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The ethical journalist: oxymoron or aspiration?

Abstract:

Year after year, Australian newspaper journalism cannot seem to make it out of the bottom four of the thirty most distrusted professions, pipped only by car salesmen, advertisers and estate agents.

Taking an historical perspective of 'public interest' and 'the public's right to know', this paper will attempt to evaluate the distinction and gravity of both tenets, focussing on why they can have the effect of diluting ethical codes, if misused.

The quasi-professional nature of journalism practice lends itself to ethical codes rather than legislative regulation. Accordingly these codes are largely accountable to no one – except perhaps the individual practitioner – and many codes of ethics and practice in the Western developed nations contain an 'out-clause' in the name of public interest. This paper seeks to investigate these 'out-clauses', and discuss the oft-quoted allegation that these clauses place journalists above the law.

In light of this, I will conclude that in a tertiary setting, and ideally in a professional setting, what must be emphasised side by side with an ethical practice is an individual moral practice, all too often separated philosophically within the professional and industrial spheres.

Biographical note:

Dr Sue Joseph has been a journalist for more than thirty years, working in Australia and the UK. She began working as an academic, teaching print journalism at the University of Technology, Sydney in 1997. As Senior Lecturer, she now teaches journalism and creative writing, particularly creative non-fiction writing, in both undergraduate and postgraduate programs. Her research interests are around sexuality, secrets and confession, framed by the media; HIV and women; ethics; trauma; supervision and ethics; and Australian creative non-fiction.

If the main purpose of the mass media is to water the roots of democracy by helping to create a knowledgeable and sensitive electorate, then the overabundance of sleaze, rumor, gossip, sensation, superficiality, and arrogance does not bode well for responsible journalism

John C. Merrill[1]

Trying to decide in the abstract how far a reporter should go is about as futile as parents trying to decide how far their daughter should go…when the passions are up and the story is tempting, any reporter…is likely to do whatever the moment seems to call for. No good reporter is honest all the time and it's silly to pretend otherwise

Robert Sherrill[2]

Introduction

Year after year, Australian newspaper journalism maintains its place in the bottom four of the thirty most distrusted professions in the country, beaten there only by car salesmen, advertisers and estate agents.[3] As one of the most mistrusted professional practices in the country, journalism is under continuous scrutiny by a critical public. This scrutiny has been given a new lease of life through the phone hacking and bribing crimes of the biggest selling newspaper in the world, the *News of the World*, its demise, and the subsequent appearances of its bosses at a UK Parliamentary inquiry in July 2011. No one would dare argue any probative value or public interest in hacking the phone of a missing, later to be found dead, teenager. Rupert Murdoch himself demonstrated moral outrage at the behaviour, claiming he did not know and had been let down by his staff. But as Lidberg writes:

> It is time for media owners to understand that their businesses exist on a mandate issued by the public. Misuse this mandate enough and your business model crumbles (2011).

Journalism ethics, as in any code of ethics or practice, is only as effective as the journalist practicing within it. As Merrill argues, the major antecedent to ethical behaviour is a will or desire to behave ethically (1997, p.27). Ethical journalism can only exist where journalists consciously want to do the right thing, and this is inherently governed by their own set of values. The craft of journalism comprises a moral imperative that can never be codified in a charter or code of ethics. Kovach et al claim that journalism is simply an 'act of individual character'. They write: 'Every journalist – from the newsroom to the boardroom – must have a personal sense of ethics and responsibility – a moral compass' (Kovach et al 2001, p.181). Expanding their arguments further, they write:

> Since there are no laws of journalism, no regulations, no licensing, and no formal self-policing, and since journalism by its nature can be exploitative, a heavy burden rests on the ethics and judgement of the individual journalist…this would be a difficult challenge for any profession. But for journalism there is the added tension between the public service role of the journalist – the aspect of the work that justifies its intrusiveness – and the business function that finances the work (Kovach et al 2001, p.180).

