Blurred Lines[1] – Between the Artist and his Art

Manasi Gandhi*

Political beings as we are, our work often becomes a looking glass through which the world sees. Try as liberal theory might to separate the public from the private, they exist only as oppositional forces and thus necessarily influence and shape each other. Thus, a person's politics influences the art he creates. And yet, with the audience, the art begets a life of its own, changing and growing with the audience's politics. The problem arises when the audience accepts the art but rejects the person – the separation of the artist from his art is a question that has important ramifications across disciplines; be it the bifurcation of judges' private lives and their actions in Court or the allegations of sexual misconduct on the part of an otherwise prominent and efficient bureaucrat. This paper shall deal with the question of misdemeanours on the part of artists – filmmakers, musicians, authors because of the magnanimous influence they have in shaping the socio-political attitude of the people. The question of the separation will always remain important but its relevance in evaluating the art independently become less important as space is permitted for opposing narratives from the marketplace of ideas as facilitated by social media today.

A question that has long troubled me has been of separating a person's work from the person's being. Last year, Woody Allen was awarded the Cecil B. DeMille award at the Golden Globes Awards prompting Dylan Farrow to come out in the public with stories of molestation at Allen's hands. Many questioned the decision

1 *Blurred Lines* is a controversial song by American artist Robin Thicke whose lyrics and video mock sexual consent. He has come under fire by feminists who claim the song promotes rape culture and trivialises consent in relation to sex. Given the outcry in the media, I believe it is the perfect title for this paper.

* Manasi is a final year B.A., LL.B. (Hons) Student at NALSAR University of Law, Hyderabad.

of the Hollywood Foreign Press Association to honour Woody Allen with a lifetime achievement award in the midst of such controversy while Allen's friends and fans claimed that the stories of molestation were planted by Mia Farrow to exact revenge for the affair Allen had with her adopted daughter, Soon-Yi Previn (whom he later married). While the jury is still out on the veracity of Dylan's claims, the debate has moved on to whether Allen's work necessarily reflects his person or can be seen independent of the alleged criminality in his private life. This brings to mind Roman Polanksi's scandal wherein he fled jurisdictions to avoid charges of statutory rape and yet won an Oscar for best picture for his next movie. Many have since called for the social boycott of Allen and Polanski's films and even petitioned the Academy of Motion Picture Arts and Sciences, the Hollywood Foreign Press Association and the British Academy of Film and Television Arts to not recognise their work for awards. The question then raised is whether you can separate the person from his work and this paper seeks to address just that.

Before we delve into exploring the possible answers to this question, we must first recognise the need to do so. It is easy, on one hand, to say that a person's private life is his own and that his work is entirely separate and unconnected from his private life. This may be true to the extent that unless the work is autobiographical, there is no intention to publish the intricacies of one's private life for the public. And yet, on the other hand, for the longest time, the main justification for copyright protection was that the work, autobiographical or not, was an extension of the author's person.[2] I personally do not subscribe to such a justification for copyright and in any case, an elaboration on copyright theory is beyond the scope of this paper. The main issue with the public/private divide between a person's being and work arises when the person in question is a celebrity or a public figure. It is undisputed that persons in the public eye have a far reaching influence over the opinions and behaviour of their audience, especially teenagers and young adults. Various studies have shown the correlation between celebrity endorsements and political opinion and teen behavioural tendencies.[3] With increased media scrutiny of celebrities' private lives, there is a blurred line

2 Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L. J. 287 (1988).

3 David J. Jackson & Thomas I. A. Darrow, *The Influence of Celebrity Endorsements on Young Adults' Political Opinions*, 10(3) The Harvard Int. Jour. of Press/Politics 80 (Summer 2005).

dividing their public and private life. What they do in the privacy of their homes is broadcast for the world to see and this constant reporting feeds into our psyche, moulding our opinions, colouring our perspective of the outside world. When celebrities become persons in positions of such influence, the burden is on them to set good examples, be role models for the masses to emulate. In such an event, the question whether an artist can be separated from his art becomes even more pertinent to be answered.

