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'Governing Celebrity: Multiculturalism, Offensive Television Content and Celebrity Big Brother': A Response

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EDITORS' FOREWORD

In May 2009 to celebrate the publication of the Special Issue 'Governing Celebrity: Multiculturalism, Offensive Television Content and Celebrity Big Brother 2007' (http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume7/number1) a seminar was hosted at the Law School, University of Westminster. The Seminar acted effectively as a launch of this special issue and we were fortunate to have not only contributions from two of the contributors to the Special Issue, Dania Thomas and Lieve Gies, but also Trevor Barnes and Louise Thorley from OFCOM who provided a fascinating 'insider' insight into the decision. A PDF of Trevor Barnes' powerpoints, and some details of the Seminar, are available at http://www.wmin.ac.uk/law/page-904. The Seminar was expertly chaired by Les Moran and Bettina Lange acted as a discussant to the papers.

We are delighted to be able to publish the response of the discussant, Dr Bettina Lange, in this issue. The idea of linking issues of the Journal in this way, by means of follow up pieces that connect and respond to previous issues is one that the Editors are keen to encourage, and they hope that such 'Responses' will form an important part of future issues of the Journal, and would be delighted to hear from authors who would like the opportunity to respond to articles published in the journal that have provoked, inspired, excited or enraged them.

ABSTRACT

This response to the special issue on 'Governing Celebrity: Multiculturalism, Offensive Television Content and Celebrity Big Brother' highlights its contribution to key socio-legal debates about popular legal consciousness, responsive regulation and social change through law. The response also discusses some of the methodological challenges posed by research into media regulation. How should such research be theoretically framed and is it necessary to distinguish clearly between deconstructionist and modernist understandings of human rights? Are social-psychological dynamics a relevant factor for explaining whether some forms of speech become labelled as racist? The concluding section provides suggestions for further research into the patterns that shape how socio-legal researchers read the social world and how the opening up of a new field of inquiry – the governance of celebrity – can be extended to understanding celebrity politics.

THE CONTRIBUTION OF THE SPECIAL ISSUE TO KEY SOCIO-LEGAL DEBATES

Should we care about celebrity? The seventh special issue of The Entertainment and Sports Law Journal entitled ' Governing Celebrity: Multiculturalism, Offensive Television Content and Celebrity Big Brother 2007' argues convincingly that understanding celebrity goes to the heart of power relationships in contemporary societies. Two of the five contributions (Su Holmes' and Sean Redmond's) trace how the contemporary phenomenon of celebrity reinforces traditional stratification of British society along race, gender and class lines. Three contributions (Lieve Gies' , Eliza Varney's and Dania Thomas') further analyse the challenges posed by celebrity for state media regulation. Moreover, the discussion in various contributions to the special issue about how celebrities should behave and how they should be treated throws light on popular legal consciousness and in particular on the question to what extent public and private power should be restrained through human rights. 1

The special issue addresses its core theme – an analysis of power relationships through the 2

lens of celebrity - in a lively, accessible and engaging manner. It is a valuable resource not just for academic research, but also for undergraduate teaching because it brings to life and highlights the significance of human rights protection. The special issue develops an interdisciplinary perspective by combining English literature, media studies, legal and socio-legal approaches. All of its articles make an important contribution to socio-legal debates. They render visible different aspects of the social world through which law works. They therefore illuminate how human rights as set out in the Human Rights Act 1998 and media soft law such as the Ofcom Broadcasting Code operate 'in action'. The articles trace how the meaning of these laws becomes locally negotiated through the involvement of a variety of ' regulators', such as Ofcom and a TV audience voting contestants off a reality TV show. The special issue therefore illuminates wider socio-legal themes that transcend the specific controversy of the Celebrity Big Brother (CBB) show in 2007.

