

Draw a Line between Freedom of speech and Privacy of Public Figures

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Introduction

'In modern society the clash between one's right to privacy and the right of the public to be informed in conjunction with the freedom of the press is a matter which has occupied the legal literature and the courts on many occasions (Karakostas).' 'This clash becomes even more evident when it refers to the private life of public figures (Flint, 8-9) where the interest of the public is more intensive (Karakostas).'

In the U.S, *New York V. Sullivan* (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254.) in 1964 was the first case to create the public figure standard (Wise Greek).

The case concerned a dispute between the New York Times and certain public officials in Alabama: particularly L. B. Sullivan, the Montgomery Public Safety commissioner. The government of Alabama sued the newspaper for running an advertisement allegedly defaming Sullivan and others. The United States Supreme Court overruled a decision, favourable to Sullivan, by the Alabama Supreme Court. Their reasoning was that because Sullivan had already placed himself into the public sphere, his case required a higher burden of proof than had been demonstrated or was usually necessary.

In Australia, 2011 ABC News reported that Former federal Labour candidate Nicole Cornes had won a defamation case against Channel 10 and comedian Mick Molloy (ABC News). In London, 2011 found that the number of court cases where privacy arguments were made by high profile individuals more than doubled, from nine in 2010 to 24 in 2011 (years to May 31st), and only seven defamation cases in 2012. 'The reason why the number of cases might have fallen is that it has become harder for defamation claimants, such as celebrities, politicians and sports stars, to win a claim' (Reuters). In UK, 'Super-Injunction' is another reason for the decline of defamation cases. 'A super-injunction stops anyone publishing information about the applicant which is said to be confidential or private - but also prevents anyone from reporting that the injunction itself even exists' (BBC News).

It becomes a trend for media to investigate public figures' privacy. For example, 22-year-old model Lara Bingle and Australian cricket vice-captain Michael Clarke faced enormous media interest over their relationship in 2010 (The Telegraph). In November 2012, every single detail about the wedding of China's 33-year-old Olympic 'Diving Queen' Guo Jingjing and 31-year-old Kenneth Fok, grandson of the late Hong Kong tycoon Henry Fok was reported by the media (Natalie). What's more, even Australia's former Prime Minister failed to escape this interrogation. In 2009, Sunday Telegraph alleged the former prime minister's daughter, Katherine, kicked one of its photographers at a social event (Halloween) at the State Theatre and said: 'Do you want me to throw you down the stairs and kill you' (Freedman).' Enraged by what he regards as an invasion of his family's privacy, the former Prime Minister Paul Keating has called for the rewriting of privacy laws so that media would have to gain someone's permission before publishing a photograph or story about their private life' (Freedman).

Public figures' privacy versus public interest

Privacy, as a legal right, has first been defined by Thomas Cooley (Thomas Cooley is the 25th Justice and a Chief Justice of the Michigan Supreme Court) as a right 'to be let alone' in his treatise on torts (Nordhaus, 286-287), and also '... the right to be free from undeserved and undesired publicity (Mills, 51)'. 'According to recent Greek literature, one's private life is considered to be the space set

by the person itself within which he is considered to enjoy his private and family activities uninterrupted and without intrusions by third parties' (Karakostas).

'The scope of the right of privacy is each time defined by the taking into account of both subjective and objective criteria' (Karakostas). 'These include information, the release of which would be offensive to a reasonable person. It would not be of legitimate concern to the public' (Flint, 9). 'Examples would normally include details about illnesses, hospitalization or intimate parts of the body. Equally, intrusion into private places is a breach of privacy' (Flint, 9). From the point of purpose, Robert W. Mills defined privacy as the most personal of all individual rights and includes the right not to have one's name, picture, or character portrait used for advertising, for trade, or for entertainment without consent (Mills, 12).

Obviously, public figures such as the former Prime Minister Paul Keating, desire that media would have to gain their permission before publishing a photograph or story about their private life. However, the response of the media is as following: 'It is grossly hypocritical of Paul Keating – or anyone else in the public eye – to complain about the media invading their family's privacy' (Spicer). Then, who shall win and whose viewpoint should be supported?

'As acknowledged, while public figures have some right to privacy, they must expect less than ordinary citizens. Articles recounting details of the daily lives of celebrities generate a much higher level of interest on the part of the public than do similar stories concerning unknown people' (Nordhaus, 289). As David Flint argues, 'when a public figure expressly or implicitly brings his or her private life into the public area, normal concepts of privacy are waived' (Flint, 2). He continues, 'the essential reason is that areas of their private lives are also essentially of public interest, and the public interest must prevail' (Flint, 8). 'As a result, a broad spectrum of information concerning celebrities is transferred from the protective shield of privacy into the realm of the public interest' (Nordhaus, 289).

'The right of privacy generally does not prohibit the presentation of any matter, on radio or television that would be considered of current public interest' (Mills, 59). 'There are always sufficient reasons to support the disclosure of public figures' privacy. If a person is a participant in a happening of public interest, even if unwittingly, he waives his right of privacy insofar as that event is concerned' (Mills, 59). 'In addition to any waiver of rights to the same level of privacy as a 'private' person by virtue of voluntary entry into the public arena, public figures and politicians often exert more influence over the lives of others. Thus, it is questionable whether they should be accorded the same level of protection' (Miller, 157).

The function of public interest seems to play a great role in the public knowledge of public figures. Dianne Louise suggested that 'public interest must necessarily place a limitation on the right to privacy so that information of general concern and for general knowledge and benefit may be put before the public' (Mckaug, 133). This idea especially makes sense for the public figures like politicians. For example, 'public policy rationalise that the way a political celebrity handles his personal life is a representation of his character and judgment, which is important to the public in determining who they wish to represent their interests' (Nordhaus, 2).