Of course, this question is applicable to not just celebrities but to all persons in the public sphere – even judges and politicians. For instance, when Tarun Tejpal was arrested for the sexual harassment of an employee, his entire work as well as Tehelka's credibility in exposing corruption and nepotism in the Indian bureaucracy was called into question.[4] It becomes important for us then to draw boundaries between persons and their work and determine when this distinction stands erased lest we tend to be overly accepting of all work or reject it all without due thought. Each one of us has a politics of our own, our experiences and social backgrounds determine the principles we live by and it is by these that we judge the world around us. We already accept and reject any work based on this personalised value system; each of one of us makes value-based judgments, some influenced by the larger context in which the art exists and some where we are willing to let the work speak for itself. The problem is that we make these judgements without any conscious thought given to the principle framework, without actually evaluating the various considerations that influence our attitude to the art. Very few instances that life presents us with are in clear binaries; the most frequent instances are those which force us to question our own politics. To be more conscious of our politics is then to confront our own value system and can only make us more self-aware individuals. This paper reflects my biases and preferences in this regard; and while I've tried to be as objective in presenting the various arguments that may be offered, I cannot claim that it is an exhaustive and complete narrative.

Since the list of such instances is far too long, my primary focus will be on prominent persons in the film, television and music industry – Richard

4 Aakar Patel, *Tarun Tejpal and Tehelka's fall from grace*, The Express Tribune, http://tribune.com.pk/story/636020/tarun-tejpal-and-tehelkas-fall-from-grace/ (November 23, 2013) [last accessed May 2, 2014].

Wagner, Orson Scott Card, Mel Gibson, Steven Moffat, Woody Allen, Roman Polanski and R Kelly. Their misdemeanours range from sexist and anti-Semitic comments to homophobia and from outright criminal by way of a sexual offence to Nazi advocacy. It is important to note that the gravity of the offence in each instance differs and thus, they cannot all be marred with the same brush – some individuation is necessary lest we end up equating a bigoted remark to child sexual abuse. To be fair, this is an obvious selection of examples to elucidate my dilemma – these personalities are ones whom the press writes most about and thus offers highly descriptive details to help nuance our arguments.

I first consider the posthumous appropriation of authorial intent and thus evaluate the most obvious separation of artist from his work. I then go on to consider the role of the marketplace of ideas as an effective counter to politically incorrect opinions held by artists while their art remains unblemished by their bigotry. And finally, I evaluate the various arguments made when the audience must confront the artist who commits a moral breach.

The Death of the Author. Literally.

Wilhelm Richard Wagner was a German composer whose musical genius is unparalleled by the men of his time and yet he is most remembered for his anti-Semitism and posthumous association with Adolf Hitler and the Nazi regime. It is undisputed that he blamed Jews for the problems faced in Europe in the late 1800s and even wrote about the decline in quality of music in Europe due to the infiltration in the music industry by the Jews in his essay *On Jewishness in Music*.[5] And yet when he republished it, he addressed Jews saying, "[R]emember that one thing alone can redeem you from the curse which weighs upon you: the redemption of Ahasverus - destruction!"[6] Wagner's essay can be read to be not advocating the extermination of Jews but their redemption by abandoning Judaism. Wagner is most prominently associated with Hitler because it was his

5 Professor Robert S. Wistrich, *Wagner's Anti-Semitism*, http://www.aish.com/jw/s/Wagners-Anti-Semitism.html [last accessed May 2, 2014].

6 Adrian Mourby, *Can we forgive him?*, The Guardian, http://www.theguardian.com/friday_review/story/0,3605,345459,00.html (July 21, 2000) [last accessed May 2, 2014].

opera, *Lohengrin*, which Hitler heard at age 12 that inspired the nationalist in him.[7] Hitler used Wagner's negative portrayal of Jews to further fuel his propaganda and founded the Nazi ideology of racial hatred. He reinterpreted the story of Wagner's opera *Parsifal* to fit his own ideological vision – while the story has undertones of Buddhist renunciation, Hitler imputed the ideology of purity of blood to it.[8]

There was an absolute ban on Wagner's music in Israel until 2000. This is ironic because in 1936, the Palestinian Philharmonic had performed the prelude to Act 1 and Act 3 of *Lohengrin* in Tel Aviv to a well-receiving audience.[9] It is also a known fact that Theodor Herzl, the founding father of Israel, was himself a fan of Wagner's work even at the time that he conceptualised the Zionist movement. Moreover, the work of others like Liszt, Chopin, Degas, Renoir and Dostoevsky has not been banned and Volkswagen, a car specially commissioned by Hitler, is popular on the streets in Israel even today.

