238	that it is	0.447846	0.858375
the question of	1.291751	1.260391	as part of	0.447846	0.875588
decision of the	1.291751	1.788596	you know i	0.445856	1.965337
the facts of	1.272528	1.298123	in the morning	0.443865	0.916738
by the defendant	1.272528	2.450521	thought it was	0.443865	0.928319
interest in the	1.268684	1.449812	that he was	0.443865	1.42446
interference with the	1.264839	1.664161	we have to	0.441875	0.605194
the scope of	1.260995	1.71038	he said i	0.441875	1.291582
right to freedom	1.260995	1.49658	want to be	0.441875	0.656154

to me that	1.253306	1.405255	a bit more	0.439885	0.967973
it is a	1.245617	1.253584	you can get	0.437894	1.380863
the absence of	1.241772	1.284497	looking forward to	0.437894	1.539196
protection of the	1.241772	1.149181	y o u	0.437894	3.464102
and family life	1.234083	1.327671	what i mean	0.435904	2.172
by the court	1.234083	1.279088	yeah and then	0.435904	3.464102
the disclosure of	1.234083	1.470017	the middle of	0.433913	0.661658
is not a	1.226394	1.162418	look at the	0.433913	0.525787
private and family	1.226394	1.34475	such as the	0.431923	1.227144
he did not	1.22255	1.647106	i think you	0.429932	1.329571
under article 8	1.22255	1.669209	know what i	0.427942	1.686988
in the course	1.22255	1.35679	to make a	0.427942	0.574992
importance of the	1.218705	1.256888	and i said	0.425952	2.897084
a democratic society	1.214861	1.298953	i was just	0.425952	1.497757
in that case	1.214861	1.322028	i went to	0.425952	0.911626
before the court	1.207172	1.513715	and then you	0.425952	2.537811
that it would	1.207172	1.299892	i didn't know	0.425952	1.182616
of the child	1.203327	2.318357	yeah i know	0.423961	2.746293
to the claimant	1.199483	2.169258	one of my	0.41998	1.265922
that she was	1.195638	2.393549	i mean i	0.41998	2.23891
the end of	1.191794	1.266915	to be honest	0.41998	1.030181
the circumstances of	1.184105	1.17281	and he said	0.41799	2.353855

referred to in	1.184105	1.880836	i think that	0.415999	1.214702
the balancing exercise	1.176416	1.951509	in the last	0.414009	0.817479
it is necessary	1.176416	1.281095	if you have	0.414009	0.700659
the first claimant	1.172571	8.70775	to be in	0.412019	0.600366
of the article	1.161038	2.594939	have a look	0.412019	1.435778
of the press	1.153349	2.321244	i would have	0.412019	0.618274
as well as	1.153349	1.260121	i don't have	0.410028	1.14586
the claimant had	1.149504	2.318535	i think the	0.410028	0.945588
the use of	1.14566	1.663414	and she was	0.410028	1.722725
for the reasons	1.141815	1.152644	is going to	0.410028	0.576345
the judgment of	1.137971	1.40538	had to be	0.410028	0.706263
to be a	1.134126	1.176546	per cent of	0.410028	1.562641
said that the	1.126437	1.363861	to get the	0.408038	0.522155
8 of the	1.126437	1.390061	that he had	0.406047	1.152014
the first defendant	1.126437	5.01101	away from the	0.406047	0.667032
the effect of	1.122593	1.351419	and there was	0.406047	1.029065
in a democratic	1.122593	1.298307	don't know if	0.404057	1.255478
of the european	1.122593	1.157396	in the end	0.404057	0.676252
be able to	1.122593	1.335887	do you have	0.404057	1.631101
taken into account	1.118748	1.421625	due to the	0.402066	1.151621
extent to which	1.114904	1.662839	and in the	0.402066	0.76223
that she had	1.111059	2.354053	and a half	0.402066	0.806393
cause of action	1.111059	2.35187	the top of	0.402066	0.719455

rights act 1998	1.099526	1.156716	all of the	0.400076	0.705371
the extent to	1.095681	1.697475	of the day	0.398086	0.625021
the information in	1.091837	1.625474	of the year	0.398086	0.907298
information relating to	1.091837	1.980312	it has been	0.396095	0.511853
the terms of	1.091837	1.811736	the idea of	0.396095	0.744381
of the proceedings	1.087992	1.895501	more than a	0.394105	0.780349
to protect the	1.080303	1.461411	would like to	0.392114	1.206537
to say that	1.061081	1.244409	don't have to	0.390124	1.012081

