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Justifying Journalistic Harms: Right to Know vs. Interest in Knowing

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Journalists are regularly criticized for causing harm to others, such as invading privacy, printing, or airing offensive material, and so forth. Although most sensitive journalists readily acknowledge these harms, they frequently argue that the pursuit and coverage of news is nonetheless justified because it fulfills a greater moral purpose—satisfaction of the public's right to know. This article argues that although "the public's right to know" does justify some harmful journalistic behavior, too often the phrase is used without the conceptual precision necessary to justify the competing harm. That is, journalists often confuse having a right to know with having an interest or curiosity in knowing and such conceptual confusion too often allows journalistic behavior to occur that would otherwise be seen as unethical.

In a recent Shoe cartoon, Jeff MacNelly, the author and artist, presents two journalists on their way to cover a press conference from a group called "Men Against Dry Cleaning." When questioned about providing such coverage, the title character pontificates about furnishing his readers with information necessary to make responsible decisions, concluding, in the third frame, that these readers "have a right to know." In the fourth frame, however, the true motivation for the coverage is revealed when Shoe notes, seemingly in passing, that the group has also provided "an open bar for members of the press."

As usual, there is a wealth of wisdom behind Shoe's humor. The impassioned words of the second and third frames, of seeing and recognizing one's duty to inform the public, no doubt ring true for most journalists. But the less than pure motives and the obvious confusion about the concept of the public's right to know can hardly be written off as mere cartoonist hyperbole. As a group, journalists seem to be
widely confused about the fundamental issues that underlie the public's right to know and the corresponding political rights of expression and a free press.

Core in Journalistic Ethos

An appeal to the public's right to know serves as the core element of the journalism ethos, as revealed in the great ado surrounding the 200th anniversary of the ratification of the First Amendment.¹ This principle, the public's right to know, routinely motivates and justifies a wide range of journalistic behavior (e.g., invading privacy, using deceptive investigative methods, treating sources as objects), behavior that without such a justification would be regarded by all as unethical. That is, an appeal to the public's right to know provides a greater good defense, giving journalists (supposed) valid moral reasons for engaging in what would otherwise be seen as improper behavior.

Given the pivotal role the principle of public right to know plays in driving and confirming journalistic activity, it is crucial that working reporters and editors, as well as theorists and educators, understand it in its full and subtle complexity. This article provides a detailed analysis of the history and value of the principle, including an examination of the general notion of rights, and suggests how this analysis would affect contemporary journalistic practices. The article concludes by recommending a moral decision making model that rejects a stark, either/or approach in favor of one that sees competing rights and values as falling on a continuum.

The following paraphrased conversation with the editor of a mid-sized newspaper represents a good starting point, as it seems to reflect a sophisticated and complete argument.

Author: You realize that running that story will likely cause embarrassment and shame to the individual and his family.

Editor: I hope you are not suggesting we should not run stories that may shame or embarrass! Our stories regularly cause such harm, but we print them because the First Amendment gives us both a right and, I would argue, an obligation to do so.

Author: No doubt, but don't those rights and obligations have to be weighed against other moral concerns? Surely no one wants to claim that the protections afforded by the First Amendment are absolute.
Editor: Not absolute, but the press corps do serve a vital social purpose: protecting and promoting the public's right to know.

The editor's argument is both accurate and powerful. One of the fundamental tenets of democratic political systems is that the citizenry must have access to relevant information about their government, their social institutions, and so forth. And it has been historically recognized that independent and aggressive news media are the most effective means of accomplishing this. Although individuals will sometimes be harmed by the pursuit and coverage of news, these harms are seen to be justified by the promotion of a more powerful moral good—satisfaction of the public's right to know.

Although this moral imperative can justify some harmful journalistic behavior, too often it is used without the necessary conceptual precision and clarity. That is, and this is the principal claim of this article, it seems that journalists often confuse having a right to know with having an interest or curiosity in knowing. They do this because they pay too little attention to the nature of rights, in general, and in particular to the right to know.