The burning question then is of appropriation of Wagner's work by the Nazi regime – though he was an anti-Semite, his position on the actual extermination of Jews remains uncertain and to that extent we must extend to him the benefit of the doubt. Deconstructionists have oft spoken of how the intention of the author is irrelevant and what must be studied is the meaning the reader derives from a text.

Roland Barthes, in his essay, *The Death of the Author*, speaks of how a text comprises multiple writings in it and these unite not in the author, as has been traditionally believed, but in the reader. The unity of the text lies not in its origin with the author but in its destination with the reader.[10] Thus, according to him, the intended meaning of the text by the author has no relevance since the reader's understanding of the text is all that matters.

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7 Dirk Kurbjuweit, *Wagner's Dark Shadow: Can We Separate the Man from His Works?*, Spiegel Online, http://www.spiegel.de/international/zeitgeist/richard-wagner-a-composer-forever-associated-with-hitler-a-892600.html (April 12, 2013) [last accessed May 2, 2014].

8 *Hitler and Wagner*, The Telegraph, http://www.telegraph.co.uk/culture/music/classicalmusic/8659814/Hitler-and-Wagner.html (July 25, 2011) [last accessed May 2, 2014].

9 Clemency Burton-Hill, *Is Wagner's Nazi stigma fair?*, BBC, http://www.bbc.com/culture/story/20130509-is-wagners-nazi-stigma-fair (May 10, 2013) [last accessed May 2, 2014].

10 Roland Barthes, The Death of the Author, (Richard Howard trans.) http://www.tbook.constantvzw.org/wp-content/death_authorbarthes.pdf.

Derrida's stance is similar wherein he denies the emphasis of the author's influence on a text. He goes on to say that while authors write with intention and meaning, the moment the words are put out in the universe, they cease to be the author's – they become a part of language and society and its meaning is determined by the structures and norms of language and society.[11] The reader, in reading the text, makes some meaning of it given his experience with the structures of society and thus, the language and meaning of the text is only in the moment and cannot be fixed to the author's intention.

Seán Burke, on the other hand, is firm in his belief that all authors must take responsibility for their writing and thus emphasises the role of authorial intent in writing.[12] He goes on to account for the possibility of misinterpretation by readers and continues to place the onus on authors to make clear the meaning of their text to the readers.

To my mind, to say that Wagner's intention in writing the essay *On Jewishness in Music* and the operas portraying Jews in negative light, was not to promote violence against the Jews but a reflection of his opinion on the state of affairs as it were, is quite a fair assessment. For one, the Nazi ideology, as we understand it today, did not exist and Wagner seems to be clear in his belief in the redemption of the Jews – he was good friends with Jewish musicians and even tried to have one baptised as Christian.[13] Burke's proposition that authors must take responsibility for misinterpretation of their work seems a little absurd in this context especially since Wagner was long dead when Hitler first heard his music and was inspired by it. Thus, the onus cannot be on the author alone as it is unfair and impractical. But this is a rare instance where the author cannot take responsibility; what about instances of living celebrities who make offensive statements to the derogation of vulnerable communities and yet continue to make patently unproblematic art? It is important for us to evaluate the role of the author in how we approach his work.

11 Seán Burke, The Death and Return of the Author – Criticism and Subjectivity in Barthes, Foucault and Derrida (3rd ed. 2008).

12 Seán Burke, The Ethics of Writing: Authorship and Legacy in Plato and Nietzsche (2008).

13 Ofer Aderet, *Richard Wagner: The man, the myth, and the anti-Semitic music*, http://www.haaretz.com/culture/richard-wagner-the-man-the-myth-and-the-anti-semitic-music.premium-1.525580 (May 23, 2013) [last accessed May 2, 2014].

Foucault provides a decent explanation for the difficulty in separating the author from his work. He speaks of author function wherein he states that with regard to a narrative discourse, the author's name plays a classificatory function in addition to an indicative function.[14] It allows for the grouping, defining, differentiation of and the establishment of a relationship amongst texts. The author's name in this sense helps give a certain context and an external source of meaning to the text than just the words. The identity of the author is influential in constituting our opinion of the text, in our comprehension of the text and this identity is constituted by his acts in the public as well as in the private. A person supporting LGBTQ rights may not appreciate a homophobic person's work as much as he would have otherwise and for no fault on the part of the work – its value is diminished if even to the slightest extent by the political choices of the author in the private. "The author is the ideological figure by which one marks the manner in which we fear the proliferation of meaning."[15] This argument is relevant because art exists in its context. For example, the book 1984 would be read very differently if it wasn't preceded by Animal Farm which set the tone of Orwell's dictatorial dystopia.