3 Eliza Varney's article contributes to debates about 'responsive' regulation by advocating the involvement of citizens through public consultation in the definition of offensive media content (Ayres and Braithwaite, 1992). She supports a procedural approach to media regulation that is based on deliberation which includes both citizens and regulators. This is meant to address the failure of the formal law to spell out clear limitations upon free speech in the context of reality TV shows. This failure is perhaps not surprising given that the traditional analytical framework for regulating offensive media content, including racist hate speech, is not easily transferred to reality TV shows. The values of truth, self-fulfilment and democracy that are meant to be protected by classic freedom of expression rights seem to be marginal to the conversations that occur in reality TV shows (McGoldrick and O`Donnell, 1998, 485). In the case of the Big Brother format, 24 hour surveillance seeks to generate exhibitionist behaviour among contestants that may shock but also entertain viewers. Varney's contribution, however, provides an interesting twist on traditional conceptions of procedural regulation. She combines support for procedural media regulation with advocacy of a specific discursive frame for public consultation that should determine the detailed meaning of offensive media content. This hybrid procedural and substantive regulation of offensive media content is interesting also in the light of calls in the US for hiving content regulation off to the market and thus to let viewers and advertisers decide which programs to support financially. In this approach viewers and advertisers regulate TV content within the context of guidelines laid down by the Federal Communications Commission (Rooder, 2005-6, 901-2). In contrast to this Varney argues that 'citizenship values' which involve regard for equality and the protection of human dignity and not just commercial considerations must feature in debates about potential limitations of free speech. Further discussion seems to be called for about how exactly procedural media regulation that seeks to define 'contemporary community standards' through public consultation should take account of a minimum threshold of substantive citizenship values.

4 Lieve Gies' paper addresses – from a different angle - indeterminacy in media regulation and in particular the role of human rights in regulating TV content. Her paper focuses on the development of popular legal consciousness – ordinary citizens' experience and understanding of law (Merry, 1985) - as one response to the indeterminacy of the formal legal rules in the books (Silbey, 2005, p. 360). Her paper contributes to socio-legal debates about the question whether popular legal consciousness is the cause or consequence of human rights protection. Do human rights flow from the actual ethical practices that can be observed in a society or can human rights act independently upon and change the ethical practices of a community (Brown, 1997, p. 58)? Lieve Gies suggests that the popular legal consciousness that manifested itself in the aftermath of the CBB program in January 2007 fell short of a fully fledged human rights culture. Her contribution thereby provides a critical departure from the mainstream of legal consciousness studies that have affirmed the durability and ideological power of law (Silbey, 2005, p. 358). Gies challenges us to rethink our interpretations of viewers' responses to the comments uttered by Jade Goody, Danielle Lloyd and Jo O'Meara that focused on Shilpa Shetty's racial identity. She questions whether the unprecedented number of 44,500 complaints that Ofcom received is really an indicator of a human rights culture in which large sections of the British population support racial, class and gender equality. While British TV viewers seemed to affirm racial equality for Shilpa Shetty, they were also happy to tolerate violations of Jade Goody's dignity, her right to privacy and liberty as well as statements that appeared to discriminate against Jade Goody on the basis of her class origins. Gies' contribution focuses on the local construction of the *meaning* of human rights in a specific context, the aftermath of the CBB program in January 2007 in Britain. She confirms the idea that popular legal consciousness should be understood as a cultural practice

in which consciousness can be unstable, inconsistent and fragmented (Ewick and Silbey, 1991-2, p. 742). Her approach departs from classic contributions to the study of legal consciousness that have focused on an analysis of citizens' postures in relation to law, such as to be 'against', 'within' or 'before' the law (Ewick and Silbey, 1998). To be 'against the law' involves to resist the influence of law in organising social life, while to be 'within the law' means to strategically use legal resources to advance one's interests within the existing legal framework. To be 'before the law' implies that citizens accept the law's claims to objectivity and universality. Here law is considered to be an abstract rule system that is separate from social life. Moreover, while popular legal consciousness has often been studied within the context of formal institutional settings, such as the work place or government bureaucracies, Gies' contribution explores new territory by tracing how popular legal consciousness is constructed in the less rule bound reality TV studio and the private homes of its audiences.