Journalists are by no means alone in their relative ignorance of the source, role, weight, or hierarchy of rights, yet no other craft or profession, except maybe the legal profession, relies so heavily upon an appeal to rights to motivate, protect, and confirm its work; no other profession has constitutionally guaranteed protections for its activities, indeed for its very existence. For example, unlike all other professionals, journalists may claim First Amendment-provided immunity against testimony in legal proceedings, even when they are called upon merely to recount their having been a witness to a factual event and even when such testimony would serve to the great benefit of another.

This example reveals the immense legal and social power held by news media, a power not enjoyed by almost any other enterprise. Such power is too often employed, however, without an adequate understanding of the historical and moral foundations upon which U. S. free speech and press rights rest.

What Rights Are and Do

Rights are generally regarded to fulfill one of two (or both) moral and political functions: Either they are seen as protecting persons from the actions of others or as giving persons entitlement to certain social goods. The former function finds its modern roots in John Locke (1689/1982), whose claim that all persons, by their very nature, enjoy rights to "life, health, liberty, and possessions" (p. 4) is clearly resonant
in Thomas Jefferson's appeal to "Life, Liberty, and the Pursuit of Happiness."

In the contemporary language of Robert Nozick (1974), these so-called negative rights are seen as moral "side constraints upon the actions" of others (p. 29). On this account, your having a right to property restricts actions I might otherwise take, for example by constraining me from trespassing upon or vandalizing your homestead. For Nozick and other negative rights theorists, rights serve as a sort of moral barrier around the protected thing or person; to cross that barrier without the rights bearer's permission is to commit an egregious harm.

By contrast, those who defend a positive conception of rights see them as entitlements or claims, claims that exist in part because of our nature as persons and in part because of the social institutions in which we are imbedded. In Richard Wasserstrom's (1970) terms,

To claim or to acquire anything as a matter of right is crucially different from seeking or obtaining it as through the grant of a privilege, the receipt of a favor, or the presence of a permission. To have a right to something is, typically, to be entitled to receive or possess or enjoy it now, and to do so without securing the consent of another. As long as one has a right to anything, it is beyond the reach of another properly to withhold or deny it. (p. 98)

Obligation to Provide "Social Goods"

And indeed, not only is it "beyond the reach of another to withhold or deny it," it may well be incumbent upon the said person to provide access to it. If I have a valid rights claim to, for example, a basic education, a concomitant and binding social obligation exists to provide access to the social goods necessary for the fulfillment of that claim.

From this general analysis two important points relevant to the current discussion emerge. First, both negative and positive rights theorists see rights as playing a profound and at the same time restricted role in moral and political dialogue. To claim a right is to make the strongest possible moral (and often legal) appeal; it is to say that such a claim can be ignored or violated only for the most compelling of moral reasons.

Having such a status, though, mandates that use of rights language should be quite restricted. In Wasserstrom's (1970) terms, "the things to which one is entitled as a matter of right are not usually trivial or insignificant. The objects of rights are things that matter" (p. 99). A. I. Melden (1977) echoed this sentiment when he noted that
interests protected by rights "cannot be some passing fancy or idle whim or desire. . . ." (p. 136).

Thus, despite corporate America's assertions to the contrary, persons do not in fact have "a right to have their chicken done right." And despite many journalists' similar assertions, persons also do not have a right to know about Madonna's latest love affair. Both of these claims clearly are not about "things that matter" and hence do not meet at least one of the necessary criteria for legitimate claim to being protected by a right.

Second, the specific right in question here—the right to know—finds its strongest moral and political force in its positive function, in its claim that persons are entitled access to certain kinds of information. This point is apparent in the most direct contemporary legal expression of the right to know—The Freedom of Information Act (FOIA). The FOIA declares that persons are entitled access to certain information held by the state, information relevant to their or to the public's good.

Given, then, its status as a positive right, when should the right to know be morally compelling and what kinds of other considerations would appropriately outweigh it? Answers to these questions require a closer examination of the right, including some of the historical background behind its indirect inclusion in the U.S. Bill of Rights through First Amendment protections of speech and the press.