What they are really talking about here in journalism terms is when the Fourth Estate notion conflicts with the business model notion. This is compounded in an industry that is rapidly changing, particularly around advances in technology and the way

people access their news. This access is more often non-traditional and potentially, unmoderated, unmediated and unauthenticated. McKnight and O'Donnell write: 'The "business model" that has sustained mass-circulation newspapers for more than 100 years is in swift decline' (Mcknight et al, 2011). They are writing about the advent of multi media journalism throughout the past two decades – the internet has effectively created an even greater tension as it has systematically redefined the public/private nexus.

In this paper, I discuss journalism professional codes of ethics in light of what I have termed 'out-clauses' contained within ethical codes of practice around the world. These 'out-clauses' are linked to freedom of speech and of the press in the commonly accepted role of the media as guardians of democracy. But as Merrill writes:

> If the main purpose of the mass media is to water the roots of democracy by helping to create a knowledgeable and sensitive electorate, then the overabundance of sleaze, rumor, gossip, sensation, superficiality, and arrogance does not bode well for responsible journalism (Merrill 1997, p.2).

Contextualising 'responsible journalism' beside these 'out-clauses', it is my purpose to suggest that, when abused or misused, they hold the potential for serious breaches of ethical practice and effectively place journalists above the law. The remedy is two-pronged: firstly, as mentioned above, the individual's "moral compass" must be developed and active; and secondly, in a bid to frame the moral compass as an effective and imperative professional practice tool, a transparent and universal impetus from tertiary journalism degrees to develop ethical pedagogies, incorporating free space and time to debate basic community principles.

What constitutes public interest and the right to know

Walter Lippman thought long and hard to define public interest, as have many minds since. He wrote: '…the public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently'(Lippman, 1955, p.17). Paul Chadwick is more circumspect. Public interest, he says: 'Is the common good, assessed in context' (in Tanner et al, 2005, p.78). But just as Lippman pondered, media ethicist Louis Day forewarns the complexity of defining what actually 'in the public interest' is. He writes:

> In the real world society is not some monolithic entity but consists of many groups, among which choices sometimes have to be made: news sources, public figures, minorities, senior citizens, children, people with disabilities. It is in the balancing of these interests that presents a real challenge to media practitioners (Day, 2006, p.32).

Public interest and the public's right to know are the embodiment of journalism practice regarded as the Fourth Estate of society. British politician Edmund Burke (1729-1797) is identified as the orator of the phrase Fourth Estate during comments he made in the British Parliament. He identified an original three estates – the Royalty, the House of Lords and the House of Commons – then referred to the fourth. According to Thomas Carlyle:[4] 'Burke said that there were three Estates in

Parliament, but in the Reporters Gallery yonder, there sat a fourth Estate more important far than they all'.

If an Eighteenth century analysis of the day imparted equal importance to the press as it did to Royalty, the Lords and the Commons, what has gone wrong? Why are journalists so mistrusted? Could this mistrust be based on a minority of unscrupulous practitioners, working more ardently for the 'business model' than for the good of the people? Or is it something else, too nebulous for the public to define, at play? How can public interest and the public's right to know – the heart of quality, usable journalism – also be a tool for potential disgrace, as in the *News of the World* crimes?

The two terms are often interchanged inaccurately but together constitute the starting point of an accountable journalism, enabling informed public debate, thought and knowledge. The public's interest and right to know are democratic imperatives where the media is the conduit for balanced and accurate information, allowing for people to form their own opinions and make decisions based on this. Tanner et al claim the two phrases are the 'most invoked defences of editors and journalists under fire for going too far' (Tanner et al 2005, p.75). They also claim that due to the misuse of terms, both have been 'devalued' (Tanner et al 2005, p.76). They argue: 'To some extent these worthy principles that form the bedrock of responsible journalism have been devalued by being used as feeble defences of intrusive and damaging reporting' (Tanner et al 2005, p.77).

