

Public interest

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Definition

- Can we define it? Look at it more as a process for deliberation
 - E.g. Abu Grahib
 - Should I publish it, further humiliating victims, or not expose wrongdoing in the military
 - Identify the stakeholders
 - Victims
 - Perpetrators
 - Human rights advocacy
 - Government: US v Iraqi
- Broad ethical guiding principle
 - Embedded in ethical decision making
 - Golden mean/role/virtue
 - Role of media in society
 - Intention/duty
 - Some duties are absolute
 - E.g. Open justice, rule of law
 - Consistency, intention
 - Commercial cultures?
 - Consequences
 - Greatest good
 - Rule of law, integrity of judiciary
 - Freedom for one is freedom for all
 - Marketplace of ideas
 - A bridge between ethical thinking and legal thinking
 - Builds on utilitarian thinking
 - McIntyre, Sanders
 - Autonomy
 - ◆ Key ingredient in ethical decision making and assuming responsibility for it
 - ◆ Understanding key concepts and how they apply to practice helps develop your autonomy
 - Understanding key concepts helps us understand the complexity of ethics
 - ◆ 'Ethical judgements then, focus on standards of right and wrong and discussion and controversy arise in the clash of different values and principles'
 - McIntyre: 3 basic virtues are common to most endeavours
 - ◆ Including
 - ◇ Justice
 - ◇ Courage
 - ◇ Honesty
 - ◆ **In order to actualise the virtues of a media practitioner, the focus of actions should be the public interest**
 - ◇ **Use PI to guide judgement and deliberation**
 - ◇ **Reconcile tensions between competing rights as a way of assessing the greater good**
 - ◇ **Focusing on duty to the public and role**
- Used as a defence/justification
 - In
 - Embedded in codes and laws
 - Reason for complying with codes/laws
 - Justification for challenging laws and codes
 - Often an element of a legal defence
 - Used by media to advocate freedom from regulation of speech, press, media
 - Autonomy of the individual
 - Avoid patronage between politicians and media
 - Accountability

- Informed, participatory democracy
- Open justice
- Siebert's (1963) Four theories of the press
 - Authoritarian
 - ◆ Direct governmental control of the mass media
 - ◆ Can't undermine established authority
 - ◆ Any offense to existing political values is avoided
 - ◆ Government is infallible and media are not independent within the media
 - ◆ E.g. North Korea
 - Libertarian/free press theory
 - ◆ Individual should be free to publish whatever they like
 - ◆ Freedom of speech promotes
 - ◇ Truth
 - ◇ Reason
 - ◇ Democracy
 - ◇ Accountability
 - ◇ Autonomy
 - ◆ Milton/Mill: Marketplace of ideas
 - ◇ That which is true... through the self-righting process ultimately survive
 - ◇ Finkelstein 2012
 - ◇ Truth comes out if you allow for a plethora of voices
 - ◇ Free speech is self-righting
 - ▶ Antidote to free speech which is wrong/offensive etc is more free speech
 - ◆ Attacks on government are accepted
 - ◆ Full autonomy of media
 - ◆ Chomsky 1992
 - ◇ If we don't believe in freedom of expression for those we despise, we don't believe in it at all
 - ◆ E.g. USA partially
 - Soviet
 - ◆ Media not intended to be privately owned
 - ◆ Serve interests of working class
 - ◆ Government is superior to the media institutions
 - ◆ Mass media expected to be self-regulatory
 - ◆ Still have certain responsibility to meet wishes of audience (different to authoritarian)
 - ◆ Complete, objective view of the world according to Marxist-Leninist principles
 - ◆ E.g. China
 - Social responsibility theory
 - ◆ After USA realisation that the market had failed to fulfil promise that press freedom would deliver the truth
 - ◆ Commission on Freedom of the Press
 - ◆ Media has certain obligations to society
 - ◇ Informativeness
 - ◇ Truth
 - ◇ Accuracy
 - ◇ Objectivity
 - ◇ Balance
 - ◆ Media is pluralised
 - ◇ Reflection of diversity
 - ◇ Access to various points of view
 - ◇ Access for minority groups
 - ◆ **Journalist accountability to the audience as well as to the government**
 - ◆ **Individual has a duty to exercise their free expression**
 - ◆ **Free expression must be balanced against the private rights of others and against vital social interests**
 - ◆ Chadwick 2005