The Right To Know

Why do persons have a right to know certain information? First, because knowledge is taken to be valuable for its own sake and for its ability to engender, in J. S. Mill's (1859/1956) terms, "individuality, . . . a condition that brings persons nearer to the best they can be" (p. 77).

Knowledge also plays a vital role in the creation and maintenance of just societies. Indeed, throughout history the right to know has been most loudly defended for the part it plays in helping to create an informed citizenry, a citizenry that through knowledge is able to place constraints on governmentally held power.

Debate in Western culture over whether its members have a right to know the workings of the state can be traced at least back to Plato's (1491/1974) Republic, in which he argues that the just society must be founded on a "noble fiction" (p. 82f). In one form or another, this notion, that members of the non-ruling class should be kept ignorant of state workings, held sway in Europe through the early Middle Ages. Although echoes of it are still clearly present, the notion that one must be specially qualified to be given access to certain types of information gradually has given way to the Enlightenment-period concept, the marketplace of ideas. Here the emphasis falls not so much on the
abilities of the individual, but on the rational processes behind the communication and receipt of ideas. Whereas defenders of the marketplace of ideas acknowledge that allowing all persons to speak and to have access to sensitive information will inevitably result in the promulgation of falsehoods, they nonetheless believe, in Jeffery Smith's (1988) terms, "the proposition that truth naturally overcomes falsehood when they are allowed to compete" (p. 31). Imbedded in this belief is the idea that persons, with their innate rational skills, will eventually sift through competing claims, sorting out the true from the false. Indeed, they argue, with Mill (1859/1956), that truth is at times best illuminated in "its collision with error" (p. 21).

Numerous defenses of the public's right to know and to express ideas emerged during Great Britain's political and religious conflicts of the mid-17th century, culminating in Milton's classic Areopagitica, first published in 1644. Although its immediate impact was limited (cited in Smith, 1988, p. 34), Milton's work became the seed for later arguments by the likes of Thomas Paine and Thomas Jefferson. Jefferson incorporated these arguments first into the 12th article of the 1776 Virginia Declaration of Rights—"That the Freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments" (Melden, 1977, p. 136)—and eventually into what would become the First Amendment to the U.S. Constitution. In fact, this emphasis on a free flow of information often stood as a key tenet of the modern period's revolutionary movements.

Despite considerable differences about how far the right to know should be taken, all these thinkers shared the basic conviction that without it, a just system of government, in particular one founded upon democratic ideals, was not possible. Democracy demands information, both to appoint qualified representatives, and to keep watch over their activities. As Meyer (1987) stated, "government, the Founders believed, was essentially selfish, grasping, and abusive of power. So an independent check in the form of the free transfer of information was essential to keep it in line" (p. 7).

The right to know has thus clearly been understood as a crucial means to a crucial end. At its core, it serves to maintain, protect, and promote political structures, structures which themselves serve to maintain, protect, and promote such other basic goods as the right to life, liberty, and the pursuit of happiness.

Restricting the Right to Know

To recognize knowledge as a carrier of such value does not thereby provide absolute license to seek it. At least two factors place important constraints on obtaining and disseminating information.
First, as John Finnis (1980) noted, "to think of knowledge as a value is not to think that every true proposition is equally worth knowing, that every form of learning is equally valuable, that every subject matter is equally worth investigating" (p. 62). Some information is simply beyond the pale of that to which one may justly claim access.

An analogy helps here. To say that someone has a right to property does not grant her access to any property; she must have some legitimate entitlement to it, based, for instance, on a just acquisition or compelling need (e.g., entering the property will allow me to save another’s life). Similarly, to say that someone has a right to know does not give her valid access to any information; she again must have some legitimate entitlement to it, based, for instance, on a preexisting moral relationship (e.g., parent-child) or on a compelling need (e.g., the information in question is vital to another’s life or safety).

This point is readily apparent when the information in question is about others’ personal relationships. For instance, in normal situations I have no right to know whether my colleague engaged in sexual relations last night. If he wishes to tell me, that is his prerogative, but I have no claim of entitlement to such information. And, importantly, it is not that his right to privacy outweighs my right to know; it is that I have no such right. In normal situations, acquiring such information serves no valid purpose.