(iv) All Data (Clusters) BNC

C1	Rel Freq	CV	BCN	Rel Freq	CV
the court of appeal	3.587191	1.574673	the end of the	0.895695	0.394911
reasonable expectation of privacy	3.191177	1.65887	at the end of	0.798164	0.747841
a reasonable expectation of	2.464512	1.616686	at the same time	0.640919	0.547937
in relation to the	2.191531	1.230445	a bit of a	0.573245	0.891863
the secretary of state	1.899327	4.338959	and i was like	0.50756	3.321427
for the purposes of	1.868569	1.454161	the rest of the	0.473723	0.552838
in the public interest	1.807052	1.714755	for the first time	0.467752	0.802098
the fact that the	1.803207	1.158413	i don't know what	0.427943	1.560093
in respect of the	1.795518	1.398553	is one of the	0.364249	0.578427
right to respect for	1.764759	1.303776	to be able to	0.362259	0.60964
in the context of	1.741691	1.057799	i don't want to	0.352307	0.779873
misuse of private information	1.722467	3.164146	one of the most	0.348326	0.820598
as a result of	1.699398	1.132781	in the middle of	0.344345	0.957721
the house of lords	1.649416	1.686182	i don't know if	0.334393	1.338934
on behalf of the	1.591744	1.648985	you know what i	0.316479	1.914001
in the present case	1.537917	1.583009	know what i mean	0.306527	2.453978
in the light of	1.511003	1.445838	as well as the	0.304536	1.168226
it seems to me	1.511003	1.537297	on the other hand	0.296574	1.248327
in the case of	1.480245	1.344875	i don't know i	0.292594	2.539311
the nature of the	1.472555	1.269642	if you want to	0.268708	1.061202

for the protection of	1.434107	1.410288	yeah yeah yeah yeah	0.260747	3.464102
in accordance with the	1.372591	1.313627	i thought it was	0.256766	1.266474
to freedom of expression	1.364901	1.479619	i don't know how	0.254775	1.542371
the publication of the	1.334143	1.919171	i think it was	0.252785	2.046448
the human rights act	1.303384	1.227732	no no no no	0.248804	3.161583
in the public domain	1.295695	1.875187	what do you think	0.246814	1.622371
on the basis that	1.276471	1.165204	a lot of people	0.242833	0.906878
right to freedom of	1.249557	1.496844	block time published time	0.238852	3.464102
in the course of	1.222644	1.356811	do you know what	0.238852	1.876431
the public interest in	1.207265	2.139429	the back of the	0.23089	1.012801
expectation of privacy in	1.191885	1.781714	do you want to	0.23089	1.366867
private and family life	1.180351	1.337421	when it comes to	0.2289	0.830156
for the purpose of	1.180351	1.499318	was one of the	0.224919	0.707987
in a democratic society	1.1073	1.303184	the other side of	0.222928	1.281606
human rights act 1998	1.095766	1.158514	the top of the	0.216957	0.781811
the extent to which	1.091921	1.701315	i would like to	0.214967	1.246751
the protection of the	1.091921	1.203723	one of the best	0.210986	1.316069
the decision of the	0.995801	1.814827	the middle of the	0.210986	1.003973
that there is a	0.991956	1.642205	mm mm mm mm	0.205015	3.464102
on the basis of	0.972732	1.452562	the edge of the	0.201034	1.346158

public interest in the	0.926595	1.61918	in the context of	0.195062	1.984687
as a matter of	0.92275	1.566216	you don't have to	0.193072	1.503527
seems to me that	0.903526	1.461099	for a long time	0.193072	0.785016
of the human rights	0.899681	1.473888	at the top of	0.193072	0.790536
secretary of state for	0.891992	1.968643	on the other side	0.189091	1.289366
that there is no	0.880457	1.528363	as a result of	0.189091	1.042075
of the court of	0.880457	1.860532	what do you mean	0.187101	1.977645
in the interests of	0.876613	1.591132	the side of the	0.187101	1.681012
on the other hand	0.853544	1.833341	you want me to	0.187101	1.573376
necessary in a democratic	0.83432	1.449689	i was going to	0.18312	1.08834
to respect for private	0.818941	1.778724	i don't think i	0.179139	1.598949
be taken into account	0.784338	1.720364	as part of the	0.179139	0.94091
on the part of	0.780493	1.751646	for the rest of	0.177149	0.76134
the light of the	0.776648	1.631494	in front of the	0.177149	0.924075
the right to respect	0.772803	1.634351	a lot of the	0.177149	1.075319
article 8 of the	0.749734	1.737293	y o u r	0.175158	3.464102
v news group newspapers	0.74589	2.14686	i don't know why	0.175158	1.415697
it is necessary to	0.742045	1.518229	in the first place	0.173168	0.598171
the identity of the	0.718976	1.891971	the ways in which	0.171177	2.728363
the administration of justice	0.715131	2.283168	to do with the	0.169187	0.565303
principle of open justice	0.703597	3.024655	in the case of	0.169187	1.506066

