Issues in Image Ethics

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Part 1 -- Editorial Decisions
A major concern in the area of photojournalism ethics in the past and today is how to make effective and ethical editorial decisions concerning shocking or graphic photographs. What considerations should editors weigh when making decisions about photos depicting death, violence, human tragedy or obscenity? Editors are often torn between the wishes of their readers and their journalistic calling to "tell it like it is". This article will attempt to examine cases of controversial photographs, various editors opinions concerning editorial decisions and ethical issues involved in making those editorial decisions.

Thousands of photographs cross editors desks every year which cause ethical dilemmas. One such case is that of the suicide of R. Budd Dwyer, a Pennsylvania state treasurer who killed himself in full view of reporters. Several photojournalists and cameramen were able to capture the event as it happened. The photos were distributed through the Associated Press wire service to member newspapers. These photos ran through the A. P. wire with an advisory to the graphic nature of the photographs. Some of the photos included in the release were a photo of Dwyer with the gun in his mouth and another shortly after he pulled the trigger. A.P. member newspapers handled the photos in different ways.
The *Florida Times-Tribune* used the photo of Dwyer holding the gun in his hand and the entire suicide sequence ran in the *Tampa Tribune*.¹

Another case involves *Mother Jones* magazine’s running of a photograph taken in San Salvador. The photograph in question depicted four decapitated victims of death squads linked to Salvadoran government forces. The *Mother Jones* staff, after much deliberation concerning how to use this powerful picture, ran the photo as a two page, full-color spread. This form of layout was chosen to emphasize the dramatic element of the incident. The layout of the photo won a silver medal from the Society of Publication Designers, but when the winners of layout designs were published in *Folio* magazine, the picture of the death squad victims was replaced with the words, “not shown”.²

Yet another case of shocking photojournalism involves more award-winning photographs taken of a murderer at the scene of the crime. Tom Kelly, director of photography for the Pottstown, Pennsylvania *Mercury*, won a Pulitzer Prize for the photograph taken of a man who had just killed his pregnant wife and stabbed his six-year old daughter and his grandmother. The man had barricaded himself and his daughter inside the house. Police talked the man into releasing his daughter. The girl pleaded with the police not to hurt her daddy. After the police brought out the man, he broke away. Kelly was there to photograph the entire incident,
and the photo of the blood-streaked murderer was published the next day in the *Mercury* and won the Pulitzer.³

Those, of course, are only a few of the cases of problematic photos which cross editors desks every year. The question remains as to how editors are to handle such situations. Every editor has different theories as to how to solve these problems varying with the editor’s background and the demographics of his readers. The editors involved with the photographs of R. Budd Dwyer’s suicide handled the photos in a variety of ways. The *Florida Times-Union* staff decided to publish only the photograph depicting Dwyer holding the gun in his hand and did not even consider publishing the pictures of Dwyer after he pulled the trigger. The editors and the staff felt the other photos were too shocking for their readers. They did not want to publish photographs sheerly for their shock value. The other paper, the *Tampa Tribune*, ran the entire sequence of photographs based on the premise of Dwyer being a public figure and the event occurring in the public’s eye. The editors claimed they would have not published the pictures had Dwyer committed suicide in private.⁴

In the case of the San Salvador picture in *Mother Jones, Folio* magazine decided not to publish the photograph as a matter of taste. *Mother Jones*’ staff viewed the picture and its placement in the magazine
very differently. *Mother Jones* published the photographs because of the amount of photojournalistic work on San Salvador that was not published. Photographers risked their lives to bring the story of San Salvador to the United States, and the photojournalists as well as the Salvadorans needed the support. The editors and staff of *Mother Jones* published the photographs in a way that had a powerful impact on their readers.⁵

The photograph of the man who murdered his wife and stabbed his daughter and grandmother was published for several reasons. One of the specifics considered by the editor was the picture’s emotional impact. The main reason the staff of the *Mercury* decided to run the controversial photo was the newspaper’s duty to tell the whole story. Kelly said of his published photograph, “I do not believe the press should hide what’s going on. It’s life. It happened.” He said that all of the other pictures taken of the incident, “may have been shocking or horrifying, but none were distasteful.”⁶

