

## Principle of Freedom and Principle of Harm: Where Does the Twain Meet?

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### *Abstract*

*The media are constantly caught in a dilemma between whether to write or not to write a story, particularly one that some may deem as controversial and sensitive and may cause harm to the individuals involved. By merely doing their job of exposing a scandal involving a public figure, the media, wittingly or unwittingly, caused harm by bringing about shame to the individual, his family, political party, and the government. Or should one subscribe to the thinking that the blame for the exposure should rest, not so much on the journalists who are after all merely executing their responsibility as a watchdog, as on the individuals involved in the scandal for disregarding the consequences of their actions. The purpose of this paper, thus, is to discuss the conflict between the principle of freedom (freedom of press and expression) and the principle of harm. Is there justification for journalistic actions that may have the potential to inflict harm on individuals and communities? Are the media guilty of causing harm to various parties just in the name of press freedom and expression and public interest?*

### **Introduction**

There is no shortage of examples in the media attesting to the conflicts that occur between the role journalism plays to inform the public and the ensuing harm that sometimes arises from that responsibility. A case in point is the coverage of a sex scandal involving a politician that cost him his political party position and his position in the government in 2008. The politician also eventually lost his membership in his political party when he was sacked because the scandal was perceived as tarnishing the image and reputation of the party.

Viewed from an ethical perspective, is the media guilty of causing harm to various parties just in the name of press freedom and expression and public interest? Should the media practice more compassion for those affected by the media coverage? Should sources and subjects who are always in the lens of the media be treated as human beings first, and media product, second, and be deserving of respect? Should the media not take into consideration the harm to the subject's reputation, safety, security and privacy (and other related parties like the family, colleagues and government)?

Since time immemorial, scandals like the above are the staple of the media, and will continue to be so. The ingredients are similar over time - a subject who is a public figure, a scandal, the media, public interest and the ensuing harm to the various parties resulting from the coverage. Thus, it is the purpose of this paper to discuss the conflict between the principle of freedom (freedom of press and expression) and the principle of harm. Is there justification for journalistic actions that may have the potential to inflict harm on individuals and communities?

Is there a framework that could be used to determine whether there were moral justifications for journalistic actions that may cause harm? (Brislin, 1992). Though harm caused by the media can be in various forms (emotional, physical, societal), this paper will focus more on the harm resulting from media's intrusion into an individual's right to privacy; an intrusion that often is justified by the principle that the media should be free and have the right to gather information to serve public interest.

### **The Principle of Freedom**

This principle guides media practitioners to safeguard the freedom of the press. The American Society of Newspaper Editors code of ethics, for instance, stated that this freedom must be "defended against encroachment or assault from any quarter, public or private". Philosophers like John Milton, David Hume, John Locke and John Stuart Mill heralded the concept of freedom as a necessary prerequisite for individuals to act or not to act according to the determinations of the will. Milton's *Aeropagitica*, for instance, stressed on the importance of freedom of expression and his 'self-righting principle' that in a free and open encounter where truth will defeat error, has been used through the centuries as a justification for a free press system. In fact, Locke, to whom liberty was very important, saw it as a natural right that should not be abridged except when it might interfere with the liberty of another.

The libertarian philosophy of the press which developed in Britain and the United States of America in the 1600s and 1700s, fashioned the concept of an 'open market place of ideas' and placed great faith in the society to make rational decisions. Decades later, John Merrill (1974), in particular, advocates the concept of individual autonomy when he argued for a "bias toward journalistic determinism, toward individualism and against collectivism, toward personal integrity and self-respect and against altruism, toward responsibility self-determined and against social responsibility socially- or collectively-determined".

This libertarian press concept also brought with it the popular belief in the autonomous self which is allowed to function unhindered in a free market place of ideas to serve the public. This later became the basis for the First Amendment of the U.S. Constitution which states that "...Congress shall make no law...abridging the freedom of speech, or of the press". Media practitioners, both within and outside the U.S., have used this as a license to assume the role of the "constitutionally chosen protector of the people's right to know" (Fortner, 1978:46).

However, in spite of the dignity and appeal of these principles, media practitioners then and today know that these principles are not without their problems.

### **The Principle of Harm**

What constitutes harm? The nature of harm itself needs to be made clear. Feinberg (cited in Lambeth, 1986) defines harm as involving thwarting, defeating or setting back an interest which is of these specific kinds: property, privacy, confidentiality, friendship, reputation, health and career.