of the european convention	0.676683	1.412157	i was like i	0.169187	3.464102
to respect for his	0.672839	1.732839	other side of the	0.169187	1.258957
had a reasonable expectation	0.672839	1.996969	are you going to	0.165206	1.336248
the context of the	0.668994	1.855268	a little bit of	0.163215	0.86028
the importance of the	0.668994	1.442104	in the form of	0.159235	1.190756
the circumstances of the	0.665149	1.585468	the start of the	0.159235	1.014728
that there was no	0.661304	1.609078	going to be a	0.159235	0.72614
the rights of the	0.657459	2.177952	by the end of	0.159235	1.07553
in this case the	0.653615	1.779232	quite a lot of	0.157244	1.852533
the data protection act	0.64977	2.786495	on the back of	0.157244	0.808026
i do not consider	0.64977	2.129991	i know i know	0.157244	2.722529
members of the public	0.64977	2.356226	what are you doing	0.157244	1.705764
respect for private life	0.64208	2.588961	going to have to	0.155254	0.890417
that it would be	0.638235	1.66824	at the start of	0.153263	0.800381
in respect of which	0.638235	2.105283	but i don't know	0.151273	1.596624
the purpose of the	0.634391	2.090618	i was like oh	0.149282	3.464102
accordance with the law	0.630546	1.942718	is going to be	0.147292	1.018503
in the absence of	0.622856	1.776389	nothing to do with	0.147292	1.119205
set out in the	0.622856	1.556374	to go to the	0.147292	0.867227
i am satisfied that	0.622856	2.089783	at the university of	0.145302	1.550312

has the right to	0.622856	1.460653	but i don't think	0.143311	1.171526
circumstances of the case	0.619011	1.511738	in the face of	0.143311	1.030088
the right to freedom	0.615167	1.619143	i was gonna say	0.141321	3.464102
the terms of the	0.615167	2.205362	at the beginning of	0.141321	0.804127
in my judgment the	0.611322	1.98467	in a way that	0.13933	0.870307
at the time of	0.611322	1.88709	it would be a	0.13734	0.844251
it is clear that	0.611322	1.608331	in terms of the	0.13734	1.544388
the european court of	0.607477	1.905471	johnson matthey technol rev.	0.13734	3.464102
in so far as	0.603632	1.892151	a wide range of	0.135349	1.44554
convention on human rights	0.603632	1.372133	i don't think so	0.135349	1.829508
european convention on human	0.603632	1.372133	on the edge of	0.133359	1.288608
the circumstances in which	0.603632	1.633572	the bottom of the	0.131369	0.880632
a result of the	0.599788	1.751168	to go back to	0.131369	0.646594
v secretary of state	0.595943	2.500197	as well as a	0.131369	0.900782
on the facts of	0.595943	1.736467	there's a lot of	0.131369	1.567526
the subject of the	0.592098	1.477451	and she was like	0.131369	2.975722
court of human rights	0.588253	1.880578	it was it was	0.131369	3.308901
the european convention on	0.584408	1.393232	it would have been	0.129378	0.76605
the course of the	0.584408	1.984336	it's going to be	0.129378	0.914295
for breach of confidence	0.584408	3.030951	in the premier league	0.129378	2.05693

european court of human	0.580564	1.905899	at the heart of	0.129378	1.100647
i do not think	0.572874	2.157331	i don't think it	0.127388	1.57737
articles 8 and 10	0.572874	1.934474	i don't know whether	0.127388	2.453346
to the extent that	0.569029	1.650313	i think it is	0.125397	1.17193
do not consider that	0.569029	2.285277	per cent of the	0.125397	1.686017
for misuse of private	0.569029	5.274077	a couple of weeks	0.125397	2.051587
the principle of open	0.569029	3.114191	have a look at	0.125397	1.378059
facts of this case	0.565184	1.809207	will be able to	0.123407	0.78905
of freedom of expression	0.565184	1.937335	he was going to	0.123407	1.720474
to the effect that	0.56134	2.085269	the way in which	0.123407	1.911688
respect for his private	0.557495	1.887008	the first time in	0.123407	0.7364
within the meaning of	0.55365	2.182892	the name of the	0.123407	0.637688
be in the public	0.55365	1.916168	thank you very much	0.123407	2.951961
there is no evidence	0.549805	1.935247	i think i think	0.123407	3.464102
the end of the	0.549805	1.69515	and there was a	0.121416	1.273998
news group newspapers ltd	0.549805	2.618631	and he was like	0.121416	2.594333
the article 8 rights	0.54596	2.230224	i have no idea	0.121416	1.430608
is likely to be	0.54596	1.743543	as one of the	0.121416	1.077832
is in the public	0.54596	2.107118	in the absence of	0.119426	1.788057
at the end of	0.542116	1.72469	for a couple of	0.119426	1.669429
the rights and freedoms	0.542116	1.844198	at the time of	0.119426	0.879744
the part of the	0.542116	1.832292	to be in the	0.119426	0.570506

