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The different right to privacy for private citizens, public figures and civil servants

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Abstract

This paper examines the differentiated application of the right to privacy concerning private citizens, public figures, and civil servants within contemporary legal and journalistic contexts. Synthesizing existing scholarship and case law primarily from the United States and Europe (including ECHR jurisprudence), it analyzes the patterns and contradictions inherent in balancing privacy expectations against the principles of free expression and the public's right to know. While private individuals generally retain robust privacy protections, public figures and officials experience diminished expectations, particularly when their actions intersect with legitimate public interest. However, the analysis reveals inconsistencies in defining "public interest" and the adequacy of protections against unwarranted intrusion, especially in the digital age. Key case studies illustrate the divergent approaches, highlighting the U.S. emphasis on newsworthiness versus the European focus on proportionality and human dignity. The paper identifies gaps in addressing the privacy challenges posed by technology and globalization, concluding that while legal frameworks vary, the concept of justifiable public interest remains a central, albeit contested, arbiter in mediating the tension between privacy and transparency. Ethical considerations in journalism often provide a crucial, though non-binding, layer of restraint.

Keywords: right to privacy, Public figures, Civil servants, Journalistic ethics, Comparative law, Freedom of expression

Introduction

The right to privacy, recognized as a fundamental human right (Universal Declaration of Human Rights, 1948), occupies a complex and contested space in modern society. Its application is not uniform; rather, it shifts significantly based on an individual's societal role. The ubiquitous nature of modern media and digital communication technologies has intensified the long-standing tension between the public's right to information, championed by a free press, and the individual's right to be "let alone" (Warren & Brandeis, 1890). Private citizens typically expect substantial protection from public scrutiny, while public figures—individuals who seek or attract significant public attention—and civil servants, entrusted with public duties, often find their privacy rights curtailed in the name of transparency and accountability.

This study synthesizes existing legal and ethical scholarship to explore how the right to privacy is differentially applied to private citizens, public figures, and civil servants across key jurisdictions, primarily the United States and Europe. It seeks to identify patterns, contradictions, and lacunae in current legal frameworks and journalistic practices. The central questions guiding this analysis are: How do legal conceptualizations and protections of privacy differ for these distinct groups? What justifications underpin these differences, and how are they reflected in landmark court decisions? Furthermore, how do journalistic ethics navigate the complex terrain of reporting on individuals with varying degrees of public exposure, balancing informational duties with respect for privacy? By examining these issues, this paper aims to provide a synthesized understanding of the current state of privacy rights and their implications, particularly for media practice in an era marked by rapid technological change and globalization.

Literature Review

The conceptual foundations of privacy rights are deeply rooted in legal scholarship. The seminal work of Warren and Brandeis (1890) framed privacy as an essential aspect of individual liberty, reacting against intrusive media practices. This foundational idea evolved, with scholars like Prosser (1960) categorizing privacy invasions in U.S. law, implicitly acknowledging varying levels of protection based on context. International frameworks, such as Article 8 of the European Convention on Human Rights (ECHR), establish a broad right to respect for private and family life, necessitating a balance with freedom of expression (Article 10).

A dominant theme within the literature is the distinction drawn between private individuals and those in the public sphere. U.S. jurisprudence, significantly shaped by defamation cases like *New York Times Co. v. Sullivan* (1964), established that public officials and figures face a higher burden in legal actions against the press, reflecting a belief that open debate about such individuals is vital for democracy (Carter-Ruck.com, n.d.). This rationale suggests that public figures voluntarily assume a risk of increased scrutiny and possess a diminished expectation of privacy (Society of Professional Journalists, 2014).

European legal thought, while also recognizing the need for public scrutiny, adopts a more nuanced balancing approach, weighing Article 8 privacy rights against Article 10 expression rights on a case-by-case basis. The European Court of Human Rights (ECtHR) in *Von Hannover v. Germany* (2004) notably asserted that even well-known individuals retain a "legitimate expectation" of privacy, rejecting the notion that fame automatically extinguishes this right (Law.aua.am, n.d.). However, the court has distinguished between celebrities and public officials, suggesting the latter may need to tolerate greater scrutiny related to their duties (Council of Europe, 2018; Law.aua.am, n.d.).

Academic critique, such as that by Hughes (2019), questions the conceptual soundness of a rigid "public figure doctrine," arguing that the underlying values of privacy remain consistent regardless of status. Hughes (2019) advocates for focusing on the specific context, the genuine public interest in the information, and the severity of the intrusion, rather than relying on categorical distinctions. This perspective aligns with a trend favoring situational analysis over fixed classifications.