Defamation or invasion of privacy, for instance, would be considered as causing harm as is so often seen when a news story or coverage discloses information about a person's life that causes serious embarrassment or financial loss to the individual.

John Stuart Mill (in his monograph *On Liberty* cited in Klaidman and Beauchamp, 1987) advocated the Harm Principle that says that a "person's liberty may justifiably be restricted to prevent harm that the person's actions would cause to others". Thus, no matter how much freedom of the press or expression a journalist is given or has, this freedom should stop at the point and instant where that freedom would cause harm to another individual. One guideline that could be used to determine the 'point' that could cause harm is when an action is "offensive and objectionable to a reasonable man of ordinary sensibilities" (Haenggi, 1999). Though this in itself is very subjective and open to various interpretations, it can be generally assumed that media conduct like stalking, harassing and disclosing of trivial intimate details of the lives of public figures must be seen as offensive and objectionable.

The principle of harm dictates that journalists must show concern for those they cover; sources should not be used as means to one's own ends. It exhorts journalists to practice values like compassion, empathy, kindness, to treat others with decency and to allow them their dignity even in the worst of circumstances (Black, 1999:40).

In reality, though, this is difficult to practice and achieve and media practitioners, particularly journalists, have been known to step on many toes in the process of producing news. An example to illustrate this would be the secret marriage of Hong Kong movie star, Andy Lau to former Malaysian beauty queen, Carol Choo in 2008 (the secret marriage was exposed by Taiwan and Hong Kong media in 2009). Though Lau justified his action of lying to his fans as "protecting" his wife, the exposé of the lie did cause him embarrassment.

Nevertheless, many journalists would admit that though they have to be resourceful in the methods they use to gather information and the way they write the news, they would not deliberately harm their sources, physically or work-wise.

In addition to personal harm (emotional, mental and physical harms), intrusive journalism may also cause societal harm (Haenggi, 1999) as the public will become less informed when news space is taken up by sensational new items. More legitimate and salient news stories are either relegated to the inside pages or shelved altogether.

On the other hand, Klaidman and Beauchamp offered a different viewpoint when they argued that a distinction has to be made between the harm caused by the journalist's act and the harm that resulted from the individual's actions. For example, the media's exposé of a public figure's extra-marital affairs or other socially-unacceptable behavior, more often than not, resulted in his or her resignation. However, it cannot be argued reasonably that such exposés were not justified because the substantial basis for some of the harm already existed before the stories were reported. Therefore, the blame for the exposure should rest, not so much on the journalists who are after all merely executing their responsibility as a watchdog, as on the individuals involved in the scandal for disregarding the consequences of their actions. A fitting example is the politician's sex scandal as the media felt that the exposé is justified as it was the politician who had disregarded public decency and put himself into harm and public shame by having an affair.

Media critics, on the other hand, view exposés as invasion of privacy. The Parliamentary Assembly of the Council of Europe, for instance, while discussing the ethics of journalism, opines that the right of individuals to privacy must be respected, and this includes the rights of persons in public office except where their private life may have an effect on their public life. The fact that a person holds a public position does not deprive him or her of the right to respect for his/her privacy.

### **People's Right to Know vs Individual's Right to Privacy**

One of the fundamental tenets of a democratic society is that there exists a 'free market place' where the citizenry can have access to news and information to help them make informed decisions on pertinent issues. Journalists often quote the freedom of the press provision to gather this news and information to serve the public's right to know. This principle of the public's right to know often justifies and motivates several journalistic behaviours (Meyers, 1993) which at times borders on the unethical (for instance, invasion of privacy or deceptive methods of news gathering). There are numerous examples that can be quoted to show how the media have gone overboard in their fervour to gather and present news and information. The two cases briefly mentioned above are just two illustrations in a myriad of examples to show media conduct, particularly in invading a source's right to privacy.

An individual's right to privacy is defined, among others, as a right from intrusion into one's seclusion and solitude, and a right from public disclosure of embarrassing private facts. Privacy carries with it the connotation of control and limited access; the individual should have the right to control who can have access to the information



and how much of that information can be shared (Patterson, 1997). In journalistic ethics, no issue is as troubling as issues on invasion of privacy, largely due to the notion by both the journalists and the public that they have a 'right to know'. Herein lies the constant conflict and dilemma: the journalists seek for information on the notion of executing their journalistic duties to serve the public's right to know, and the individual/sources' belief in their rights to religiously guard certain information from public knowledge and consumption.