the facts of this	0.534426	1.81901	or something like that	0.117436	2.440642
i do not accept	0.534426	1.971555	was going to be	0.117436	1.058708
court of appeal in	0.530581	2.256252	it was a bit	0.117436	1.757195
for the court to	0.526736	1.889811	call me to hear	0.117436	3.464102
everyone has the right	0.526736	1.599544	it is important to	0.117436	1.273629
article 8 rights of	0.519047	2.273966	technol rev. 2015 59	0.115445	3.464102
in the court of	0.515202	2.977534	oh i don't know	0.115445	3.034148
that the claimant had	0.515202	3.276268	matthey technol rev. 2015	0.115445	3.464102
to the fact that	0.515202	2.155904	a member of the	0.115445	0.714756
protection of the rights	0.515202	1.82103	you don't need to	0.115445	1.022965
with a view to	0.511357	2.345547	in relation to the	0.115445	1.467499
that there was a	0.507513	1.716158	have a lot of	0.113455	1.327924
the basis of the	0.507513	1.820103	if you have a	0.113455	0.936332
of the rights and	0.503668	1.807637	at the bottom of	0.113455	0.882892
the contents of the	0.503668	3.341998	do you want me	0.113455	2.063574
in all the circumstances	0.503668	1.675526	it has to be	0.113455	0.539183
by the court of	0.503668	2.122801	the extent to which	0.111464	2.123444
having regard to the	0.495978	2.275063	in the same way	0.111464	0.824335
rights and freedoms of	0.495978	1.894541	no i don't think	0.111464	2.438552
within the scope of	0.495978	2.871363	on the basis of	0.111464	1.240439
data protection act 1998	0.495978	2.826213	end of the day	0.111464	1.376464

the scope of the	0.492133	1.965453	and i don't know	0.109474	1.653762
of the fact that	0.488289	1.825794	in one of the	0.109474	0.678705
the interests of the	0.488289	1.836325	that sort of thing	0.109474	2.429627
so far as the	0.484444	2.152766	out of the way	0.109474	1.16353
8 of the convention	0.484444	2.158196	i didn't want to	0.109474	1.16037
the time of the	0.480599	1.899734	a few years ago	0.109474	0.651035
to me to be	0.480599	1.942291	a couple of years	0.107483	0.897246
that it is not	0.472909	1.543893	well i don't know	0.107483	2.914255
is a matter of	0.472909	1.819503	thank you so much	0.107483	1.979623
the comparative importance of	0.472909	1.741898	the fact that the	0.107483	0.888241
the judgment of the	0.469065	2.111214	i don't think it's	0.107483	2.034856
a course of conduct	0.469065	3.668858	in front of him	0.107483	1.919755
the exercise of the	0.469065	1.678868	what do you want	0.105493	1.694246
on the one hand	0.469065	1.74627	i don't i don't	0.105493	3.464102
a copy of the	0.469065	2.472234	in the second half	0.105493	1.426641
rights under article 8	0.461375	2.06997	the beginning of the	0.105493	0.914405
have regard to the	0.45753	2.04549	i have to say	0.105493	1.539555
privacy in respect of	0.45753	2.579414	that there is a	0.103503	1.023702
for the prevention of	0.45753	1.893431	i don't even know	0.103503	1.651612
a democratic society in	0.453685	1.861645	know what to do	0.103503	1.128594
referred to in the	0.453685	3.169198	i think it's a	0.103503	1.36604

comparative importance of the	0.453685	1.798769	in the back of	0.103503	1.200018
the facts of the	0.453685	1.727833	you have to do	0.103503	1.120507
of state for the	0.449841	2.848313	you have to be	0.103503	0.833849
of disorder or crime	0.449841	1.945466	that would be a	0.101512	1.338183
the prevention of disorder	0.449841	1.907467	as much as i	0.101512	0.840541
the way in which	0.449841	1.879079	at the age of	0.101512	0.884026
the purposes of the	0.445996	2.136939	i was just like	0.101512	2.73482
a public interest in	0.445996	2.233592	a couple of days	0.101512	0.856781
prevention of disorder or	0.442151	1.933973	might be able to	0.099522	1.298739
of the data protection	0.442151	3.290676	be able to get	0.099522	2.415687
do not think that	0.438306	2.455065	you need to be	0.099522	0.776603
intense focus on the	0.438306	1.809672	in the presence of	0.097531	2.633561
information relating to the	0.438306	2.994966	i don't know where	0.097531	1.960481
hard copy and online	0.434461	13.7073	i was like yeah	0.097531	3.464102
it is in the	0.434461	2.420602	you don't want to	0.097531	1.011717
it is important to	0.434461	1.741896	it will be a	0.097531	1.210759
that it was not	0.434461	1.907599	the heart of the	0.097531	1.05268
on the comparative importance	0.430617	1.821089	skin to skin care	0.097531	3.464102
copy and online headline	0.430617	14.10674	how do you know	0.095541	1.337493
it is not necessary	0.430617	3.020113	a lot of money	0.095541	1.416277