Juxtaposing Foucault against Barthes doesn't provide a solution to our problem – the art can take on new meaning within the ideological framework the artist sets it in, or it can be understood in a new socio-political background just as well. This precipice on which we live, between substantial separation where the art lives free of the bounds of authorial intent and the ideological context which the artist provides within which the art exists puts the onus on the audience. It is up to us to critically examine our choices, what we accept and reject and thus shape culture. This question becomes relevant when the artist breaches the bounds of morality, makes statements that offend or even allegedly does actions that are criminal. To what extent does authorial intent count and how far does the author function play a role in the marketplace of ideas?

14 Michel Foucault, *"What is an Author?" The Author Function*, Language, Counter-Memory, Practice (Donald F. Bouchard & Sherry Simon trans., 1977).

15 *Id.*

If Speech → Offence, What is the Limit to the Marketplace of Ideas?[16]

Let the first instance of offensive comments and bigoted behaviour be Orson Scott Card, the author of the science fiction series *Ender's Game*. The first book, going by the same name, was adapted into a movie in October 2013. The story is fairly simple – mankind faces an invasion by aliens and to defend Earth, children are trained as soldiers. The main protagonist plays a pivotal role in permanently destroying the aliens' home planet. The novel promotes tolerance and compassion and yet is action packed and has been critically acclaimed and has won the top two awards for science fiction. The US Marine Corps also has it on its list of recommended reading for its cadets and officers.

So far, Card's work is unproblematic except for the usual criticism aimed at the violence in the novels.[17] The problem arose when the movie was to be released and various people spoke out against Card's unrepentant homophobia. Many blogs and articles were published expressing personal desire to boycott the movie of which Card was a co-producer.[18] The pieces written were very clear – they had found nothing offensive or problematic with the story itself, their issue was with Card's open stand against marriage equality and consistent position opposing homosexuality.[19] The people writing and speaking up against Card weren't all queer but from across the spectrum of sexual preferences and gender. The voice was unanimous in that they found Card's reaping of commercial benefits while expressing such bigoted views highly problematic.

16 In calculus, when a determinate answer is not possible, functions are used to get the closest answer possible which approaches what is known as the limit of the function. Similarly, the exceptions or limitations of the marketplace of ideas can never be determined since they are temporally and socially determined and yet, in any given moment, some limits are placed on free speech. One of these is speech that "tends to" offend.

17 It is true that some have even compared Card's portrayal of the protagonist to Hitler but that is a one among the myriad accolades received over the decades since its publication. *See also*, Elaine Radford, *Ender and Hitler: Sympathy for the Superman (20 Years Later)*, http://peachfront.diaryland.com/enderhitlte.html (March 26, 2007) [last accessed April 29, 2014].

18 Rachel Edidin, *Orson Scott Card: Mentor, Friend, Bigot*, Wired, http://www.wired.com/2013/10/enders-game/ (October 31, 2013) [last accessed April 29, 2014].

19 *10 Homophobic Quotes by Orson Scott Card, Author of "Ender's Game"*, Verbicide, http://www.verbicidemagazine.com/2013/11/07/homophobia-quotes-orson-scott-card-controversy-bigot-enders-game/ (November 7, 2013) [last accessed April 29, 2014].

Card has been called patently offensive, narrow-minded and despicable and yet there have been some who have written in defence of *Ender's Game*. It has been argued that on reading a book, watching a movie, what is important is "the quality of the work itself, not the personality of the artist."[20] In fact, the sequel to this series is *Speaker for the Dead* whose main theme is the need to understand and respect creatures that are different. This is diametrically opposite to Card's personal beliefs. If he can convincingly write a novel that supports equality, does it really matter what his personal beliefs are?