But what is the alternative? What other means can be employed to inform? Is there a better way of communicating and critiquing government and agency decision making processes and policy? How does corruption, illegal dealings, disaster and community warnings get disseminated? In many ways this is the greatest criticism of journalism practice. In claiming to critique and analyse government decision-making processes, journalists find themselves positioned between 'the people' and the often smooth speaking, spin-doctoring of highly organised and invested institutions (for example, governments, churches, businesses etc). Maintaining wary journalistic scepticism is meant to help arm the public with facts and information to make its own decisions, notwithstanding the irony that the media (in most developed and democratic countries) is made up of highly organised and market-driven corporations.

There is a difference in meaning: public interest differentiates itself by its precise links to codes of ethics, and fields involving concepts of morality; the public right to know is aligned more to freedom of speech and therefore, of the press. But Tanner et al state it is a definitional grey area, with most agreeing to a formula relating to disclosure, qualified by ethical consideration and other values (Tanner et al 2005, p.79). This paper would argue that the 'other values' are the individual practitioner's personal moral convictions which of course provides for a huge spectrum of context and diversity.

Quasi-professionals and codes

Richards argues that every decision a journalist makes in his or her professional capacity has the potential for a lack of ethics. He writes: 'What many journalists seem not to understand is that all of their professional decisions have an ethical dimension.'

He argues that every step within the process of gathering information and disseminating it comprises ethical components:

> …there is an ethical dimension at all stages in the journalistic process, from initial decisions regarding what to report, through decisions about gathering and processing of whatever information is acquired, to decisions as to how the information will be presented and to whom (Richards 2002, p.10).

Goldstein argues that journalists engage in deception on a daily basis and in many cases do not even realise they are being deceptive. He writes: 'Many of the most questioning techniques used by journalists in their quest to be eyewitnesses rely on stealth, secrecy and deceit' (Goldstein 1985, p.120). He identifies a number of journalism techniques that can be considered dubious. However many of these are regarded as common practice in the industry. For example: the ambush interview; faking taking notes or avoiding taking notes so that the subject 'forgets' they are being interviewed; nodding heads, or smiling to indicate agreement or to encourage the subject to provide more information; telling subjects they are interested in something when their interests lies in something altogether different; allowing subjects to believe erroneously that the journalist knows nothing about what they are talking about, when in fact they do; using material obtained via overheard conversations; reading documents not intended for them (Goldstein 1985, p.113).

In 1997 the Poynter Institute for Media Studies set out criteria for ascertaining when it is appropriate for a journalist to 'deceive' in order to procure a story. The criteria permit such behaviour where:

- The information sought is of profound social importance

- All other alternatives have been exhausted

- The journalist discloses and justifies his or her deception

- The apparent benefits of the story outweigh any harm caused by the act of deception

- The journalists have decided that their deception is warranted having considered the consequences of the deception on those being deceived, the impact on journalistic credibility, and any legal implications of their actions (Fakazis 2003, p.53).

If journalists were to reflect on each and every decision in depth, it could potentially render those with conscience unemployable. Richards cites the well-known adage within the industry: 'doctors bury their mistakes, lawyers jail them and journalists publish their mistakes for all the world to see' (Richards 2005, p.4). Yet ethical decisions are at the core of what journalism is and what journalists do on a daily basis. Richards says that journalism is a quasi-profession (Richards 2002, p.10; 2005, p.4). On this point, Goldstein agrees. He claims that by any of the usual definitions, journalists are not 'professionals' (Goldstein 1985, p.18), inferring journalism merely resembles a profession. Without an evidentiary test of proof that can be repeated, journalism can never be regarded as a profession similar to medicine, law or the sciences. But in developing their arguments, some media theorists conveniently ignore the greyness surrounding the professional status of journalism. By identifying

journalism as a profession, they simply then substantiate this claim by the existence of ethical codes, implying its professional status:

> Journalism's claim to the professionalism resides in meriting public trust. The basis for public trust is located in journalists' position of ethical managers of truth. Hence trust is based on journalists' privileged access to truth and expert power to disseminate their version of it (Crowley-Cyr et al 2004, p.54).