The decision to print or no to print a story that may impinge on an individual's privacy and subsequently causes harm, has never been an easy decision to make. The attempt to strike a balance between the right to respect for private life and the freedom of the press/expression, would almost always result in one party being frustrated. Should one adopt the position taken by the British House of Commons that "when one decides to become a public figure, one gives up in some way a little of one's right to privacy?" Or should one adhere to the ethical tenet and the Harm Principle that one's execution of her/his liberty should not go to the extent of harming a person? Can Bok's position, when she said, "There is no clear line surrounding private life that can demarcate regions journalists ought not to explore" (1999), be taken to lighten this ethical dilemma?

What constitutes the public's right to know? Though knowledge is an integral ingredient in creating an informed citizenry, the right to information should not be absolute; the public (through the journalists) should not be given valid access to any information. As Meyers (1993) opined, the right to know does not apply to all and any information; the public does not have a legitimate claim to every fact or opinion. There is neither a compelling nor a valid need for the public to get the information. At times, a person's right to privacy should outweigh the public's right to know based on the argument that the individual/public simply has no such a right.

The Andy Lau-Carol Choo secret marriage is a case in point. Before the media got wind of his marriage, Lau had always kept mum on the status of his relationship with Choo. However, speculation about the marriage became fodder for the media when Lau attended the funeral of Choo's father. Lau had to eventually admit to the public that he had married Choo the previous year. He apologised for lying to his fans but defended his action by saying that the marriage was kept a secret to "avoid his wife from being chased after by the media" (The Sun, 31 August, 2009). Because of Lau's celebrity status, the media and public may have the legitimate right to know about some personal details on Lau (but even this is subject to interpretation as to how much information ought to be shared with the public). Lau, too, on the other hand, should know better than to lie to the public given the intense interest that it has in him. A celebrity's marital status does not constitute secret information that ought to be kept from fans.

However, a more crucial concern that arises from this case is the media's misconduct during the funeral of Choo's father which showed a blatant disregard for privacy.

Family members have the right to mourn a death in the family in private; however the elder Choo's funeral became a media circus with the local and international media trying to get shots of Lau and his wife. Photographers had their lenses focused on Lau and because of that, he had to be shielded by many large umbrellas. The media too had to be prevented from getting too close to the funeral procession; a private zone where the media, in the first place, should not even have encroached.

The invasion into the Choo family's private moments should be seen as inflicting harm on the family. Lau's status as a celebrity, compounded by speculation about his marital status, still does not warrant intrusion into this kind of private affair. The public, too, should not expect to have a right to know because clearly a right to know just does not exist in this matter. As stated before, a right to know is not equal to valid access to any and all information; the public must have a legitimate entitlement to the information. Lau's and the Choo family's right to privacy should supersede the public's right to know (a real or an imagined right). Moreover, journalists (and even the public) often confuse the 'right to know' with having 'an interest or curiosity in knowing' (Meyer, 1993). What can the public possibly gain from information about Andy Lau attending a private affair (i.e. the funeral)? Thus, media conduct during the funeral merely shows the media's zeal to gather information not only for its own financial benefit, but also to whet the public's curiosity in knowing rather than serving a right to know.

### **Justification for Invasion of Privacy?**

The issue of whether a right to privacy exists for individuals gets complicated when the source's social standing is taken into account. While it has been said that the private zone of ordinary individuals is wide, a celebrity, public figure or public official has to contend with more media and public attention. It has become a norm and has been taken for granted (rightly or wrongly) that the lives of those in the public eye are open to public scrutiny. Individuals holding public office, particularly ex-heads of states like Bill Clinton and Silvio Berlusconi and politicians have had their private affairs paraded in the media. In some cases, the exposé eventually led to resignations from their positions (though it has to be pointed out that the resignations were not due to media exposure but because of the conduct of the individuals themselves).