Regarding civil servants and public officials, the literature generally concurs that their roles necessitate accountability, justifying closer examination of conduct relevant to their public duties (Council of Europe, 2018; Law.aua.am, n.d.). The principle that governance requires tolerance for robust debate often leads to a reduced scope for privacy claims by officials, particularly politicians (Lingens v. Austria, 1986; Law.aua.am, n.d.). Nevertheless, this scrutiny is not boundless; intrusions must typically relate to public functions or matters of genuine public concern, not purely private affairs.

Contemporary scholarship also engages with the impact of data protection regimes, such as the EU's General Data Protection Regulation (GDPR) and the associated "right to be forgotten," established in *Google Spain SL v. AEPD* (2014). This right allows individuals, primarily private citizens, to request the removal of outdated or irrelevant personal data from search results, though it is balanced against the public's ongoing interest in accessing information, particularly concerning public figures (Archive.epic.org, n.d.). The literature thus presents a complex picture where privacy rights are universally acknowledged but variably applied, mediated by factors like public status, the nature of the information, and the perceived public interest in disclosure.

Comparative Legal Analysis

Legal systems across different jurisdictions exhibit significant variation in how they delineate and protect privacy rights, reflecting distinct legal traditions and societal values.

United States: U.S. privacy law is characterized by a fragmented approach, relying on state laws, common law torts, and specific federal statutes, heavily influenced by robust First Amendment protections for freedom of the press. A clear distinction is drawn between private and public individuals. Private citizens benefit from the tort of public disclosure of private facts, which prohibits publishing highly offensive private information lacking legitimate public concern (First Amendment Watch, 2017). However, the concept of "newsworthiness" or "legitimate public concern" is interpreted broadly, often favoring publication (First Amendment Watch, 2017).

For public figures (including general-purpose and limited-purpose figures) and public officials, the legal balance shifts dramatically towards press freedom. The First Amendment provides a strong defense for publishing information deemed newsworthy, particularly if it relates to the individual's public role or status (First Amendment Watch, 2017). Landmark cases like *Sidis v. F-R Publishing Corp.* (1940) illustrate this tendency, upholding the media's right to report on a former public figure's later private life, reasoning that public interest can endure long after fame has faded (Law.justia.com, n.d.). Public officials face even greater hurdles, particularly in defamation claims, requiring proof of "actual malice" (*New York Times Co. v. Sullivan*, 1964; Carter-Ruck.com, n.d.). Information related to their official conduct or obtained from public records generally receives strong protection

from privacy claims (*Cox Broadcasting v. Cohn*, 1975; *Florida Star v. B.J.F.*, 1989; Carter-Ruck.com, n.d.). While lower-level civil servants may retain more privacy regarding purely personal matters, the newsworthiness doctrine can apply if they become involved in public events. Overall, the U.S. framework prioritizes transparency and press freedom, especially concerning individuals in the public eye, affording them a limited zone of privacy.

Europe (ECHR and National Frameworks): European systems, guided by the ECHR, treat privacy (Article 8) and freedom of expression (Article 10) as fundamental rights of equal value, requiring a balancing act in cases of conflict (Council of Europe, 2018). The ECtHR employs a proportionality analysis, considering factors such as the contribution to a debate of general interest, the subject's notoriety, prior conduct, the method of information gathering, and the publication's impact (*Von Hannover (No. 2) v. Germany*, 2012; *Axel Springer v. Germany*, 2012; Hughes, 2019).

Private individuals receive strong protection; intrusions require significant justification based on public interest, not mere curiosity (Council of Europe, 2018; *Peck v. United Kingdom*, 2003). The "right to be forgotten" under data protection law further empowers private citizens to control outdated personal information (*Google Spain SL v. AEPD*, 2014; Archive.epic.org, n.d.).

Public figures, including celebrities, retain Article 8 rights, but these are balanced against the public interest value of the information (*Von Hannover v. Germany*, 2004; Law.aua.am, n.d.). Reporting is generally permissible if it contributes to public debate, but purely private details lacking public relevance may be protected. Cases like *Campbell v. MGN Ltd* (2004) in the UK demonstrate a nuanced approach, permitting publication of information correcting a public figure's false statements but prohibiting disclosure of excessive private details (Globalfreedomofexpression.columbia.edu, n.d.). National laws, such as France's Civil Code Article 9, can offer even stricter protections, although the trend, influenced by ECtHR jurisprudence (*Couderc and Hachette Filipacchi v. France*, 2015), acknowledges that even personal matters of prominent figures can acquire public interest dimensions.