Other editors have ran other debatable photographs for a wide spectrum of reasons. In 1985, the editors of the *Bakersfield Californian* ran a photograph of a five-year old drowning victim. The editors and staff of the newspaper decided to publish the photo, depicting a grieving family gathered around the boy’s body, as a sort of cautionary message to their readers. The editors felt the photograph might help deter the number of
summer drownings in the two rivers near Bakersfield. Other editors have published shocking photographs of war tragedies to tell the story of a newsworthy event, war, and the peoples' reaction to that war. There are as many different ways to handle controversial photographs and as many different reasons for the photographs use as there are editors.8

Although there are no hard and fast rules for guiding the decisions to publish or not to publish startling photographs, almost all of the decisions made concerning those pictures are based at least somewhat on ethics. The common thread through most dubious photograph cases comes down to whether the newsworthiness or importance of the picture outweighs the shock value or graphicness of the picture or the ill effect it could possibly have on the subjects of the photograph or the readership in general.

The first issue usually examined when questioning a photograph is the newsworthiness of the photo. Editors have a right and a duty to publish what they see as important news. There is a common cause that photojournalists, journalists and editors all value: the people's right to know. Although the people's right to know is not included in the Bill of Rights, this cause is so important to people in the journalism business that it is included in the Sigma Delta Chi (a professional journalist society) Code of Ethics. This belief arises more out of the people's need to know than a guaranteed right.
The "right to know" is made up of several different factors. The first ingredient of the "right to know" is the people's need for information relating to their government. This information is necessary for the public to vote wisely. This notion can be explained by the Kant's principle of a right. Kant's notion of a right, when applied to the case of our democratic government, says that if our government has a right to exist, then others have the duty to refrain from interfering with democracy's right to exist and have to provide democracy with the basics of what it needs to exist. Since the people's right to a say in their government is a central notion in democratic theory, the people must vote wisely in order for a democracy to work. If people are not provided with proper information, via the media, to make informed voting decisions, then democracy will suffer, hence interfering with democracy's right to exist.

Another ingredient in the notion of the people's "right to know" is the notion of the media providing information necessary for safety, health and well-being. An example of such necessary information is information educating the public on the AIDS crisis and how to prevent the spreading of the disease. Other good example of necessary information include information concerning violent criminals in the area, instructions concerning what to do in certain weather emergencies, articles on trends affecting employment, investments, lifestyle and so on. This idea of necessary information can be supported by utilitarianism. If the people
the "right to know" about issues concerning safety, health and well-being is morally right, then this practice will maximize good and minimize harm. If people have been provided with information that will prolong their lives and even improve them, then providing the people with such information would maximize good consequences. If the people are denied information concerning their health, safety and well-being, then their lives will be shortened and unhappier. This maximizes bad consequences. Therefore, people, morally, have a "right to know" about issues which concern their health, safety and well-being.

Another consideration of the people's "right to know" is liberty or freedom of expression. This can be justified through Kant's principle of a right. One of the basic rights is liberty, and if you interfere with a writer's expression, you interfere with the writer's liberty.

An editorial decision based on the importance and newsworthiness of a photograph is found in the case of a front page photo of the Wilmington Morning News. The front page picture depicted Ernest C. "Boo" Parson, a convicted double murderer, raising both his middle fingers in his chained hands. The editor, J. Donald Brandt, said the gesture was not as obscene as the crime of which Parson was found guilty. Brandt said the photograph made an eloquent statement about the obscenity of Parson's crime.10

The other issues considered in making editorial decisions considering
shocking photographs concern taste and the photograph's effect on readers. Many pictures are not published because they are too gory or graphic. Assistant managing editor, Steve Cheski said that even if it is a public, newsworthy act, newspapers have a responsibility to their readers in handling such stories to avoid being ghoulish. Many editors use what they refer to as a "Wheaties test"; the editors try to determine what the reader would find unappetizing as he/she reads the paper at breakfast. Cheski emphasized that thought must be given to the feelings evoked by photographs.11 This test, balanced with the newsworthiness of a photo, can help editors make a wise decision concerning the publishing of a graphic photograph.