The next instance in question is of Mel Gibson and his anti-Semitic remarks in various interviews. He is even said to have portrayed Jews negatively in his film *Passion of the Christ*.[21] When he was arrested on a drunk-driving charge, he reportedly asked if the arresting officer was a Jew and said, "Fucking Jews. The Jews are responsible for all the wars in the world" and is apparently a Holocaust denier.[22] Of course Mel Gibson has denied all the allegations levelled against him and attributed it to his short temper and continues to hold a respected place in the film fraternity.[23] While Gibson's movie was about the suffering of Jesus and thus would necessarily paint the Jews in some negative light given their allegiance to the Old Testament, it is difficult to accept that remarks made in public can be excused on grounds of a short temper. It is true that Gibson's case isn't talked about as much as Steven Moffat or Card but it is important to contrast it with Donald Sterling who faces severe criticism and even sanctions for making racist remarks against African Americans. Is it because Sterling is more influential than

20 Cavan Sieczkowski, *Harrison Ford Defends 'Ender's Game' Adaptation Despite Author's Anti-Gay Views*, The Huffington Post, http://www.huffingtonpost.com/2013/10/09/harrison-ford-enders-game-anti-gay_n_4071549.html (October 9, 2013) [last accessed April 29, 2014].

21 Lauren Gambino, *Mel Gibson accused of fresh anti-semitic outburst*, The Telegraph, http://www.telegraph.co.uk/culture/film/film-news/9200535/Mel-Gibson-accused-of-fresh-anti-semitic-outburst.html (April 12, 2012) [last accessed April 30, 2014].

22 Josh Levs, *Writer: Mel Gibson spewed anti-Semitism, talked of killing ex*, CNN, http://edition.cnn.com/2012/04/12/showbiz/gibson-alleged-rants/ (April 13, 2012) [last accessed April 30, 2014].

23 Brandi Fowler, *Mel Gibson Addresses Rant on The Tonight Show: "I've Got a Little Bit of a Temper"*, E Online News, http://www.eonline.com/news/312367/mel-gibson-addresses-rant-on-the-tonight-show-i-ve-got-a-little-bit-of-a-temper (April 28, 2012) [last accessed April 30, 2014].

Gibson that he faced such severe consequences or is it that given Hollywood's history with anti-Semitism the matter doesn't invoke such furore?[24]

Similarly, Steven Moffat, co-writer of the much loved TV series *Sherlock* and *Doctor Who*, is known to have made several sexist and misogynist remarks in public.[25] Many have questioned BBC's decision to continue to appoint him as the chief writer for its flagship shows despite his frequent statements that sexualise women, stereotype them as gold-diggers, and relegate them to the domestic duties.[26] And yet, one of his lead actresses in *Doctor Who* defended him stating that his writing was not sexist and that the character he wrote for her was "very rounded, interesting, flawed and layered".[27]

The point here is not to test the veracity of these allegations or to pick a side in these debates (though the alleged statements have been made in public and are on record for the world to see and thus there can be no doubt as to the claims of bigotry). The main defence in favour of movies by bigoted film-makers is that the maker can be separated from his work – everyone has the right to let their work speak for itself, despite their own personal failings. The second justification is that of the marketplace of ideas and that even if the movie itself or even the maker is chauvinist, the principle of free speech trumps all opposition.

But free speech is never absolute or as Stanley Fish says, "is not an independent value but a political prize."[28] There are obvious limits to it. The issue is of

24 Walt Disney was an anti-Semite and his company remains the largest contributor to children's films even today.

25 Aja Romano, *Why does the man behind 'Doctor Who' and 'Sherlock' still have a job?*, The Daily Dot, http://www.dailydot.com/opinion/steven-moffat-sexism-sherlock-doctor-who/ (January 13, 2014) [last accessed April 30, 2014].

26 Loretta Donelan, *10 Sexist Steven Moffat Quotes*, Hollywood, http://www.hollywood.com/news/celebrities/55026975/steven-moffat-sexist-quotes (August 24, 2013) [last accessed April 30, 2014].

27 Kirsty McCormack, *'He's not sexist' Karen Gillan defends Doctor Who writer Steven Moffat*, Express, http://www.express.co.uk/news/showbiz/460644/Karen-Gillan-defends-Doctor-Who-writer-Steven-Moffat-against-sexism-accusations (February 19, 2014) [last accessed April 30, 2014].