For civil servants and public officials, European law generally allows greater press scrutiny concerning their official functions, emphasizing democratic accountability (*Lingens v. Austria*, 1986; Law.aua.am, n.d.). Politicians, in particular, are expected to tolerate robust criticism. However, purely private matters unrelated to public duties remain protected. Transparency regarding official actions is favored, but personal data unrelated to public roles is typically shielded.

Jurisdictional Differences Summary: The U.S. system adopts a more categorical approach favoring press freedom once an individual is deemed public, relying heavily on the broad defense of newsworthiness. European systems employ a more context-specific balancing test, offering potentially greater privacy protection even for public figures unless a clear, proportionate public interest justifies the intrusion. Both systems, however, converge on the principle that a compelling public interest can override privacy claims (Society of Professional Journalists, 2014), though they differ significantly in defining and weighing that interest. Other jurisdictions often reflect a blend of these approaches.

Ethical Considerations in Journalism

Beyond legal requirements, journalistic ethics provide crucial guidance on navigating privacy issues. Codes of ethics, such as that of the Society of Professional Journalists (SPJ), emphasize the principle of "Minimize Harm," explicitly recognizing that private individuals have a greater right to control information about themselves than public figures (Society of Professional Journalists, 2014). A central ethical tenet across various codes is the distinction between genuine "public interest" and mere "public curiosity" (Council of Europe, 2018; Research.tuni.fi, n.d.; Society of Professional Journalists, 2014). Publishing private information is ethically justifiable only when it serves a significant public good, such as exposing wrongdoing or informing public debate, rather than simply pandering to sensationalism.

Ethical duties vary based on the subject:

Private Citizens: Require heightened sensitivity, compassion, and respect for boundaries. Journalists are ethically encouraged to obtain consent when possible, minimize harm through measures like anonymization, and avoid exploiting personal tragedies for sensational value (Society of Professional Journalists, 2014).

Public Figures: While subject to greater scrutiny, ethical reporting still demands relevance and proportionality. Journalists should question whether private conduct genuinely impacts public roles or contradicts public personas (*Campbell v. MGN Ltd*, 2004). Intrusive newsgathering methods and gratuitous details are ethically discouraged, even for celebrities (Hughes, 2019; Mosley v. News Group Newspapers Ltd, 2008).

Civil Servants/Public Officials: Ethics align with the watchdog role of journalism, justifying scrutiny of actions relevant to public trust and performance. However, fairness dictates avoiding needless intrusion into unrelated private matters and offering subjects a right of reply (Society of Professional Journalists, 2014).

Responsible journalistic practices also involve ethical considerations regarding information gathering (e.g., avoiding trespass or surveillance without compelling justification) and publication choices (e.g., debates around publishing images of protesters or handling outdated information about private individuals) (Society of Professional Journalists, 2014; Uark.pressbooks.pub, n.d.). Ethical frameworks thus act as a vital complement to law, promoting restraint, fairness, and respect for human dignity in reporting practices.

Case Studies

Several landmark cases illuminate the practical application of legal principles and ethical considerations:

Von Hannover v. Germany (2004): The ECtHR protected Princess Caroline's privacy from paparazzi photos of mundane private activities, establishing that fame does not negate the right to a private sphere devoid of public interest (Law.aua.am, n.d.). This case significantly influenced European media practices regarding celebrity privacy.

Campbell v. MGN Ltd (2004): The UK House of Lords balanced Naomi Campbell's privacy against press freedom, allowing publication of the fact of her drug addiction (to correct her public denial) but deeming specific treatment details and intrusive photos an unjustified violation (Globalfreedomofexpression.columbia.edu, n.d.). This exemplifies a granular balancing approach.

Sidis v. F-R Publishing (1940): A U.S. court denied privacy protection to a former child prodigy living in obscurity, prioritizing the public's perceived enduring interest based on past fame over the individual's desire for seclusion (Law.justia.com, n.d.). This highlights the strength of the U.S. newsworthiness doctrine.

Lingens v. Austria (1986): The ECtHR affirmed that politicians must tolerate harsh criticism, limiting their ability to use defamation or privacy laws to shield themselves from scrutiny related to their public roles (Law.aua.am, n.d.).