However it is clear from statistics cited above that there has always been a lack of public trust in the practice of journalism. Codes of ethics and codes of conduct or practice have evolved to encourage high ethical standards and accountability, and to attempt to professionalise journalism practice. Of course, the mere existence of a code does not guarantee that journalists will behave ethically. In fact, 'out-clauses' allow journalists scope to deviate from the code (and in effect, excuses ethically dubious behaviour) where it is necessary to do so – in the public interest.

For example the American Society of Professional Journalists' code of ethics provides:[5] Journalists should avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public.[6] Similarly, the United Kingdom Code of Conduct for Journalists (authored by the National Union of Journalists) says:[7] A journalist shall obtain information, photographs and illustrations only by straight-forward means. The use of other means can be justified only by over-riding considerations of the public interest.[8] And the German Press Code provides:[9] Dishonest methods must not be employed to acquire news, information or picture. BUT covert research can be justified in individual cases if it brings to light information of special public interest which could not be obtained by other means.[10] 'Public interest' is referred to in the Association of Southeast Asian Nations Journalists' Code of Ethics is: The ASEAN journalist shall refrain from writing reports which have the effect of destroying the honour or reputation of a private person, unless public interest justifies it.[11] Interestingly, the Code of Conduct for Zimbabwean media practitioners actually spells out public interest moments: Reporting on a person's private life can only be justified when it is in the public interest to do so. This would include: detecting or exposing criminal conduct; detecting or exposing seriously anti-social conduct; protecting public health and safety; and preventing the public from being misled by some statement or action of that individual such as where a person is doing something in private which he or she is publicly condemning…Media practitioners may probe and publish details about the private moral behaviour of a public official where this conduct has a bearing upon his or her suitability as a public official.[12]

Australia also has an out-clause qualification in its most widely used code. The Australian Journalist Code of Ethics states:[13] Basic values often need interpretation, and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.[14]

Ethical decision-making is complex and varied. In most cases, it is fully dependent on the individual journalist, and the particular circumstances. This reliance on individual behaviour and decision making is problematic because of the quasi-nature of the profession – the individual's behaviour is unaccountable to no person or

authority, and effectively, ethically fraught. Louis Day argues that an ethics system lacking any form of liability allows for a certain sense of autonomy, without responsibility, and so lacks 'moral authority' (Richards 2005, p.48). Similarly, Crowley-Cyr et al see ethical obligations as the responsibility of the individual. They write: 'The important point of departure between the classic professions and journalism is that journalists' ethics are voluntary whereas in the classic professions ethics is mandatory' (Crowley-Cyr et al 2004, p.55). Journalists must volunteer or make a conscious decision to be ethical, despite business model pressures exerted on them for speed and scoops. Clearly, it is this business model paradigm creating tensions for working journalists. But before journalists actually get into the field, the tertiary sector has the responsibility and opportunity to begin the practice of ethical teachings. In university journalism degrees, ethical discussions can be integrated into every professional practice class. There is an imperative to pedagogically create the space to begin to think and discuss ethical behaviour, and I would argue, also to integrate a moral ingredient into the discussions. Analysis and discussion of best and worst practice artefacts across the media, in their most basic form, is a starting point. Developing the routine of reflective writing around student professional practice and creative artefacts is a further development of such pedagogy. There are ways to challenge students not only about their own ethical boundaries but also their personal moral codes, urging integration of these into their ethical practice.