during the course of	0.430617	2.936348	on the one hand	0.095541	2.477161
an intense focus on	0.426772	1.818899	i am going to	0.095541	0.950168
does not mean that	0.426772	1.644124	i want to be	0.095541	0.91598
of the house of	0.426772	2.167234	most of the time	0.095541	0.775771
have a reasonable expectation	0.426772	2.534957	and it was a	0.095541	0.887806
2004 2 ac 457	0.422927	1.966029	i just want to	0.095541	1.484468
democratic society in the	0.422927	1.886597	in the uk and	0.095541	0.816375
in the individual case	0.419082	1.95436	the centre of the	0.09355	1.300091
in favour of the	0.419082	1.787596	turned out to be	0.09355	1.119912
it is common ground	0.419082	2.163435	in the wake of	0.09355	1.072189
state for the home	0.419082	2.801029	i don't have to	0.09355	1.040517
for the reasons given	0.419082	1.905023	to get rid of	0.09355	1.071715
campbell v mgn ltd	0.419082	2.351033	one of my favourite	0.09355	1.646232
whether there is a	0.415238	2.015995	would be able to	0.09355	2.827144
available to the public	0.415238	2.331266	as part of a	0.09355	0.918924

Clusters C1

C1	Rel. Freq.	Co.V	BNCNGR 5	Rel Freq	CV
a reasonable expectation of privacy	2.380109	1.616036	at the end of the	0.439887	0.846466
right to freedom of expression	1.203512	1.521265	you know what i mean	0.278661	2.67245
reasonable expectation of privacy in	1.08047	1.854124	the other side of the	0.169187	1.258955
the human rights act 1998	1.026638	1.211396	in the middle of the	0.163216	1.219125
it seems to me that	0.888215	1.469032	on the other side of	0.117436	1.459982
of the human rights act	0.8613	1.493224	at the top of the	0.115445	0.773193
necessary in a democratic society	0.822849	1.454983	matthey technol rev. 2015 59	0.115445	3.464102
in the light of the	0.776708	1.631618	johnson matthey technol rev. 2015	0.115445	3.464102
right to respect for private	0.769018	1.831345	mm mm mm mm mm	0.115445	3.464102
the right to respect for	0.757482	1.636724	do you want me to	0.113455	2.063573
for the protection of the	0.676735	1.50909	the end of the day	0.109474	1.414908
of the court of appeal	0.67289	1.792093	no no no no no	0.109474	3.154484
in accordance with the law	0.630594	1.942727	do you know what i	0.103503	3.08238
had a reasonable expectation of	0.626749	2.003615	for the first time in	0.095541	0.886288
the right to freedom of	0.607524	1.628239	yeah yeah yeah yeah yeah	0.093551	3.464102

european convention on human rights	0.603679	1.372368	at the start of the	0.08957	1.13414
as a result of the	0.592143	1.770681	by the end of the	0.087579	1.034861
the european convention on human	0.584453	1.393476	kangaroo skin to skin care	0.087579	3.464102
in the context of the	0.580608	1.992338	and i was like oh	0.081608	3.464102
european court of human rights	0.572918	1.911984	call me to hear when	0.077627	3.464102
the principle of open justice	0.569073	3.114261	for the rest of the	0.075637	1.381978
for misuse of private information	0.565228	5.298806	at the bottom of the	0.073646	1.285247
the european court of human	0.565228	1.95817	i don't know i don't	0.073646	3.191437
right to respect for his	0.561383	1.667067	nom nom nom nom nom	0.071656	3.464102
to respect for his private	0.542157	1.891604	is one of the most	0.069665	1.128301
to respect for private life	0.538312	2.705695	the end of the season	0.065684	1.508307
v secretary of state for	0.534467	2.36998	block time updated timeupdated at	0.063694	3.464102
everyone has the right to	0.522932	1.606179	c a s h f	0.063694	3.464102
on the part of the	0.507552	1.885965	de de de de de	0.063694	3.464102
i do not consider that	0.499861	2.525008	s h f l o	0.061704	3.464102
the court of appeal in	0.499861	2.284815	h f l o w	0.061704	3.464102
the facts of this case	0.492171	1.942187	a s h f l	0.061704	3.464102
be in the public interest	0.484481	2.038515	r o f i t	0.059713	3.464102
the data protection act 1998	0.484481	2.838531	p r o f i	0.059713	3.464102