5 Dania Thomas' contribution further adds to the theme of fragmentation of law in popular legal consciousness by highlighting that TV viewers' complaints were not indicative of support for racial equality but only objected to a particular form of 'racism lite', that is racist statements in the context of a reality TV show from which contestants – including Shilpa Shetty - would reap significant economic benefits. Thomas highlights that while some viewers of the CBB program were prepared to challenge racist statements directed at Shilpa Shetty, they also tolerate 'racism on the streets', in particular discriminatory treatment of asylum seekers and immigrants in Britain. She invokes, however, a different conception of legal consciousness than Gies. Thomas considers legal consciousness as 'epiphenomenal,' grounded in economic structures, and hence not as cultural practice (Ewick and Silbey, 1998, p. 739-40). Moreover, she suggests that differentiation of human rights protection according to how ' desirable' or 'undesirable' the subject of human rights law is, is grounded also in the reality of race relations legislation in the UK. The latter provides differentiated responses to race discrimination according to the socio-economic status of the victim of discrimination. Hence, in Thomas' contribution, popular legal consciousness is anchored into material social structures, such as economic conditions and the formal law. Both Gies' and Thomas' contributions paint a disquieting picture of a popular legal consciousness that provides only limited support for the rule of law, in the sense of universal human rights protection that applies regardless of the perceived value of the individuals to be protected through human rights.

6 Finally, both Sean Redmond's and Su Holmes' papers contribute to the socio-legal debate about whether law can make people good and hence the limitations of social change through law. Redmond's fascinating anthropological account of food rituals, that includes an analysis of contemporary 'TV food', shows how deeply constructions of 'oriental otherness' are anchored into the social body. How and with whom we prepare, handle and ingest food is key to how we build or own identities and those of racially 'others'. Formal legal rules, such as human rights and anti-discrimination legislation seem to be very blunt instruments for intervening into the subtle strategies of 'othering' through food rituals. The mundane and routine activities of food consumption - powerful social forces that can affirm – 'from the bottom up' - traditional social stratification along race, class and gender lines – seem far removed from the reach of statutory anti-discrimination law. These food rituals also illuminate another aspect of popular legal consciousness: how 'hegemony is produced and reproduced in everyday transactions' (Silbey, 2005, p. 330). Similarly, Su Holmes' contribution reminds us that in order to understand how the law lives, we need to discuss much more than prosecution rates of anti-discrimination provisions, enforcement practices by regulatory bodies or the interpretation of anti-discrimination and media regulation by the courts. Equality human rights law gains meaning by being applied to specific legal subjects. But how do these legal subjects come into being? Su Holmes traces from a Foucauldian perspective the construction of neo-liberal subjects that submit to the disciplinary regimes of fame. Contemporary conceptions of celebrity are not based on innate talent or actual accomplishment. The disciplinary regimes associated with contemporary conceptions of celebrity are part of a wider shift in society towards the ' entrepreneurial self'. Holmes argues that contrary to its rhetorical claim - to reflect upward mobility on the basis of merit - the disciplinary regime of fame ends up affirming established social stratification in Britain along class and gender lines. Hence, both Redmond and Holmes illuminate macro-micro links in socio-legal analysis. They examine the micro-foundations that undergird formal legal provisions which seek to enshrine equality of citizens on a macro level.

7 Highlighting these micro-macro links provides a critical lens through which to view legal

regulation. While Sean Redmond's and Su Holmes' articles illustrate that private social behaviour – around food and the regulation of the self – is significant for public life, formal legal rules often operate with a contrived distinction between a public, macro and a private, micro sphere. For instance, s. 6 (1) of the Race Relations Act 1965, introduced the criminal offence of incitement to racial hatred. It also served the interests of the British state by seeking to prevent public disorder. The Public Order Act 1936 required that a breach of the peace had to have occurred for the offence of incitement to racial hatred to be committed (Rumney, 2003, p. 125). According to section 18 (2) of the Public Order Act 1986 the offence would not be committed if material or behaviour inciting racial hatred was displayed only to other persons within a dwelling (Rumney, 2003, p. 127). Hence, a public sphere was to be protected from incitement to racial hatred. Moreover, section 18 of the Public Order Act 1986 made it clear that holding *beliefs* of racial hatred itself was not criminalised, only behaviour, the actual incitement of racial hatred in others, was prohibited (Rumney, 2003, p. 126).