Entitlement Justified

Suppose, however, that the person with whom he had sex was my spouse? One clearly can justify an entitlement to such information under these conditions, because knowing it would fulfill an important purpose. Recalling Wasserstrom’s (1970) and Melden’s (1977) language, it is information that matters; it satisfies more than just some passing fancy or idle whim or desire.

This point cannot be overly emphasized. The right to know does not apply to all and any information. Even setting aside questions of whether other rights may outweigh (the second appropriate constraint, to which I will return in a moment), persons simply do not have legitimate claim to every fact, opinion, or theory potentially available to them. There must be some valid need present or some other moral connection that gives the agent informational privilege.

For the contemporary journalist, though, the issue is not so much about the personal lives of private citizens but about the lives and activities of public figures. The current journalistic canon is that public figures are fair game. Two justifications for this position are typically given. First, for all the democracy-related reasons as noted
before, the public has a right to know who public officials are and what they are about. Second, by choosing to go into public life, such persons surrender any competing moral claims, in particular the claim to privacy.

The first justification no doubt has merit. Because the actions and, arguably, the characters of public officials directly affect citizens' lives and well-being, a legitimate claim of need and just entitlement to relevant information can easily be made. A similar, if more circuitous, defense can be given for revealing names of criminal defendants and victims; that is, a system of justice works best when exposed to light.11 These same considerations do not apply, however, to Madonna's latest love affair, or to whether Marla and The Donald are on the rocks this week, or even to displays of a family's grief at the loss of a loved one. In none of these cases is there a legitimate need to know; no rights-granting purpose is satisfied in the communication of the information.12

These types of examples are, in fact, the heart of this article. Persons are undoubtedly enthralled, fascinated, and titillated by such words and images. But that persons are thus curious does not grant in them a right. To argue such is to confuse having a right to know with having a curiosity in knowing. Given the nature of legitimate rights claims, for such a positive entitlement to exist, a more powerful moral appeal than mere interest or curiosity must be present; there must be some genuine moral need. That need is present when the activities of public officials or institutions are in question. No such need exists when the information in question is as trivial as the philandering of the likes of Madonna and others.

Are Privacy Rights Forfeited?

But what of journalists' second point, that when persons choose to enter public life they forfeit their right to, among other things, privacy?

Two responses are relevant here. First, the notion of a public figure is far too ambiguous, ranging from a Madonna who lives and breathes for media attention, to a Magic Johnson who, prior to his disclosure of being HIV positive, insisted on keeping his life off the basketball court strictly private, to the average Joe or Jane who inadvertently stumbles into a newsworthy event. Surely there is very little similarity among these types of cases and thus to lump them together as all being public figures is to commit a multitude of logical and moral fallacies.

Second, even in those cases where the person has no grounds to claim privacy (e.g., in the case of the elected official doing public
business) the right to know is still not absolute; it must be balanced against other competing moral considerations. Even Milton and Mill, the idols of right to know proponents, recognized the need to weigh the right against other moral concerns. Mill (1859/1956) explicitly makes this point. Immediately following a rich and impassioned defense of The Liberty of Thought and Discussion, he noted an exception to that principle:

Even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may incur just punishment when delivered orally to an excited mob assembled before the house of a corn dealer, or when handed about among the same mob in the form of a placard. (pp. 67-68)

Thus we reach an obvious conclusion. Even in those few cases in which the public has a legitimate right to know, that right has to be weighed against other rights or moral considerations.

Weighing Moral Claims

Such a weighing is by no means a simple task. One must first determine whether another valid moral claim is present. This alone is often problematic in that it requires both an appreciation for the differences between normative and descriptive aspects of a situation and a sufficient understanding of what consequences will likely result from the available options.