Editors should also consider the possible effects a photograph on a child who could look at the paper. This is especially true of publications with a large percentage of family readership. In response to the case of the photograph of convicted murdered Parson, Dr. Maurice Liebesman emphasized that children mimic what they see. He said that imitation is an important part of growing up. Children might use the same gesture if they see it in the paper, even though the person doing it is not necessarily a role model.12

The principles of ethics can be applied to editorial decision making.
For arguments of newsworthiness and the public’s right to know, the editor can use Kant’s principle of a right:

a.) The people have a right to know about news affecting voting decisions, health, safety, well-being, etc.

b.) Others (editors, journalists, censors, etc.) have the duty to refrain from interfering with the people’s right to know, and editors, journalists, etc. have the duty to provide the people with knowledge (i.e. the news).

The belief of the people’s right to know can also be applied to the principle of utility:

1.) Acting on the belief of the people’s right to know maximizes good and minimizes harm.

2.) Providing people with information helps them make informed decisions and vote responsibly, which maximizes good.

3.) Providing people with information helps them avoid such harmful things as accidents, disease and illness, danger and so on, which
minimizes harm.

4.) Acting on the belief of the people’s right to know minimizes harm and maximizes good.

5.) Acting on the belief of the people’s right to know is moral.

The issues of tastefulness or a photograph’s effect on readers can be applied to several ethical principles. First of all, the effect of a photograph on a reader can be applied to Kant’s principle of reversibility. Reversibility would say if it is morally right for you (the editor) to print a shocking photograph of another’s suffering (providing the events surrounding the suffering are newsworthy), then it is okay for someone else to print a photograph of your suffering. The argument takes on a slightly different angle when applied to Kant’s universalizability: if it is morally right for you to publish a photograph of another’s suffering, then it is okay for everyone to publish a photograph of someone suffering. As an editor, you may not agree with someone publishing photographs of your suffering, but you
would more than likely agree that everyone has the same moral right to publish a newsworthy picture of someone suffering.

In order to break the tie in respect to the photograph’s effect on a subject, Kant’s notion of respect can be considered. An editor must examine if they are treating the subjects of the photograph as an means to an end. Are you, as the editor, considering the subject’s feelings or interests? Are you considering solely your own interests? Are you interfering with the subject’s rights? An editor should weigh these considerations when deciding the effect the photograph would have on the subject.

The principles of ethics should be weighed in both the areas of the people’s right to know about an event and the effects of publishing the photograph. Applying principles ethics will help in making wiser, more thoughtful editorial decisions.
Notes


2 "The Unprintable Picture" Mother Jones, April 1985, p.5.


4 Fredrickson, p.9.

5 "The Unprintable Picture", p.5.


8 Goodwin, pp. 189-193.


11 Fredrickson, p.9.
Notes (Continued)

12 Themal, p.10.

13 Goldsmith, p.18.
Sources Utilized


"The Unprintable Picture" Mother Jones, April 1985, p. 5.
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Part 2--Privacy
Journalists and the public seem to be on opposite sides of the fence when it comes to the question of privacy. In general, Americans feel that they have a right to privacy, but the Constitution does not explicitly guarantee that right to privacy. Despite the lack of a national privacy law, Associate Justice William O. Douglas said, "The right to be left alone is the beginning of all freedom."\(^1\) Besides the question of an actual right to privacy, there are no cut and dry lines that separate information gathering and invasions of privacy. When such opposing views exist on the subject, is there any way for the press and people to make peace about privacy?

Photojournalists seem to be in the business of invading privacy by documenting people's lives on film. It is a photojournalist's job to freeze the news as it happens in order to show it to the rest of the world. In order to do this effectively, a photojournalist must capture the moment instantly, without much thought or regard to anything else but getting the picture. They exercise their First Amendment right to record the facts, shed light so people can find their way, and publish despite the pain and discomfort a published photograph might cause.\(^2\) A photojournalist can easily invade a subject's privacy. News photographers have to be very careful about these issues once the film is developed and pictures are being chosen for publication.
What is privacy? One of the many facets of the privacy dilemma is that there are so many different definitions of privacy. According to an article in the *American Philosophical Association Newsletter* of May 1988, the ways privacy can be defined include references to autonomy and control of information. Several other definitions include the right to be left alone, information management, the right to be unobserved when in private, inaccessibility and liberty of personhood-creation and personhood-enhancement. Common law definitions include:

- interference with seclusion, solitude and anonymity
- publication of embarrassing private facts
- depicting the subject in a false light
- appropriation of name, likeness or identity
- unauthorized publicity
- breach of confidence or secrecy
- unfair business practices involving misappropriation, trade secret, trade name and copyright violations.