Is there justification for the invasion of privacy of these public officials by the media and the public? Do they **not deserve the same respect** and privacy accorded to ordinary individuals? While this **continues to be debated** every time a new scandal comes to light involving a public official, the general sentiment is that **the media have the right** to report and the public has the right to know about **the conduct of these officials**, even though the conduct has no bearing or effect on the **individual's performance in public office**. The Clinton-Lewinsky sex scandal in 1998 **and the extensive media coverage**

sparked a lot of debate on media conduct. While some (both within and outside the media) regarded the coverage as investigative journalism, others viewed it as simply voyeurism. The public thought the media should stop reporting on the sex lives of public figures as this should not be a public issue. A Gallup poll in April 1998 showed that the public thought the media had overstepped their role when they (the media) framed the sex story more strategically than other types of Clinton coverage (Denton, 2003).

Nevertheless, there will always be a section of the public who believe that the media have a responsibility to cover such stories. The argument here is that the character and conduct of public officials (who are elected representatives and spokespeople of the public) directly or indirectly affect and impact the lives of the citizens they serve, thus giving the public a legitimate claim and entitlement to information about these officials (Meyers, 1993). Then there is also a school of thought that says the public has a right to know who public officials are and what they are about; by choosing to go into public life, these officials forfeit many rights, including the claim to privacy (Meyers, 1993). However, this debate would again become cyclical when it is argued that the public is not entitled to every information as that right is not absolute. However small the private zone of public officials is, they still have a right to some degree of privacy from intrusion by the media and the public.

The debate on the justification for invasion of privacy will continue to be inconclusive because too many factors come into play, such as to who is involved, what the issue is and what values society holds. Even when ordinary citizens whose position does not directly impact on society are involved, the debate does not get any easier. This could be seen in the media coverage of the murder of 8-year-old Nurin Jazlin Jazimin in 2007. The media were in a dilemma between wanting to respect the privacy of the deceased and her family, and exercising their freedom to inform the society about a horrific murder. The media could not be faulted for practicing John Stuart Mill's Principle of Utility (also known as Consequentialist Theory) which advocates the principle of "the greatest good for the greatest number (the majority)". To the media, giving wide coverage to the murder is justified as it would bring more benefit than harm to the public. With extensive media coverage, the media at least created awareness about children's safety.

Nevertheless, a point that needs clarification here to shed some light on the conflict between media freedom and media intrusion is not so much that the media should not or cannot report on an incident or issue. While the media's freedom to inform and enlighten the public should always be upheld, the contention is more the manner in which the information is gathered and the way the stories were reported. No amount

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<sup>1</sup> Nurin, an 8-year-old, went missing for a month after going alone to a night market. Her body was later found stuffed in a sports bag. The case gripped the nation's attention and rage because Nurin was abducted, beaten and had a cucumber and a brinjal forced into her private parts. She died of an infection after her intestines ruptured (NST, 26 Sept. 2007). Newspapers like The Sun and the New Straits Times practiced some modicum of respect by describing the death as being caused by "foreign objects" being forced into her private parts; other newspapers, however, deemed it fit to mention what the 'foreign objects' were.



of freedom should justify the media stalking or jostling to get pictures of a source particularly in a private affair like a funeral. During Nurin's funeral, for example, her parents, in their hours of grief, were hounded with questions and pictures and were not given a moment's peace. Photographers jostled to get a better view of the grieving family, prompting Nurin's 9-year old sister to protect the mother and asking the photographers to stop taking pictures of them (News Straits Times, 22 Sept. 2007). This was and continues to be done by the media; the funerals of Andy Lau's father-in-law and Nurin's are just two examples out of numerous cases.

The details given in a news report too could lead to invasion of privacy. The coverage of the Nurin murder in the print media, for instance, saw some newspapers exercising caution and respect for the deceased and leaving out graphic details of how she died. However other newspapers deemed it necessary to mention the unpleasant details that led to her death<sup>1</sup>. While the Principle of Utility can be quoted to justify the graphic details, the media should also take into consideration the emotional harm such coverage has on the grieving family members. What benefit is it to the public to know about how the girl died, especially as revealing information about the death is also seen by certain quarters as being insensitive to the family? In this particular case, the benefit to the majority should not override the harm to the minority. To expedite the process of making a decision in a conflict between the journalist's freedom to write, the public's right to information and the individual's right to privacy, media practitioners should distinguish between the public's 'right to know' with a 'want to know' or a 'need to know'. Debating this would be a whole discourse by itself; thus, suffice to say that media practitioners need to know the difference between the three. While the media should fulfilled the public's 'right to know' and the 'need to know' as long as the information is needed for citizens to make informed decisions in their daily lives, the media too should not pander to their 'want to know' as this is more often a desire to know information that satisfies the curious nature of humans. Many media products (for instance, entertainment magazines, reality television shows, tabloid newspapers and Internet websites) have mushroomed over the years to indulge the public's curiosity, thus creating confusion or a blurring of the distinction between a 'right to know' and a 'want to know'. This has resulted in a media culture that justifies invasion of privacy or evasive journalism in the name of an all-encompassing 'public's right to know', with some pandering to our lowest faculty of sensation.