the protection of the rights	0.480636	1.80344	don't know i don't know	0.057723	3.119842
v news group newspapers ltd	0.480636	2.929263	i know what you mean	0.057723	2.209798
the article 8 rights of	0.472946	2.299015	was a bit of a	0.057723	1.123162
of the european convention on	0.472946	1.556368	i don't know if i	0.057723	1.802044
the rights and freedoms of	0.461411	1.831622	an hour and a half	0.057723	1.915701
of the rights and freedoms	0.457565	1.860758	but at the same time	0.057723	1.114421
the comparative importance of the	0.45372	1.798879	and at the same time	0.055732	1.281472
by the court of appeal	0.449875	2.288239	gmt block time published time	0.055732	3.464102
the prevention of disorder or	0.43834	1.927841	at the back of the	0.055732	1.23507
in a democratic society in	0.43834	1.876754	there was a lot of	0.055732	1.40324
prevention of disorder or crime	0.43834	1.949379	at the beginning of the	0.055732	0.843465
secretary of state for the	0.434495	2.92348	is a bit of a	0.053742	0.817576
on the comparative importance of	0.43065	1.821194	i don't know if it's	0.053742	2.296445
hard copy and online headline	0.43065	14.106736	at the heart of the	0.053742	1.188839
a democratic society in the	0.42296	1.886691	there are a lot of	0.053742	0.825056
for the prevention of disorder	0.42296	1.957698	i n e s s	0.053742	3.464102
protection of the rights and	0.419115	1.855141	one two three four five	0.053742	3.214224
of state for the home	0.419115	2.801053	at the same time the	0.053742	1.281163

an intense focus on the	0.415269	1.841295	s i n e s	0.051751	3.464102
focus on the comparative importance	0.411424	1.834279	b u s i n	0.051751	3.464102
the circumstances of the case	0.411424	1.874081	'standing at the sky's edge	0.051751	3.464102
of the house of lords	0.411424	2.197941	i f y o u	0.051751	3.464102
the house of lords in	0.407579	2.700617	u s i n e	0.051751	3.464102
for the purposes of the	0.407579	2.103463	on the edge of the	0.049761	1.284257
rights and freedoms of others	0.407579	1.878172	for the first time since	0.049761	1.458435
of privacy in respect of	0.399889	2.648532	and i was like i	0.049761	3.464102
intense focus on the comparative	0.399889	1.81158	i think it would be	0.047771	2.584175
democratic society in the interests	0.396044	1.94376	best wishes name hi name	0.047771	3.464102
protection of health or morals	0.396044	2.028319	this is one of the	0.047771	2.025791
society in the interests of	0.396044	1.94376	i don't want to be	0.047771	1.33185
the protection of health or	0.396044	2.028319	t e a c h	0.047771	3.464102
rights being claimed in the	0.392199	1.884399	at the same time as	0.04578	1.06058
for the protection of health	0.392199	2.052419	it was going to be	0.04578	1.791492
it is common ground that	0.388354	2.260015	i was going to say	0.04578	2.40411
is in the public interest	0.388354	2.613487	in the case of the	0.04578	1.819071
i do not think that	0.384509	2.512035	on the back of the	0.04578	0.897808

in the court of appeal	0.384509	3.328216	a couple of years ago	0.04578	1.375553
being claimed in the individual	0.380664	1.895605	e a c h e	0.04379	3.464102
article 8 of the convention	0.380664	2.411195	a couple of weeks ago	0.04379	1.957427
comparative importance of the specific	0.380664	1.951157	a little bit of a	0.04379	1.482196
convention right to freedom of	0.376819	2.08976	in the middle of a	0.04379	1.472277
crime for the protection of	0.376819	1.972764	technol rev. 2015 59 3	0.04379	3.464102
expectation of privacy in respect	0.376819	2.666965	i don't know why i	0.04379	1.741193
importance of the specific rights	0.376819	1.956926	at the same time i	0.04379	0.972333
the specific rights being claimed	0.372973	1.966424	last letter from your lover	0.04379	3.464102
already in the public domain	0.369128	3.04225	the other end of the	0.04379	1.785968
of the specific rights being	0.369128	1.972338	it was one of the	0.04379	0.838895
the convention right to freedom	0.365283	2.127099	the end of the year	0.04379	1.203997
of disorder or crime for	0.365283	1.993269	y o u c a	0.04379	3.464102
in the interests of national	0.361438	1.996601	the last letter from your	0.04379	3.464102
the interests of national security	0.361438	2.001157	a c h e r	0.041799	3.464102
there is a reasonable expectation	0.361438	2.328098	it is one of the	0.041799	1.10628
or crime for the protection	0.361438	2.001748	towards the end of the	0.041799	0.919274
disorder or crime for the	0.361438	2.001748	technol rev. 2015 59 2	0.041799	3.464102