The Universal Declaration of Human Rights even offers a definition of privacy in article 12:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honor or reputation. Everyone has the right to protection of the law
against such interference or attacks."³

Despite all of the varying definitions of privacy, there is one thread linking them all together--the notion that privacy is a right. This can be explained by Kant's principle of a right:

1) A person has the right to privacy
2) A person is entitled to privacy
   --others have the duty to refrain from interfering with that privacy and
   --others must provide a person with his/her privacy.

Although there is no official code of ethics for photojournalists, there are moral imperatives that can be seen as common to all professionals:

1. The image maker's commitment to him/herself to produce images which reflect his/her intention, to the best of his/her ability;
2. the image maker's responsibility to adhere to the standards of his/her profession, and to fulfill his/her commitments to the institutions or individuals who have made the production economically possible;
3. the image maker's obligations to his/her subjects; and
4. the image maker's responsibility to the audience.⁴

These imperatives can be justified by the basic ethical principles. Kant's notion of respect may be applied to all four of the moral imperatives. Kant's principle would say that respect for self, the profession, the subject
involved, the readers and the institution who have made the image
production possible can be justified. These things all have intrinsic worth
and should be treated as an ends; therefore, the choices, interests, feelings,
rights involved should be considered. These ethical principles are
important to photojournalists when examining the question of privacy as
well as many other issues.

The courts are busy trying to solve hundreds of cases every year
concerning a photojournalist invading someone’s privacy. Legally, privacy
cases are generally decided in favor of the press. Many privacy cases are
won by newspapers simply by using a defense of newsworthiness, a notion
supported by the people’s “right to know”. (See page 8.) These cases
involve both private figures, people who are not in the public eye; limited
public figures, those people thrown into the public eye via a newsworthy
event; and public figures, those who make their living by being in the
public spotlight. When people are involved in a newsworthy event,
journalists tend to treat them as public figures.⁵ Often privacy is an
ethical rather than a legal problem. ⁶

Privacy problems in photojournalism tend to fall in one of four
categories: intrusive photographing, publishing of embarrassing or private
photos, depicting the subject of the photograph in a false light, and using
the subject’s image for monetary gains without consent (appropriation). ⁷
An example of a case of publishing an embarrassing photograph involves a photograph that was published in a Florida newspaper. Hilda Bridges, who had been kidnapped and forced to disrobe by her estranged husband, sued the *Cocoa Beach Today* for publishing a photograph of her fleeing the kidnapping scene with only a towel covering her. She sued the newspaper and the photographer for invasion of privacy, and a Florida state court awarded her $1000 in damages and $9000 in punitive damages. The newspaper appealed this case, and a Florida appellate court threw out the award. Bridges then took her case to the Supreme Court, but they refused to consider her arguments. The decision remained in favor of the newspaper. The Florida appeals court commented, "The law in Florida seems settled that when one becomes an actor in an occurrence of public interest, it is not an invasion of her right of privacy to publish her photograph with an account of such occurrence."\(^8\)

Other cases involving intrusive photography occur frequently involving photographers badgering public figures, such as actors and politicians, for photographs. The *National Enquirer* photographers frequently get into trouble by climbing walls, sneaking around and even flying overhead in a plane to take pictures of a celebrity. There is also the famous case of photographer Ron Galella and his photo-obsession with Jacqueline Kennedy Onassis. He would spend most of his time following
the former First Lady and taking pictures of her. Despite court orders to stay away from Onassis, Gallela has sold many of his photographs of Onassis and her family to a variety of publications.\textsuperscript{9}

False light cases occur when the images distort the truth and create false impressions of one's intentions, character or actions. An example of a case of placing a subject in a false light is the case of Clarence Arrington, a financial analyst for the Ford Foundation. His picture was taken and prominently featured in a story about black middle class citizens in the New York Times Magazine. Arrington claims that he never knew that his picture was being taken and he profoundly disagreed with the content of the article. Arrington sued the New York Times, the photographer and the photographer's agency for invasion of privacy.\textsuperscript{10}