28 Stanley Fish, There's No Such Thing as Free Speech, and It's a Good Thing, Too, http://www.english.upenn.edu/~cavitch/pdf-library/Fish_FreeSpeech.pdf.

determining these limits.[29]

The idea of a marketplace of ideas was first floated by John Stuart Mill in his book *On Liberty* where he said that "... there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."[30] He was a strong advocate of an unfettered right to speech barring a few exceptions. He founded the harm principle which stated that no law curbing the right to free speech was justified unless it prevented speech that caused harm to others.[31] Mill defended his position on grounds that all arguments must be pushed to their logical limits before accepting them and only the "fullest liberty of expression" can facilitate this. It was, according to him, essential for the dignity of all persons.

In response to Mill, Joel Feinberg proposed the offence principle wherein he said that criminal sanctions to prevent actions that would offend someone was justified since the harm principle offered too narrow a scope to protect persons from unacceptable speech.[32] Of course, various factors like the nature of the speech, the intention of the speaker, the intensity of the offence, and the general interest of society, among other factors, had to be kept in mind when determining what

29 There are multiple other accounts for the justification of free speech, from sustaining democratic forms of governance to attaining self-realisation. While these have their merits, given the context of this paper, it is only the marketplace of ideas that must be the focus of my argument. This paper seeks to move away from arguments supporting any State-backed means of censorship; the idea is to explore individual response and responsibility to politically incorrect and/or criminal behaviour from artists in the public sphere. And yet throughout this paper, the focus remains on the community as an aggregate of individuals who respond in light of their own life experiences and how this collective responsibility defines us as a society. In such light, the marketplace of ideas provides an accessible model to define objective limits to free speech and the arguments based on claims of self-governance and individual self-fulfilment remain beyond the scope of this paper.

30 John Stuart Mill, On Liberty, *Note 1* at http://www.bartleby.com/25/2/2.html [last accessed May 3, 2014].

31 *Mill's Moral and Political Philosophy*, Stanford Encyclopaedia of Philosophy, http://plato.stanford.edu/entries/mill-moral-political/ (October 9, 2007) [last accessed May 3, 2014].

32 *Freedom of Speech*, Stanford Encyclopaedia of Philosophy, http://plato.stanford.edu/entries/freedom-speech/ (November 29, 2002, Rev. on July 1, 2012) [last accessed May 3, 2014].

speech was offensive enough to come under the purview of the law and what wasn't.

The limitation of both these theories is that they offer a very narrow space for argument and rely on legal intervention to regulate speech. Thus, the argument, in its attempt justifying laws limiting free speech, solely focuses on the offender and goes down no incidental avenues of thought. Jeremy Waldron, in this regard, is one of the few philosophers who offers an argument to support limitations on free speech by looking at it from the perspective of the offended.

Waldron's book *The Harm in Hate Speech* justifies legislation against hate speech on grounds of promoting mutual respect. He begins with the assumption that in a multicultural society, as are most societies today, individual human dignity is of paramount importance and to make co-existence viable, hate speech must be prohibited. Hate speech promotes strife and tends to "obstruct the manifold adjustments required for a free ordered life in a metropolitan polyglot community".[33] He proposes inclusiveness and assurance of a dignified life as a public good and thus, there is a negative responsibility on the people to not make the provision of the public good more difficult than it really is. This negative responsibility is in addition to the positive obligation on the State to protect the right of individuals to live without fear and as equals.

But the problem with Waldron's position is that it is limited to that of hate speech and is not to be extended to cases of offensive speech and thus Waldron's response to Dworkin does not adequately help resolve the present debate. Hate speech is that which is prejudicial to a community on grounds of race, religion, etc., and has the potential to incite violence against such group. Offensive speech, on the other hand, is judged by a moral compass. Societal and individual morality exist only in so far as they are both influenced by each other and when speech is judged by these parameters, it is easy for the dominant groups to clamp down on any speech that doesn't align with their belief system and because dominant groups tend to have a decisive influence over laws, questions of morality often become questions of censorship.

33 Fritt Ord, *Session 4: Multiculturalism and Human Rights - Part 1/2 - Fritt Ord & NYRB-Conference, Oslo, 2012*, http://youtu.be/DoSbp8pdbM8 (June 29, 2012) [last accessed May 1, 2014].