- ◆ Sentries who watch and warn
- ◆ Guides who search, map and explain
- ◆ Scribes who listen and record
- ◆ Witnesses with courage to speak
- ◆ Hosts to debate among others
- ◆ Advocates for the weak
- ◆ Keepers of the collective memory
- ◆ **Viner 2017**
 - ◆ Guardian champions of:
 - ◇ Public interest
 - ◇ Continued freedom of the press
 - ◆ Digital town squares mobbed with bullies, misogynists, and racists
 - ◆ Surveillance is the business model of the digital age
 - ◆ Facebook shatters the public square into millions of personalised news feeds
 - ◆ Shifting entire societies away from the open terrain of genuine debate and argument
 - ◆ Challenge for liberal democracy and journalism
 - ◆ Digital journalism produced by many news orgs less and less meaningful because the bulk of online advertising now went to Google and Facebook
 - "Binge-publishing" without checking facts
 - ◆ E.g. Most media in Western Europe
 - ◆ Belsey 1995
 - ◇ "Freedom to practise journalism brings with it the obligation to be concerned with the ethical quality of the output"
- Foucault & Habermas
 - Corporatist
 - ◆ Search for public wisdom
 - ◆ 500 BC -1500 AD
 - Libertarian
 - ◆ Search for personal freedom
 - ◆ 1500-1800
 - Social responsibility
 - ◆ Growth of popular democracies
 - ◆ 1800-1960
 - Citizen's participation
 - ◆ Rise of postmodern cultures
 - ◆ 1960-2000
 - Consumerism and choice
 - ◆ Whatever you want to pay for
- Another four ways of defining
 - Cooperation
 - Surveillance
 - Facilitation
 - Radical challenge and change
- Fourth Estate
 - Lecture
 - ◆ Clear and accurate reporting
 - ◆ Watchdog of separation of powers, and of the other estates
 - ◆ Guard civil liberties
 - ◆ Interrogating the integrity of politics and the political process
 - Schultz 1998
 - ◆ This ideal is grounded in the notion that among the checks and balances that ensure that the powerful are held accountable, the media has an essential, and highly political, role to play. The process of finding, distilling, and analysing the information that is the media's commodity also ensures its political role, the core of its definition as the Fourth Estate
 - Justice Sully in Ackland 2007
 - "The media react with savage vindictiveness to any attempt to apply to them those standards of transparency and accountability"

- ◆ There are over 500 pieces of legislation which contain secrecy provisions that restrict the freedom of the media to publish certain info
 - ◆ Institutionalised support for whistle-blowers is flawed or non-existent
 - Used by media to justify what it publishes or hides
 - How to report, comment, entertain etc
 - APC 2014
 - "Public interest is defined as involving a matter capable of affecting the people at large so they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others"
 - E.g. Press Council on James Foley
 - "Sometimes it is in the public interest for people to be exposed in a powerful way to realities which they may find upsetting"
 - "It is important that public opinion is well-informed"
 - Editorial response rejected interference in what should/shouldn't be published
 - "It is a direct challenge to editorial independence that should be rejected by every media outlet that takes press freedom seriously"
 - Hocking in Dennis 2002
 - Public interest is a mediating principle between the interests of the press as an issuer of information, and the interests of the consumer of information
 - To protect the issuer is to protect the consumer
 - Implied right to freedom of speech (political communication)
 - Some areas where there is a real interest in having a free and unfettered media or press
 - Role and performance of institutions of government policy making and implementation
 - Freedom of political communication in a system of representative democracy
 - Freedom of the media to investigate, inform and comment on matters of public concern and importance
 - Doings of elected representatives, public servants and some private organisations
 - Businesses who are accountable to various stakeholders
 - Organisations that seek membership and funds from the general public
 - E.g. Churches
 - Role and performance of courts
 - Open justice
 - Prevention and detection of crime and fraud
 - Economic and cultural well-being of the country
 - Public health and safety
 - National security
 - Hurst and White 1994
 - "Media should reveal political, economic or social trends because these trends will clearly affect society's members, to a greater or lesser degree. It may not, however, be in the public interest to concentrate on individual case examples of those trends"
 - **"The media devalue the defence by appealing to the PI when the matter is "of interest to the public"**
 - "Conceal some realities if they are grossly offensive to prevailing standards of morality"
 - **Or, may be in the public interest to publish material which is offensive and distasteful**
 - ◆ **E.g. Representation of homosexuality in media**
 - ◇ Once seen as criminal behaviour
 - ◇ Mirror society or change agent
 - Used by government or regulatory bodies
 - Ownership and control
 - Failure to provide niche services
 - Technology
 - ABT v Bond 1990
 - ◆ Broadcasting license is a valuable privilege to influence public opinion and values