the extent to which the	0.361438	3.446602	meet me in st louis	0.041799	3.464102
specific rights being claimed in	0.353748	2.04021	o u c a n	0.041799	3.464102
his private and family life	0.353748	1.749242	as a result of the	0.041799	1.744783
for the purposes of this	0.353748	2.287055	it's a bit of a	0.041799	1.597369
claimed in the individual case	0.353748	1.927196	was like i was like	0.041799	3.464102
have a reasonable expectation of	0.353748	2.829858	at the end of a	0.041799	1.622215
of the convention right to	0.346058	2.183796	nothing to do with the	0.041799	1.304585
mirror hard copy and online	0.342213	14.106736	the middle of the night	0.039809	1.45506
is necessary in a democratic	0.342213	1.680206	is one of the best	0.039809	1.70166
of the data protection act	0.338368	3.470954	in the context of the	0.039809	2.035236
is a reasonable expectation of	0.338368	2.320717	i don't think i've ever	0.039809	2.51658
in the public interest for	0.338368	2.335723	don't know what to do	0.039809	1.22554
campbell v mgn ltd 2004	0.338368	1.991908	i was like i was	0.039809	3.464102
expectation of privacy in the	0.338368	3.512868	in the wake of the	0.039809	1.353582
the public interest in the	0.334523	2.642775	in the tropics and subtropics	0.039809	3.464102
on the basis of the	0.334523	2.153345	at the time of the	0.037818	1.349355
has a reasonable expectation of	0.330678	2.556281	until the end of the	0.037818	1.301226
on the basis that the	0.330678	2.034519	i thought it would be	0.037818	0.881126
for his private and family	0.322987	1.667723	the end of the month	0.037818	1.898736

respect for his private and	0.322987	1.667723	i don't know what it	0.037818	1.979236
for interfering with or restricting	0.322987	1.87185	to be a part of	0.037818	1.713536
in the course of the	0.322987	2.308012	what are you going to	0.037818	1.464969
state for the home department	0.319142	3.530394	on the side of the	0.037818	1.267048
accordance with the law and	0.319142	1.835176	to be one of the	0.037818	1.351328
interfering with or restricting each	0.319142	1.828764	and i was just like	0.037818	3.014771
at the time of the	0.315297	2.021922	two three four five six	0.037818	3.284916
to the secretary of state	0.315297	6.800887	h tt ps // w	0.035828	3.464102
must be taken into account	0.315297	1.843423	the far end of the	0.035828	2.74377
the justifications for interfering with	0.311452	1.870127	tt ps // w w	0.035828	3.464102
8 of the european convention	0.311452	2.279969	ge o rg /c or	0.035828	3.464102
with or restricting each right	0.311452	1.832565	at the edge of the	0.035828	1.669129
the article 10 rights of	0.311452	2.733333	doo doo doo doo doo	0.035828	3.464102
it is in the public	0.311452	2.887829	w w c am br	0.035828	3.464102
to be taken into account	0.307607	3.616205	i think it was the	0.035828	2.377897
all the circumstances of the	0.299917	2.13707	am br id ge o	0.035828	3.464102
on the facts of this	0.299917	2.111009	p e n s e	0.035828	3.464102

the judgment of the court	0.296072	2.444111	w w w c am	0.035828	3.464102
is in accordance with the	0.296072	1.843954	c am br id ge	0.035828	3.464102
right of freedom of expression	0.296072	2.615562	the rest of the world	0.035828	0.993635
1 everyone has the right	0.296072	2.221675	i don't know what to	0.035828	1.596422
has the right to respect	0.296072	1.687212	w c am br id	0.035828	3.464102
would be in the public	0.292227	2.214048	x p e n s	0.035828	3.464102
or for the protection of	0.292227	2.016547	the end of the world	0.035828	0.944605
there is a public interest	0.288382	2.505584	all the way to the	0.035828	0.984502
justifications for interfering with or	0.288382	1.867378	at the side of the	0.035828	1.493262
the news of the world	0.284536	4.556705	and then i was like	0.035828	3.464102
for private and family life	0.284536	2.175874	conte and chalk on paper	0.035828	3.464102
respect for private and family	0.284536	2.175874	to the end of the	0.035828	1.101858
of privacy in relation to	0.284536	2.577344	br id ge o rg	0.035828	3.464102
restricting each right must be	0.280691	1.921779	id ge o rg /c	0.035828	3.464102
seems to me to be	0.280691	2.341948	in the run up to	0.035828	1.336215
article 10 rights of the	0.280691	2.46393	the second half of the	0.035828	2.171427
in the individual case is	0.280691	2.082987	to the rest of the	0.035828	1.410177
right must be taken into	0.280691	1.921779	no i don't think so	0.035828	2.29865
each right must be taken	0.280691	1.921779	e x p e n	0.035828	3.464102
or restricting each right must	0.280691	1.921779	on the other hand the	0.035828	2.140872