### **Where does the Twain Meet?**

The work of media practitioners, especially journalists, is an unenviable one - they are constantly caught in a no-win situation. In their pursuit and coverage of news, they inevitably cause various harms to individuals. Proponents of both positions - those who advocate for media freedom to execute their duties and those who caution against causing harm - have legitimate concerns that should be addressed. There is thus a need for guidelines/framework that can help journalists who are already under a lot of deadline pressure, to come to a decision that would cause the least harm. One may argue that there already exist a legal framework, codes, canons, models and principles

to guide journalistic behaviours; yet harms on individuals continue to be inflicted. This maybe because these guidelines are more prescriptive and proscriptive rather than practical. Statements like “the news media must guard against invading a person’s right to privacy” (Code of Ethics of the American Society of Professional Journalist Sigma Delta Chi), and “I shall refrain from writing reports which will adversely affect a private reputation unless the public interest justifies it” (Ethics Code for the Philippines Press) are too vague and general to offer any practical guide<sup>2</sup>.

Nevertheless, these frameworks should not be dismissed by the media, but instead there must be a more conscious effort to understand the spirit behind the guidelines which is not to control but rather to bring about a more responsible press.

There has not been much effort on the part of the media thus far to analyse, due to the nature of the profession, the type of information they report on and the purpose of the reportage.

While it is the responsibility of the media to report on Nurin’s murder or a politician’s sexual indiscretion, what purpose do sordid and titillating details about the stories serve? Thetwain can meet if the media have more compassion and respect for the people they cover. Choosing to sometimes protect the minority they cover from harm should not be seen as a failure by the media to practise freedom to serve the majority’s right to know. The Western concept of freedom (of the press or expression) is not the be-all and end-all in journalism; other elements ought to be taken into consideration so as not to harm certain members of the public<sup>3</sup>.

To complement the existing guidelines the media can practice to reduce the occurrence of harm on the public, the media ought to, regardless of deadline and other pressures, weigh each story on its purpose and intention. Will the story save the community or individuals from harm? Will there be more harm than good by running the story? (Brislin, 1992). The media need to look deep into their conscience to ensure that the free flow of information and news is for creating an informed citizenry rather than to sensationalise due to commercial considerations. Though many are not comfortable with religious or ethical values and principles as exhortations for responsible journalistic behaviours as these have been said to thwart freedom, these are the public’s only hope for a responsible and ethical press. Problems continue to arise because the media have continued to ignore these tenets.

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<sup>2</sup> The two codes practiced in the journalism profession in Malaysia, *Tatasusila Kewartawanan Malaysia* and *Kod Perilaku Profesional Anggota Kesatuan Kebangsaan Wartawan Malaysia*, make no specific mention of invasion of privacy. There is also no law in Malaysia protecting the individual’s right to privacy.

<sup>3</sup> An example of how freedom brings more harm than good is Danish politician Geert Wilder’s controversial film ‘Fitna’ produced in March 2008 about Islam and terrorism. Though freedom of expression should be respected and defended, it is also irresponsible, insensitive and a provocation on the part of Wilder to continue to paint Islam and Muslims in general as terrorists. More caution should be exercised in a spirit of respect for religions and other beliefs and convictions.



Perhaps the media can take heed of President Dr APJ Abdul Kalam (the President of India) who lamented about why the media must be so negative. Talking about the Indian press, the president questioned why the media, instead of harping on crime, sickness or terrorism, cannot recognise India's strengths and achievements (The Star, 9 Oct, 2009). The answer lies in the mindset of the media practitioners. Gatekeepers (every level from the journalists, photographers, editors, sub-editors, graphic artists, etc.) must be willing to change an age-old tenet of journalism - bad news sells. There must be a shift from this principle to a framework that practices more compassion and respect for people in the news.

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