METHODOLOGICAL CHALLENGES

TENSIONS BETWEEN DECONSTRUCTIONIST AND MODERNIST PERSPECTIVES

8 The special issue of the journal, however, also raises questions about how its various contributions approach the discussion of key socio-legal issues. I suggest that, firstly, some of the articles reflect an unresolved tension between deconstructionist and modernist approaches to understanding 'law in action'. The theme of deconstruction that questions material and general accounts of social life runs through the entire special issue. The very topic of the special issue, an analysis of a reality TV show, reminds the reader that there is no unmediated social reality 'out there' but that our understanding of the social world is refracted through the media. There are different accounts of the social world and how we 'read' events matters because it shapes what becomes regulated in what way. In fact rendering the social world 'legible' is a precondition for exercising public power over it (Lang, 2009). Eliza Varney's article raises the issue whether the harmonisation of media regulation in the EU is actually a strategy for rendering the social world legible (Scott, 1998, p. 2). More specifically, a deconstructionist perspective is invoked in those articles that refer to Michel Foucault's work (Holmes, para. 35) and that draw on the more general idea that discourses frame and perform social action (Gies). In addition, some articles have adopted the post-structuralist linguistic turn by treating key social variables, such as race, class and gender as fluid and not fixed. In fact these variables are portrayed as having a 'now you see it, now you don't' quality. Jade Goody's class affiliation is uncertain. While her racist comments were considered in some newspaper commentary as a product of her working class origins, she was also depicted as transcending her class origins by having accumulated significant wealth through her celebrity status. She reinvented herself and acquired high socio-economic status. Similarly, race was identified as relevant but also edited out of the picture in the CBB controversy. Some of the TV viewers who complained to Ofcom described Jade Goody's comments as racist, but Shilpa Shetty refused to characterize Jade's comments as racist. A deconstructionist perspective seems also to be affirmed by Dania Thomas' article. She is critical of essentialist understandings of race in British immigration and race relations legislation that define race in narrow, categorical terms and render invisible more complex and multifaceted identities, such as different conceptions of 'Black-Britishness'.

9 But while deconstructionism frames some of the arguments in the articles it seems to recede into the background in relation to the discussion of human rights. Lieve Gies', Dania Thomas' and Eliza Varney's papers affirm from a modernist, liberal perspective the universality and indivisibility of human rights. This seems to be at odds with the deconstructionist perspective adopted in relation to other elements of their arguments. Deconstructionism suggests that culture generates 'difference' and that there is no fundamental ontological basis for value judgements about the 'right' or 'wrong' treatment of citizens. It therefore becomes questionable whether the same set of human rights can, and should, be attributed to every human being.

10 In contrast to this, Eliza Varney's article seems to invoke a natural law perspective on human rights when criticizing that English law lacks clear principles with reference to which conflicts between free speech and regulation of offensive media content could be decided. Moreover,

both Lieve Gies' and Dania Thomas' articles are critical of sections of the British public who want to extend human rights only to those citizens they see as deserving the protection of the law. Lieve Gies' paper, for instance, criticizes the fact that numerous British citizens were prepared to challenge racist statements levelled at Shilpa Shetty by Jade Goody, Danielle Lloyd and Jo O'Meara but at the same time tolerated violations of Jade Goody's dignity in newspaper commentary, through misogynist statements as well as remarks about her 'underclass' origins and perceived lack of intelligence. Similarly Dania Thomas' paper affirms *universal* human rights by criticizing that some CBB viewers were prepared to challenge racist statements directed at the 'deserving', glamorous, rich and upwardly mobile Shilpa Shetty, while tolerating institutional racism in British public life and racist discrimination against immigrants and asylum seekers in Britain more specifically.