When a competing moral claim is discovered, one must then go on to determine its relative strength, as weighed against the existing right to know. Here the courts, and consequently journalists, have long relied on the clear and present danger criterion first recommended by Justice Holmes (Schenck v. United States, 1919) in a now famous passage:

The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. (p. 249)

But this criterion, popular as it is, is of little help to the working journalist. For example, when a local journalist recently struggled
with whether to report that an area minister had been accused of sexually abusing children in his daycare center, there was a clear and present danger with either option. The minister faced an immediate and substantial threat to his reputation, and to his overall well-being, should the accusations be made public. But if the charges were valid, there was also a clear risk to any children whose parents had not been informed of the potential threat.

The reporter's struggle in this case was altogether appropriate. As with any true moral dilemma, no option was desirable and no obviously preferable choice stood out. She recognized this difficulty and indeed felt overwhelmed by it. In her mind she was incapable of determining the correct answer and thus she took what she believed to be the morally neutral position—run the story and let the viewers decide what was best. Indeed, her turmoil over the choice did not come to full fruition until later, when she had time to reflect upon her choice.

This example is especially informative in that hers was precisely the response that is characteristic of many working journalists. Part of the journalism ethos is that only facts are real; value judgments either are relative (and thus out of the purview of the journalist) or fall into the religious or philosophical domain (and thus are beyond the journalist's expertise). In either case, the ethos holds, the reporter should not be making such judgments; she should merely discover and report the facts.

Although this attitude may be liberating, it also divorces the journalist from her role as a moral agent, accountable to others. In the case in question the reporter had an obligation to determine who would be harmed by her actions and to take whatever steps possible to minimize those harms. To say she was only reporting the facts is far too reminiscent of claiming to legitimize an act by only following orders.

Neutral Stance is Not Neutral

The appeal to the morally neutral stance of "run the story and let the readers or viewers decide" is, in fact, anything but neutral. The decision to print or air first and ask questions later assumes that the information in question is valuable, at least enough to justify the expense of obtaining and airing or printing it. This assumption is not morally neutral; it entails an implicit, and sometimes explicit, value judgment that the information is worth knowing.

Why, then, do journalists so often present the process as neutral? Because, first, doing so serves their self-interest. It allows reporters to get the compelling, dramatic story (and, importantly, please the editor
or producer in the process) without having to fret over moral principles. And second, the belief in, and importance of, the public's right to know is such an integral part of the contemporary journalistic ethos that it is seen as fact, not value. The right has taken on the status of what Gaye Tuchmann (1972) called "common sense"; that is, it is so obvious as to be taken for granted as part of the way things are, not as a judgment that has to be determined and that is subject to moral evaluation (pp. 674-675). Even in those cases that stretch the boundaries of common sense, journalists tend to appeal not to moral deliberation but instead to legal precedent, expressing an attitude that if the law does not say it is wrong, it must therefore be right.

Given that any choice the journalist makes involves a value judgment, what sort of reflective process should be used? If the arguments above have merit, journalists need first to recognize that increased knowledge is not always of moral benefit, that not all factual information carries with it a corresponding right to know. Second, in those cases where a legitimate right to know does exist, journalists must attempt to determine how that right weighs against other competing moral claims.

I again emphasize that this is a difficult and often time-consuming task. Indeed, when I have suggested it to working journalists, they have generally criticized it on two grounds:

1. It is impractical. It would require reporters to carefully assess every story, every photo, to determine whether it is ethically appropriate. This, they argue, is too time consuming and it would impose on journalists the role of moral cop.

2. It is too restrictive. Important information would be withheld out of an inordinate fear of violating a perceived notion of proper ethics.

Each Story a Moral Judgment

In response to the first concern, reporters, editors, and news directors all make similar judgments every time they consider a story. They evaluate newsworthiness, timeliness, whether readers or viewers will be interested, and so on. It is through experience that journalists come to feel competent to make these judgments. So also through experience can they feel competent to judge ethical propriety. In fact, many journalists readily admit to making such ethical judgments on a daily basis, deciding for instance whether to print or air nudity or offensive language.