- ◆ Should be regulated with regard to the public interest
 - Diversity of information/sources/control
 - Localism
 - Access
 - Avoid patronage
 - Public broadcaster
 - Merged with other discourse
 - Greater good
 - Essential pillar of democracy; 4th estate as watchdog
 - Public right to know
 - Libertarian theory vs social responsibility theory
 - And advocates of how it should be regulated
 - License conditions
 - Self-regulation, codes, censorship
 - Consumer choice with minimum intervention and cost
 - Government or independent regulator
 - Referred to within regulation itself
 - Guidance for complying with a law
 - E.g. ACMA will issue licenses unless contrary to the public interest
 - E.g. Australian Press Council (self-regulatory)
 - Avoid causing or contributing materially to substantial offence, distress or prejudice, or a substantial risk to health or safety, unless doing so is sufficiently in the public interest'
- But no one knows what it is
 - Bonney and Wilson 1983
 - There is no such thing as the public interest
 - Nor a single public with unified interests
 - Nevertheless, the concept has ideological significance
 - Setting terms of debates around ownership, regulation and policy
 - Leveson Inquiry: Nick Davies (2012)
 - "The most important point that needs to be made about the concept of the public interest is that nobody knows what it means"
 - "Reporters have operated in a kind of ethical mist"
 - "Journalists claim that it is a matter of public interest that we be told about the sex lives of public figures... I profoundly disagree with them. I think there is no public interest in the disclosure of people's sex lives unless there is evidence of crime"
 - **The issue with self-regulation?**

Public interest in:

- Competing public interests
 - Underpinning threads are different in different contexts
- Different interests
 - Citizens versus customers
 - Are citizens the same as consumers?
 - Do media practitioners have the same duties, loyalties, concerns towards citizens as consumers?

Citizens' rights	Consumers
Justice Fair trial ▪ Democracy Rule of law Transparency/accountability	<ul style="list-style-type: none"> • Rights <ul style="list-style-type: none"> • Price, safety, fit for purpose, etc • ACCC • Interests <ul style="list-style-type: none"> • Choice, lifestyle, etc

- Curiosity vs interesting vs right
 - Concurring with Hurst and White 1994
 - Sanders (2003) distinguishes between the public good and the public curiosity
 - Appetite for stories to do with curiosity
 - **Adolescent morality**
 - **Own culture's immaturity in sexual matters**

- Public interest vs algorithmic interest
 - Interest of the public
 - Preponderance concept of the public interest
 - E.g. Lawyer X: HC acknowledged likely surge in Herald Sun readership
 - Self-interest, private interest
 - Commercial/economic
 - Tribal/sector/local
 - National interest
 - Majority vs minority interests
 - Freedom vs regulation
 - Public interest in both freedom and limiting that freedom
 - And who regulates
 - Freedom of speech/press
 - Autonomy
 - Democracy
 - Marketplace of ideas
 - McQuail 1992
 - Fundamental PI in communications media
 - Also an ideological device to cloak unjustified regulatory ambitions by government or to assault liberties of expression
 - E.g. AFP raid of ABC
 - Hysterical culture built around national security justifying infringements
 - National interest
 - "Keeping us safe from terrorism"
 - Explicit legal basis in the succession of new laws shielding secretive government practices
 - Textbook
 - ◇ 70 laws related to national security in the 2001-18 period
 - ◇ 273 amendments to Bills
 - McGarrity 2011
 - ◇ Three factors limit the media's ability to hold the executive to account on national security issues
 - ▶ Limited provision of and access to information about terrorism-related investigations and court cases
 - ▶ Chilling effect on freedom of speech
 - ▶ Media manipulation by the fed government
 - ▶ Media deprived of intelligence about counter-terror operations and proceedings
 - ASIO Act 1979
 - ◇ Offence to disclosure info about warrants
 - ◇ No PI provision
 - ◇ 2016: exemptions for outsiders
 - Amendments to Espionage Amendment Bill (2017) in 2018
 - ◇ No fair and accurate requirement
 - ◇ Public interest defence available
 - **Crimes Act 1914 s 79**
 - ◇ **Journalist is guilty of an offence if they receive anything that they know or ought to know is classified as an official secret**
 - ◇ **Basis of raids**
 - ◇ **Liable to 7 years imprisonment**
 - Vs public interest in freedom of press and right to know
 - Much looser legal backing
 - Lange v ABC
 - But not a defence to defamation
- Privacy laws
- Open justice, sub judice contempt, suppression orders, shield laws and defences
- Defamation law and defences
- Copyright protection and defences
- Vilification laws and defences

Pell	Broadcasting NZ footage
Legal reasoning vs ethical reasoning	Commercial v ethical
Tension between free media and open courts	Tension between free press and regulated press
Broadcast in the public interests	NOT broadcast in the public interests