11 This tension between deconstructionist perspectives and a modernist, liberal, foundationalist approach to human rights becomes also apparent in Lieve Gies' article pointing to a gap between a fully-fledged human rights culture and actual human rights protection in Britain. How can we know what that yardstick of a 'human rights culture' involves if all our understandings of what human rights *mean* are mediated by a social world that is represented to us, for instance through the media, and thus is not directly accessible to critical inquiry? From a deconstructionist perspective it becomes very difficult to fill with any real meaning essentialist notions of core human rights values, such as dignity, respect or equality. There is no objective and privileged 'bird's eye' position from which the extent to which human rights are implemented can be measured (Preis, 1996, p. 309). The s. 6 (1) offence of inciting racial hatred in the Race Relations Act 1965 is a practical example of the difficulties of translating core human rights values into anti-discrimination legislation alluded to in deconstructionist perspectives. The offence only criminalized the incitement of *hatred* directed at sections of the public in Britain distinguished by colour, race or ethnic or national origins. Language or behaviour that incites ridicule, prejudice or contempt against a racial group was not enough for the offence to be made out (Rumney, 2003, p. 127). Similarly under section 29 J which was introduced into the Public Order Act 1986 by the Religious and Hatred Act 2006 the expression of antipathy, dislike, ridicule, insult or abuse of a particular *religion or belief* system and of practices of those who hold such beliefs is permitted in order to protect free speech. But is there really a clear dividing line between ridicule, prejudice, contempt and hatred? All these cognitive dispositions and emotional states seem to shade into one another. Does a core human rights value of equality and dignity require to criminalize all of these pernicious attitudes? Moreover, given the likelihood that the 'less strong' and potentially 'more reasoned' attitudes of prejudice and contempt may be *more* convincing than the communication of outright hatred, would it not be important also to outlaw these dispositions – which may actually create greater damage to race relations and individual members of ethnic, national and racial groups - in order to provide effective anti-discrimination law?

12 The tension between a deconstructionist and modernist approach to human rights protection seems also to surface in the use of the term 'human rights culture'. Some anthropological perspectives suggest that culture should be viewed in dynamic, not static terms. It is a practice that is embedded in local contexts and the various realities of everyday life. Conflict and disagreement, for instance over the meaning of rights, is part of a human rights culture (Preis, 1996, p. 305). The abstract legal subject, the bearer of human rights invoked by liberal, modernist human rights, is at odds with actual human beings embedded in social contexts that give meaning to their lives (Preis, 1996, p. 290). For instance, concern with human dignity has been perceived as particularly prevalent in Western liberal democracies (Preis, 1996, p. 291). The deconstructionist view of human rights then questions the idea that human rights cultures flow from the ' translation' of human rights into a specific local cultural setting. Gies' paper (para. 36) adopts this perspective. She draws on the argument advanced by the legal anthropologist Sally Merry that abstract and universal human rights need to be 'inserted' into the local community through symbols, images and narratives that make sense to the particular local culture. But this view rests on the assumption that there are pre-existing abstract and universal human rights to begin with that form the foundation of a human rights culture. This human rights culture is then made locally relevant. Having traced potential tensions between various deconstructionist and modernist strands in the arguments presented in the special issue I will now turn to a second methodological issue, the role of social-psychological dynamics in the CBB controversy.