Whether, in response to the second concern, this approach would be too restrictive rests upon how one views the options. For example, instead of regarding a decision to withhold a story as a choice against
publication, it could be seen as attempting to promote privacy. In other words, by focusing on what is being accomplished, rather than on what is being suppressed, the journalist need not feel constrained. Instead, he or she may feel ethically and professionally empowered.

This does not mean that airing or publishing a potentially harmful story must always give way to a competing moral claim or right. Society is dependent upon journalists to fulfill their moral role of providing meaningful information on significant issues and often that obligation should take moral priority over a resulting harm. But when the moral analysis requires that a story or an element of a story be withheld, the reporter need not take this as a loss; instead, he or she may take pride in having been a morally responsible professional and person.¹⁴

Notes

1. See, for example, the special section in the November/December, 1991 issue of Columbia Journalism Review.
2. He is not named, in part, out of respect for his privacy and, in part, because this conversation is typical of many others held with other reporters, editors, news directors, etc. Much of the research for this project comes from 5 years' observation of news gathering, editing, and reporting activities at this same newspaper and at a network affiliate television station. Other research comes from analyzing journalists' evaluation of ethical issues in scholarly and professional literature and in journalism ethics seminars and workshops.
3. Philip Patterson and Lee Wilkins (1991) suggested a similar view in Media Ethics: Issues and Cases (pp. 114-115). Because they restrict having a right to know to a legal status, they add a third category of having a need to know. In this article having a right to know connotes having a moral right, which, in a just society, would produce a corresponding legal right. Indeed, there is not sufficient space to adequately develop this argument here, however, having a right to know is based in large part upon having a corresponding need to know.
4. Philip Meyer (1987) described one such refusal in the opening pages of Ethical Journalism (pp. 4-13).
6. This characterization comes from Isaiah Berlin's (1969) description of negative and positive liberty in his classic essay, "Two Conceptions of Liberty." The seemingly value laden choice of these terms is not intentional on Berlin's part. Indeed, the
essay is devoted to showing that negative liberty is to be highly preferred over positive.

7. For example, in the paranoia of the Nixon Administration and in the Pentagon's control of information in the Gulf War.

8. Ironically, Milton fervently defended the need for a free and active press. However, he rejected open discussion of Catholicism or of ideas that are "impious or evil absolutely either against faith or manners" (cited in Smith, 1988, p. 34).

9. Melden (1977) made a similar point, focusing on the privilege that relationships provide (p. 61).

10. Many also claim that relatively "innocent" bystanders, such as families of public figures or persons unwillingly thrown into the public eye, are also fair game. See, for example, the New York Times editorial which argued, "Anyone who runs for public office invites public interest in one's private life, family, and spouse. . . ." (cited in Fink, 1988, p. 29).

11. Note that this argument says merely that a right to know exists in this situation. It does not say that this right must thereby outweigh any competing moral interest, such as protection of privacy or an obligation not to further victimize.

12. Two moral justifications are often cited for the latter example, the communication of others' grief. First, it is argued, the expression of grief best satisfies a need to know certain kinds of information, for instance that a particular public activity is dangerous (R. Bentley, personal communication, February 1989). Yet, although persons do indeed have a right to know about public hazards, such information can be obtained without having to flaunt private moments, moments to which others have no legitimate claim. The second justification cited is that communicating such grief can create genuine empathy and thus help break down the sense of otherness which often exists among relative strangers (J. Banaszynski, personal communication, April 1989). Creating empathy is certainly a benevolent goal, but it does not necessarily carry with it a corresponding rights claim. I cannot claim legitimate entitlement to information about others' suffering, unless they are willing to grant it to me. That is, even if it has the potential to make me a more caring, better person, it is their decision whether to let their experience serve to further my moral education.
13. Meyer (1987) reached a similar conclusion in his analysis of whether journalists should provide testimony in court (pp. 11-13).

14. An earlier version of this article was read at the 1992 National Conference on Ethics and the Professions in Gainesville, FL. I wish to thank Bruce Jones, Clay Steinman, and the anonymous reviewers of this journal for their helpful suggestions in reworking the article. Also, research on the article was supported in large part by the Kegley Institute of Ethics at California State University—Bakersfield.

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