Media context

- Courts
 - Open justice vs fair trial (suppression orders)
- 60 minutes
 - Harm to reputation
 - Circumventing laws
- Barnaby Joyce
 - Invasion of privacy vs in the public interest
 - Maley 2018
 - "The families of politicians are generally considered off-limits for good reason: they didn't sign up for public scrutiny"
- James Foley photo on front page of The Telegraph
 - "The Council agrees it is sometimes in the public interest for people to be exposed in a powerful way to realities"
 - Paper's response rejected interference in what it publishes
 - Public interest in a free press
- Abu Grahieb
 - See above
 - Tufekci Z 2015
 - "Graphic footage may be appropriate at times to shock the conscience toward corrective action, for example with victims of war or state violence.
 - But when a murder is carried out in a way that seems to be courting sensationalized coverage, not publicizing the killer's name, face or screeds is the right response"

Issues/Facts Ethical dilemma	Stakeholders/Voices	Virtues/Values	Duties/Loyalties	Consequences	Decision(s)
To publish	individual / collectively	Role	Duties:	of publishing	Not publish?
Decide Not publish	Victims/families	Virtues			Not publish just yet?
Agree not to publish	US Govt, Army, Prison	Justice			Publish?
	Coalition members	Compassion		of not publishing	
	Iraq (govt, public etc)	Courage			
	Public (US, Non US)	Wisdom			
	Audience (segments)	Honesty			
	Media	Values	Loyalties	of being wrong?	
	Media regulators & watchdogs	Journalistic & News Values	National Interest v Public Interest v Self Interest	Most good/least harm?	
	Human Rights advocates & NGOs, UN			Forseeable/Unforseen?	
	"Democracy"? 'Experts' (law, ethics, media)			Short term/long term	
	Historical record?			Act vs Rule ?	
	Own organisation			National Interest v Public Interest v Self Interest	
	Self				

- Codes
 - APC
 - "Sufficiently in the public interest"
 - Necessarily level of justification in the PI is proportionate to the gravity of the potential breach of the principles
 - Ensuring everyone has genuine freedom of expression and access to reliable info
 - Protecting and enhancing independent and vigorous media
 - Exposing or preventing crime, dishonestly, serious misconduct
 - ACMA
 - When investigating the alleged breach of privacy, ACMA will consider elements
 - Identifiable person
 - Personal info
 - Seclusion

- Expectation that activities would not be observed or overheard
- Broadcast of activities is highly offensive
- Consent

ALRC proposed list of public interest matters

- Freedom of expression, including political communication;
- Freedom of the media to investigate, and inform and comment on matters of public concern and importance;
- The proper administration of government;
- Open justice;
- Public health & safety;
- National security;
- The prevention and detection of crime & fraud; &
- The economic wellbeing of the country.

Is PI the same as right to know

- Not usually an enforceable legal right
- Different weight depending on subject/organisation/person
 - E.g. Commercial confidence vs government accountability
- Right to Know Campaign - Moss Report

McQuail 1992

- Held 1970

Theory	Calculated	Measured	Problematic
Preponderance	• Numeric sum of individual interests	• Votes, likes, opinion polls	• Disregards minority
Common interest	• Shared, commonly held values across public	• Inclusive of everyone	• Still have to reconcile competing values (right to privacy vs freedom)
Unitary	• Absolute normative principle • Derived from some large social theory/ideology	• Absolute standard value • Categorical imperative	• Does such standard exist?

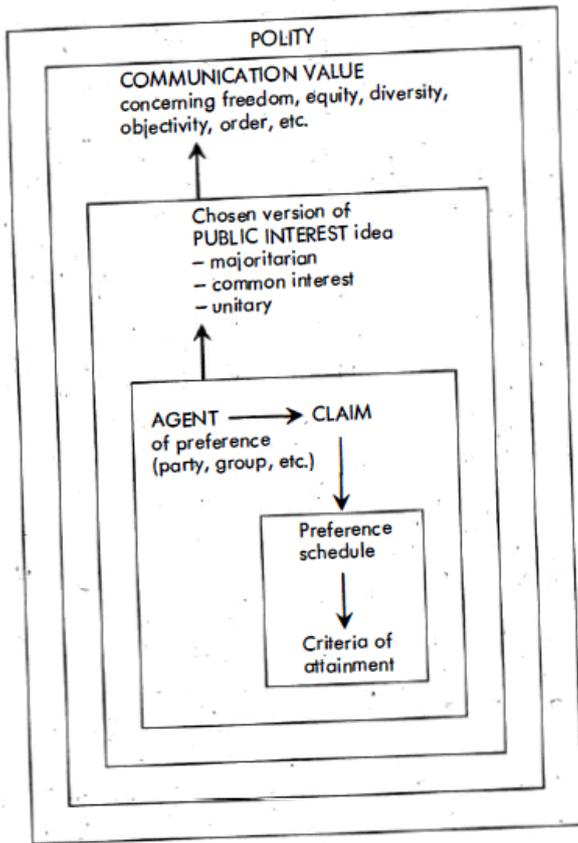


Figure 3.1 Framework for identifying public interest claims in media assessment