SOCIAL-PSYCHOLOGICAL DYNAMICS IN THE CBB CONTROVERSY

Consideration of the social-psychological dynamics of the CBB race row may shed further light on how popular legal consciousness becomes formed. In particular, how do such dynamics mediate the subtle relationship between structure and agency that helps to explain the actions of some of the protagonists in the CBB race row? Dania Thomas highlights that Shilpa Shetty *chose* not to describe publicly as racist Jade Goody's, Danielle Lloyd's and Jo O'Meara's comments that asked her to 'fuck off home' and referred to her as ' Shilpa Poppadom' as well as 'Shilpa Fuckawallah'. Was this an empowered response in which Shilpa Shetty asserted her agency by refusing to take up the role of the victim of crude racist comments? What role may social-psychological factors have played in Shilpa Shetty's reaction? What were the 'feeling rules' that framed what was appropriate behaviour in the situation (Hochschild, 1983)? Dania Thomas' paper hints at possible suggestions: Shilpa Shetty rejected the role of the outcast: the victim complaining of racist bullying. She thereby also affirmed her unassailable middle class position. More importantly Shilpa Shetty supported what sections of the British TV audience were keen to assert, the belief that Britain is a fair and tolerant society. Having the British CBB viewing public at her side – also by extending a magnanimous attitude to Jade Goody and her fellow contestants- was crucial to her success in the TV show. 13

And what were the social-psychological dynamics that prompted an unprecedented number of British TV viewers to complain to Ofcom about Jade Goody's and some of her fellow contestants' comments about Shilpa Shetty? Perhaps as Edwina Currie's unmeasured response to the CBB race row during the 'Question Time' TV program seems to suggest - in which she contrasted the 'beautiful lady' Shilpa with the three 'slags', who were 'witches with a capital "B"' (Sue Holmes, para. 5) - those character traits we find difficult to accept within ourselves we must reject so vehemently when we observe them in others, that at the end our responses do not seem to be so different from those of the people we accuse of inappropriate behaviour. The energy invested in distinguishing ourselves from 'undesirable others' at the end reveals predictably patterned behaviour.
An analysis of social-psychological factors, however, is not just one route to understanding the inner life of social actors. It matters also because social-psychological factors are woven into political structures. This brings us back full circle to the issue of human rights protection that the special issue highlights. First, social-psychological dynamics can help to explain how and why human rights cultures come into existence. It has been argued that North-American and European human rights cultures have been able to build upon shared moral identities. They draw upon the psychological resources of 'security' and 'empathy' among their citizens. Security is understood as a situation in which life is judged by citizens to be sufficiently free of risk so that distinguishing oneself from other citizens is no longer important in order to assert one's own sense of self-respect and worth. Empathy involves the ability to see an issue from the perspective of a fellow citizen (Brown, 1997, p. 57). 14

Second, social-psychological factors can also help to explain the limited realization of *universal* human rights. Social-psychological factors shape views about who is considered as worthy of human rights protection. In New Labour's politics the question who is worthy of human rights protection matters. Rights are not bestowed upon all citizens in equal measure because of their inherent dignity and the worth that resides in every member of humanity, but rights are associated with responsibilities that citizens have to discharge to the political community. Where they fail to do so, protection of their human rights may correspondingly be limited. The universality of human rights is turned into a matter of ideology, rather than practice (Preis, 1996, p. 310). 15

FURTHER QUESTIONS FOR RESEARCH

Finally I will highlight further questions for research that the special issue raises. It reminds us that how we read the social world matters for how we regulate it through law. The media, including reality TV shows, shape how we read the social world. The special issue argues that there are different ways in which we can read the controversy around the CBB program. But how we read the social world also constructs us. Some contributors to the special issue chose to highlight race as central to understanding the controversy surrounding the program, others focused on gender and class. Further research - from a sociology of knowledge perspective - 16

seems to be required. How is academic critique shaped by strategies of reading the social world that we have often internalized, rather than made explicit and subjected to scrutiny. Moreover, Su Holmes' suggestion that relationships between power and celebrity should be further explored seems to be particularly relevant in the light of recent high profile interventions of celebrities, such as Bob Geldof and Joanna Lumley, in British aid policy and the issue of Gurkha settlement in Britain. What can celebrity politics tell us about shifting conceptions of democratic legitimacy in Britain? Finally, further research may address how we can demystify social relations. According to Dania Thomas' article this would be an important step in dismantling oppressive social hierarchies and thus to develop a progressive popular legal consciousness.

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