While some journalism practice is ethically questionable, it is not automatically illegal which also platforms excellent classroom discussion. This is where arbitrary and individual decision making comes into play. A sub-set of journalists ironically assume a moral high ground and will go to any lengths to obtain a story. Some will even break the law and defend their actions using justifications claiming the public has a right to know or that there is a greater public interest being served. However, very few journalists are ever prosecuted. Thomas Goldstein says that this places journalists above the law. He argues that the standard justification used by journalists (namely that the ends justify the means) generally does not withstand close scrutiny (Goldstein 1985, p.115). Award winning journalist and author Robert Scheer concedes: 'Some of the most important stories of recent years have involved theft, burglary, seduction and conning people'. But he qualifies his statement by saying that this sort of behaviour is only acceptable practice if the story is 'vital to the public interest' (Goodwin 1983, p.173). At an A.J. Liebling Convention, Scheer was asked how to deal with politicians who are suspected of hiding things from the public.[15] His answer was: 'The journalist's job is to get the story by breaking into their offices, by bribing, by seducing people, by lying, by anything else to break through the palace guard'. He has since recanted his sentiment, and is reported to have regretted ever saying it (ibid).

Notwithstanding, Scheer's original statement is a reflection of a culture, and a culture that despite, or perhaps because of the numerous ethical codes and out-clauses, still exists. It is up to the individual practitioner on the day, on the spot, at that moment – the entire exercise of gathering information is the responsibility of the journalist and the ethical frame invoked by his or her own 'moral compass'.

Conclusion

Ultimately, it is still the actions of individual journalists in any given situation that determines what the public eventually sees, hears, or reads. The individual journalist is invested with his or her own moral codes of practice and decision making processes. This ironically places one of the most mistrusted of practices in the unique situation of being individually morally differentiated. So if the journalist believes it is in the public's interest to bend the rules, break them or even break the law, ethical code out-clauses justify and effectively, protect. It is a balancing act where the culture is pervasive. As Eugene Roberts says:

> We have to have high standards but we can't get so finicky about ethics that we use them as excuses for not doing our jobs…There's no ethics in being docile and the pawn of whoever wants to prevent you from getting the story (Goodwin 1983, p.175).

I would say that the imperative for impartial, accurate and balanced reporting of facts is high – and historically, with the advent of the internet, could not be higher – when dubious behaviour is accorded the legitimacy of being somehow sanctioned by codes of ethics. And I believe in a tertiary setting, the teaching of ethical codes is of little value without the weight of a concurrent moral discussion. As the attempted professionalisation of journalism, in a sociological sense, sees the craft of journalism now taught throughout the world within tertiary institutions, I would suggest that it is the prime time to re-evaluate and adapt the consideration of ethical practice to the new multi-media world we live in. I further argue this is of little use without a simultaneous debate around morality. There is a time to ponder within a university setting that is lost in a newsroom. It is impossible to garner a universal morality but enabling students to consider their own value based perspective on decision making while at university and urging them to maintain this perspective once practising in the field could lead to more thoughtful considerations in these industrial settings, and possibly begin to create a more trusting public.

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Notes

[1] in *Journalism Ethics*, 1997, p.2

[2] long time White House correspondent, in Goldstein 1985, p.116

[3] Morgan Poll, Finding No.4518. These are the main findings of a Roy Morgan telephone survey conducted on the nights of June 16/17, 2010, with 672 Australian men and women aged 14 and over: June 28 , 2010

[4] in his book *Heroes and Hero Worship,* published 1841, p.222

[5] adopted in 1996

[6] www.spj.org

[7] adopted on June 29, 1994

[8] www.uta.fi/ethicnet/uk

[9] adopted on December 12, 1973

[10] www.uta.fi/ethicnet/germany

[11] www.ijnet.org

[12] http://www.journalism.co.za/code-of-conduct-for-zimbabwean-media-practitioners-draft.html

[13] revised February 1999

[14] www.alliance.org.au

[15] in 1977

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Janie Conway-Herron, Moya Costello, Lynda Hawryluk: Editorial Introduction