Cliff Richard v. BBC (2018): An English court found the BBC violated Sir Cliff Richard's privacy by broadcasting a police raid on his home related to an investigation where he was never charged, emphasizing the privacy interest in being free from premature public identification as a suspect (Hughes, 2019).

Mosley v. News Group Newspapers Ltd (2008): A UK court awarded damages to Max Mosley for a tabloid's exposé of his private sexual life, finding no legitimate public interest to justify the intrusion, reinforcing protection for consensual private activities even for public figures (Hughes, 2019).

Google Spain SL v. AEPD (2014): The Court of Justice of the EU established the "right to be forgotten," allowing individuals (primarily private ones) to request delisting of outdated or irrelevant search results, showcasing a European emphasis on informational privacy, balanced against ongoing public interest (Archive.epic.org, n.d.).

These cases demonstrate the varying outcomes based on jurisdiction, the individual's status, and the perceived public interest, providing tangible examples of the legal and ethical boundaries in practice.

Discussion and Analysis

The comparative analysis reveals fundamental differences in legal philosophy between the U.S. emphasis on free speech and the European prioritization of human dignity and privacy. This divergence creates practical challenges in a globalized media landscape, where content crosses borders easily. The distinction between "public" and "private" individuals, while legally significant, often functions more as a continuum in reality, posing challenges for applying categorical rules. A more nuanced, context-sensitive approach, focusing on the nature of the information and the justification for disclosure, appears increasingly necessary (Hughes, 2019).

Journalistic ethics serve as a critical buffer, particularly where legal protections are weaker. The consistent ethical emphasis on genuine public interest over mere curiosity provides a valuable standard. However, the pressures of the modern media environment, including the rise of non-traditional media and "clickbait" culture, challenge adherence to these ethical norms. The impact of technology further complicates privacy, blurring lines through social media virality and enabling new forms of surveillance. Legal and ethical frameworks are continuously adapting to address issues like the use of publicly available online content and the implications of data protection laws like GDPR for journalism.

Cross-jurisdictional enforcement remains a significant hurdle. Privacy injunctions in one country may be ineffective if information is published elsewhere, highlighting the limitations of national laws in a borderless digital

world. Potential solutions involve greater international dialogue and harmonization efforts, though significant obstacles, particularly the U.S. First Amendment stance, remain.

A recurring pattern across legal and ethical discourse is the centrality of "public interest" as the key justification for overriding privacy. However, defining and applying this concept consistently remains problematic. Cases like *Sidis* (1940) might be viewed today as stretching public interest too thin, while critics sometimes argue European courts unduly restrict reporting on matters of potential public relevance. Ensuring the public interest test is applied rigorously and ethically, rather than as a pretext for sensationalism, is crucial. The overall trend suggests a growing societal awareness of privacy harms, prompting adjustments in both law and journalistic practice towards greater sensitivity, though the fundamental tension with free expression persists.

Conclusion

The right to privacy, while universally recognized, is applied differentially based on an individual's public profile and the specific context of disclosure. Private citizens generally receive the highest level of protection, shielded from unwarranted media intrusion. Public figures and civil servants, conversely, operate under a diminished expectation of privacy, particularly concerning matters relevant to their public roles and conduct (Society of Professional Journalists, 2014; Law.aua.am, n.d.). However, this reduction is not absolute; even prominent individuals retain rights against purely personal or irrelevant intrusions.

Comparative analysis highlights a spectrum of approaches, with the U.S. generally favoring press freedom and newsworthiness (First Amendment Watch, 2017; Law.justia.com, n.d.), while European systems often prioritize individual dignity through a balancing test (Von Hannover v. Germany, 2004; Council of Europe, 2018). Despite these differences, the concept of "public interest" emerges as a common, albeit contested, benchmark for justifying privacy intrusions across jurisdictions (Council of Europe, 2018).

Journalistic ethics play a vital role in mediating these tensions, urging practitioners to minimize harm, respect boundaries, and distinguish genuine public interest from mere curiosity (Society of Professional Journalists, 2014). The challenges posed by digital technology and globalization necessitate ongoing adaptation of both legal frameworks and ethical norms.

Ultimately, achieving a balance between a free and informative press and the fundamental right to privacy requires continuous evaluation and context-specific judgment. While legal structures provide boundaries, ethical commitment within the media profession is essential for fostering a media environment that is both robustly informative and respectful of individual dignity. The dynamic interplay between privacy, publicity, and the public interest will undoubtedly continue to shape legal and societal norms in the years to come.

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