in the present case the	0.276846	2.280323	ps // w w w	0.035828	3.464102
the individual case is necessary	0.276846	2.1145	// w w w c	0.035828	3.464102
the first and second defendants	0.276846	8.266503	all that kind of stuff	0.035828	3.111546
of misuse of private information	0.276846	4.150147	i don't know if you	0.035828	2.212285
must be applied to each	0.276846	1.905592	is going to be a	0.033837	1.329706
to respect for private and	0.273001	2.222804	showcase leicester cinema de lux	0.033837	3.464102
test must be applied to	0.273001	1.92131	i don't know i think	0.033837	3.464102
interference by a public authority	0.273001	1.864421	be a bit of a	0.033837	1.155039
seems to me that the	0.273001	2.150124	a lot of the time	0.033837	1.257974
in re s a child	0.269156	3.149616	in the back of the	0.033837	2.166673
proportionality test must be applied	0.269156	1.966475	know what i mean yeah	0.033837	3.464102
private and family life his	0.265311	1.792054	i don't want to go	0.033837	1.357492
authority with the exercise of	0.265311	1.813991	thank you so much for	0.033837	2.812278
i do not accept that	0.265311	2.615847	a b o u t	0.033837	3.464102
family life his home and	0.265311	1.792054	one of the most important	0.031847	1.22507
publication should not be allowed	0.265311	2.684329	there is a lot of	0.031847	1.137869
by a public authority with	0.265311	1.838607	the far side of the	0.031847	2.392169
by the house of lords	0.265311	2.266921	this does not mean that	0.031847	1.900401

and family life his home	0.265311	1.792054	i didn't know what to	0.031847	2.32065
and is necessary in a	0.261466	1.801987	would you like me to	0.031847	2.499168
life his home and his	0.261466	1.817191	a hell of a lot	0.031847	1.329486
the court is satisfied that	0.261466	1.994772	didn't know what to do	0.031847	2.149736
regard to the importance of	0.261466	2.133742	and then she was like	0.031847	2.660453
public authority with the exercise	0.261466	1.816253	at the far end of	0.031847	2.686566
the proportionality test must be	0.261466	1.981949	r e v e n	0.031847	3.464102
expectation of privacy in relation	0.261466	2.647939	at the other end of	0.031847	1.744497
his home and his correspondence	0.261466	1.817191	in such a way that	0.031847	1.533651
a public authority with the	0.257621	1.841703	it is going to be	0.031847	1.2461
in the case of a	0.257621	2.562927	e y o u r	0.031847	3.464102
there shall be no interference	0.257621	1.809821	i think it might be	0.031847	1.539599
the exercise of this right	0.257621	1.840401	v e n u e	0.031847	3.464102
of information received in confidence	0.257621	2.114435	i don't think i can	0.031847	2.770957
in the house of lords	0.257621	2.873531	all you need to do	0.031847	1.376073
with the law and is	0.257621	1.822656	it was the first time	0.031847	1.592159
have particular regard to the	0.253776	2.156441	t i o n s	0.031847	3.464102
law and is necessary in	0.253776	1.830174	in the same way as	0.031847	0.89306
in conflict an intense focus	0.253776	2.008747	y o u r e	0.031847	3.464102

disclosure of information received in	0.253776	2.132944	and i was like yeah	0.031847	3.464102
lead to the identification of	0.253776	2.993869	there are a number of	0.031847	1.634272
shall be no interference by	0.253776	1.830748	i n g t h	0.031847	3.464102
the law and is necessary	0.253776	1.843937	e v e n u	0.031847	3.464102
the public interest for the	0.253776	2.250023	w i l l b	0.029857	3.464102
of health or morals or	0.249931	2.038899	80 60 40 20 0	0.029857	3.464102
in campbell v mgn ltd	0.249931	2.708121	at the same time it	0.029857	0.849496
this right except such as	0.249931	1.856862	what do you call it	0.029857	3.238472
with the exercise of this	0.249931	1.856862	i might be able to	0.029857	2.258613
are in conflict an intense	0.249931	2.030798	i thought it was a	0.029857	1.566567
to the importance of the	0.249931	2.176324	in the corner of the	0.029857	1.747339
conflict an intense focus on	0.249931	2.030798	as far as i know	0.029857	1.439298
two articles are in conflict	0.249931	2.05433	from all over the world	0.029857	1.596333
in the public interest to	0.249931	2.978834	i don't know what i	0.029857	2.065463
the nature of the information	0.249931	2.912295	name and name and name	0.029857	2.365386
to a debate of general	0.249931	3.085823	while at the same time	0.029857	1.542298
of this right except such	0.249931	1.856862	both india and the uk	0.029857	3.464102
exercise of this right except	0.249931	1.856862	i know i know i	0.029857	3.238472
the two articles are in	0.246086	2.045895	have a bit of a	0.029857	1.389901