However, the term of 'public interest' must be fully and clearly interpreted before it is put to use; public interest must be articulated with the greatest clarity possible. 'Where the facts have been fictionalized for presentation, the courts must decide whether the presentation is of sufficient or justified public interest to excuse the invasion' (Mills, 59). 'The American model considers the public interest both in terms of the status of the parties involved 'a public figure' and the content of the statement 'newsworthiness'' (Mills, 162). 'Normally, in determining whether the subject matter is of public interest and thereby privileged, factors which should be considered include the nature of the

publication, the informative or instructive value of the article, the degree of public prominence, and the effect of the publication' (Mckaign).

'In short, the usage of the public interest must be just that to justify the sacrifice of privacy. Where the purposes are primarily selfish ones or other considerations determine the use to be not in the public interest, the rights of privacy prevail' (Mills, 59). 'It is therefore clear that any conception of a public interest exception must be based upon the content of the speech' (Miller, 162). Warren and Brandeis saw speech of this type- 'idle gossip'- as wholly valueless, and although 'apparently harmless, when widely and persistently circulated is a potent for evil' (Warren, Brandeis 152).

Freedom versus credibility

As David Flint argues, 'it is undeniable while the press is a nosy, insolent institution; it is absolutely indispensable in a liberal democracy' (Flint, 8). 'Inevitably, the media has a right to inform the public about matters of public interest' (Nordhaus, 290). 'It often serves as a 'surrogate' for the public, which may necessitate broader rights of access for the press in order to provide the public with the greatest amount of information possible' (Nordhaus, 293). The public encourages this intrusion into the lives of public figures by their obsession with every bit of gossip that comes their way. 'The paparazzi (The term 'paparazzi' is defined as 'a freelance photographer, esp. one who takes candid pictures of celebrities for publication' (Nordhaus, 286)) feed this hunger by gathering the information that the public yearns to consume' (Nordhaus, 286). 'Normally, the freedom of media yields the fruit of 'newsgathering and news worthiness' ' (Newsworthiness involves a balancing of three key factors: the social value of the item published; the depth of the intrusion into exclusively private affairs; and the extent to which the party voluntarily assumed a position of public notoriety' (Nordhaus, 293)), which can be used as defences to protect their actions when heading cases to the court. Jamie E. Nordhaus analysed the reason why it was hard to protect the private lives of celebrities from being invaded by the paparazzi: The answer lies in a three- fold analysis. First, the position of celebrities in society encourages such invasions. Second, the paparazzi can use the newsgathering and news worthiness defences to protect their actions. Finally, current privacy law is not structured in such a way as to afford celebrities the proper protection they need (Nordhaus, 289).

Nowadays, does the role of the media stray far from the original mission? According to the First Amendment of US Constitution (The Government's power to censor the press was abolished so that the press would remain forever free to be abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government (403 US 713:717)) 'the essential role of the press is to expose deception in government or, to put it more broadly, to subject public life to scrutiny' (Flint, 8). The conflict becomes more acute in the context of public figure privacy rights versus media rights to free speech, 'as some quarters of the media continue to subvert their constitutional function, preferring to print gossip and 'human interest' stories over those which affect economic, social and moral concerns' (Miller, 149).

However, a new perspective toward media and press should be taken seriously if they are eager to playing a further great role in society. Nowadays, journalists do not enjoy a high reputation for honesty and ethics. The survey of professions by the Roy Morgan polling organization in July 2011 showed only 11% of respondents thought print journalists were honest and ethical. An international survey of 127 journalists in 46 countries, including Australia, found that most faced ethical dilemmas at work and most admitted to having behaved unethically (Patching). 'The media depend not so much on entertainment but on credibility' (Flint, 12). 'Credibility is the key, which is assured through accountability, internal and external' (Flint, 13). The point is that accountability and responsibility

are matters for self-regulation by both the press and the public. 'If some media outlet becomes unacceptable, then the public should write and complain. In the worst cases, turn it off or stop buying' (Flint, 13).

'While the First Amendment does protect legitimate newsgathering, it does not provide the press with an impenetrable shield from liability for torts committed while gathering the news' (Nordhaus, 293). 'To protect the gathering of news to the extent necessary to adequately keep the public informed, but not to the extent of allowing access to information to which the public would not normally be entitled' (Nordhaus, 293). Therefore I agree with Duncan Miller:

Unlimited speech is not justified on the basis of self-fulfillment as the speaker who damages the human dignity of another by disclosure of personal information does not show the equal respect and concern that justifies his own right to speak (Miller, 158).

Conclusion

Media's attention and free speech principle to public figures has resulted in certain degree of loss of privacy concerning both private and public issues for many public figures. This loss is partially due to the status of public figures as public figures and public interest, which they have no choice but to subject their everyday lives to more extensive scrutiny than the average citizen.

'However, what constitutes a loss of privacy that actually concerns any particular public figure, whatever the circumstance, will be a deeply subjective claim. A legitimate public interest will arise more often to reduce protection and permit the publication of limited classes of personal information' (Miller, 163). 'However, insofar as public figures control the way in which they publicize themselves they will be in control of the level of interest that their personal lives can legitimately attract' (Miller, 163).

As to the media, freedom and responsibility are intertwined; they are the two sides of the one coin. Unlimited and unrestricted freedom leads only to ruin. Credibility is the key to the reputation and prosperity of the media's bright future.

In conclusion, where is the line? It's both the subjective and objective criteria. In my view, we should draw the line between the freedom of speech and privacy of public figures, out of the point of legitimate public interest and credibility respectively.

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