Another ethical problem is the problem of image ownership and appropriation. Jacqueline Kennedy Onassis provides an example of a case of appropriation. Christian Dior, a famous fashion house, hired a Jackie-O look-alike model to be photographed in an ad campaign. In the case, the New York Supreme Court said that, "the rights of Ms. Onassis were 'trampled upon' when the fashion house of Christian Dior used a look-alike model. The appropriation question says that a person's image and picture should not be used by another for financial gain.\textsuperscript{11}
In order to help avoid such legal battles and give the public a more favorable view of the press, what sorts of privacy ethics should be involved in the area of photojournalism? The first way of looking at the ethics of privacy is through the notion of harm. In John Stuart Mills’ monograph, *On Liberty*, he explained what he calls the Harm Principle. He said, “A person’s liberty may justifiably be restricted to prevent harm that the person’s actions would cause to others.” Mills suggested that one should weigh principles and find a balance. He also explain that whether a harm outweighs a liberty depends on the gravity of the harm, the significance of the liberty, the efficiency with which a liberty-limiting intervention can occur and resources available for such an intervention.\(^{12}\) Before we can apply Mills’ principle, we must examine what a harm is. According to Joel Feinberg, a harm involves thwarting, defeating or setting back an interest regarding property, privacy, confidentiality, friendship, reputation, health and career.\(^{13}\)

We can apply the harm principle to the case of the Florida woman. Harm was done by setting back Bridges’ interest in privacy. That harm was mainly embarrassment of having her scantily clad body published in the local paper. The liberties involved on the part of the photographer include his First Amendment right to freedom of speech, which is considered to be a very significant liberty. The harm of embarrassment
then must be weighed against freedom of speech along with consideration of possible intervention. There are no cut and dry answers using this method, but it provides the photojournalist with one way of sorting out an issue of privacy.

A photographer could use the moral imperatives listed above to help make ethical decisions about photos. Using the case analyzed above, the photographer upheld respect for himself by producing a picture which lived up to his intention of telling the story of the kidnapping to the best of his ability. He also respected the newspaper that employed him by giving the paper a picture which told Bridges’ story. He respected his audience by photographing newsworthy events for them. The one moral imperative that the photographer does not live up to is respect to his subject. He ignores the possible embarrassing side effects of publishing Bridges’ photo. The photographer should weigh all four of the moral imperatives to arrive at a wise and ethical decision about a photograph.

Another approach to the privacy question is the principle of utility. This principle focuses on the consequences of an action and if that action maximizes good and minimizes harm. In the case analyzed above, the photographer did not minimize the harm caused to Bridges by publishing the photograph. The event was of interest, but was not of urgent importance; therefore, the overall good was not maximized by publishing the photo. Using this approach, the decision to publish the photo was
moral wrong.

Using yet another approach, Kant’s principles of universalizability, reversibility and respect, the decision to publish the photograph of Bridges was wrong also. Universalizability, a principle that says an act is morally right when it is right for others in the same situation to do the same thing, and reversibility, a principle that says if you do something to someone, it must be right for them to do the same thing to you, clearly defines the action as wrong. The photographer would not be happy if someone published a nearly-nude photograph of him or his wife on the front page of his hometown paper; therefore, he probably could not universalize or reverse this action and still agree with it. The principle of respect, which says that people should be treated as an ends and never as a mere means, also applies in this case. The photographer was using this woman as a mere means of making money and getting a photo published. He ignored Bridges feelings and weighed her feelings and interests less than his own.

One principle which could be used to justify the publishing of Bridges’ picture is Kant’s principle involving rights. This principle says that if a person has a right, he is entitled to that right and others should not interfere with that right. The photographer in this case could cite his rights to freedom of expression to earn a living as well as the public’s right to know in defense of his moral decision to publish the picture. Bridges could not morally interfere with those rights.
Privacy ethics do not work like a toggle switch; there are not clearly right or clearly wrong decisions. Both areas, privacy and ethics, are ambiguous and subject to individual interpretation. A photojournalist should simply examine the situation, its outcome, and how it will affect others before submitting a picture for publication. If moral decisions are made by photojournalists, the result will be a more harmonious and cooperative relationship between the press and the public.
Notes


2 Meyer, p. 77.


6 Goodwin, p. 214.

7 Gross, pp. 8-14.


9 Gross, p. 12.


Notes (Continued)


13 Klaidman, p.96
Sources Utilized