In such light, Ronald Dworkin's defence of free speech seems compelling when he says that laws limiting free speech can never be read harmoniously with the Constitutional guarantee to free speech and expression. He bases his argument on fairness – laws in a democratic society are legitimate only if adopted by a fair political process.[34] Thus, in a democracy, not giving a person a right to be heard would be akin to denying him a vote and thus by extension a bigoted voice must be given space and be allowed to be published or all claims to legitimacy would be defeated. Moreover, democracies are founded on ideals of equality and it is this very equality that mandates that everyone, irrespective of their beliefs be gives a chance to be heard – this is the fundamental feature of constitutional dignity. His solution is thus to not limit speech, but to strengthen anti-discrimination laws, punish crimes motivated by hate more severely, and prevent exercise of discrimination in the justice system.

Thus so far, it seems that there is no real justification to ban offensive speech. Even to call for a social boycott seems problematic if one agrees with Dworkin's position on equality, fairness and constitutional dignity. While the justifications have come for speech itself that is offensive or hateful, it is easy to adopt the same arguments to accept movies by persons bigoted in their private lives. But this tolerance, if at all, must be restricted to bigoted and offensive speech. What happens when the author in question commits a criminal offence? Do the same rules apply or does the nature of the misdemeanour dramatically change one's position on such matters?

The Moral Condonation Conundrum[35]

Woody Allen was accused of molesting his daughter Dylan whom he had adopted with his ex-partner Mia Farrow. The facts of this matter as we know

34 Fritt Ord, *Session 4: Multiculturalism and Human Rights - Part 2/2 - Fritt Ord & NYRB-Conference, Oslo, 2012*, http://youtu.be/6wJQ658e-4U (June 29, 2012) [last accessed May 1, 2014].

35 A popular TV Show The Big Bang Theory names all its episodes in a similar manner eg. The Friendship Turbulence where the central focus of the plot is on a fight and eventual reconciliation between the protagonists. On a similar note, this part of the paper will focus on the moral dilemma faced by me when I want to watch movies made by Woody Allen or Roman Polanski, all the while knowing that both have been accused of child sexual abuse.

them are: in 1992, 7 year old Dylan told her mother that she had been molested by her father and Mia recorded this conversation on videotape as evidence for the authorities.[36] Dylan was taken to a paediatrician who reported the matter to the police (she was obligated to do so) and yet Mia did not press criminal charges against Allen. Instead, she broke off her relationship with Allen and used the incident of molestation to claim sole custody of the children they had adopted together.[37] It is also important that around the same time, Mia had found evidence of Allen's relationship with Soon-Yi Previn, her adopted daughter from before her relationship with Allen. It has been alleged by Allen's supporters that Mia planted this story in Dylan's mind to exact revenge on Allen for having a relationship and later marrying her adopted daughter.[38] Allegations of the veracity of Dylan and Mia's claims or the lack of reliability on Dylan's memory and Mia's intentions have been thrown around for over 20 years now – their two adopted sons, Moses and Ronan have taken sides with either parent and this has split the family and their friends in two camps.

What is important to note is that while Woody has always denied the charges levelled against him, it is known that he had been in therapy for his inappropriate behaviour since before the allegations surfaced.[39] And yet these allegations and confrontations, though made via magazines and tabloids, are a matter of the private – they do not directly reflect on Allen's talent as a film maker. His movies continue to focus on women and portray them as strong, independent women and as layered characters in their own right. What is happening as a consequence of this debate is that people are picking sides in a dispute that does and yet does not concern them. It does not concern them since they can never be privy to the

36 Maureen Orth, *10 Undeniable Facts About the Woody Allen Sexual-Abuse Allegation*, Vanity Fair Daily, http://www.vanityfair.com/online/daily/2014/02/woody-allen-sex-abuse-10-facts (February 7, 2014) [last accessed May 1, 2014].

37 *Mia Farrow's daughter breaks silence about Woody Allen's alleged molestation*, Fox News, http://www.foxnews.com/entertainment/2013/10/03/mia-farrow-daughter-opens-up-about-alleged-child-molestation-from-woody-allen/ (October 3, 2013) [last accessed May 1, 2014].

38 Victoria Coren Mitchell, *Between labelling Woody Allen a child molester or his daughter a liar, I feel utterly stuck*, The Guardian, http://www.theguardian.com/commentisfree/2014/feb/09/woody-allen-dylan-farrow-alleged-sexual-abuse (February 9, 2014) [last accessed May 1, 2014].

39 Maureen, s*upra* note 36.

naked truth of the matter as it unfolded between Dylan and Allen in the attic in 1992. And yet it concerns us as citizens because any case of child sexual abuse is a matter of absolute moral condemnation and thus concerns us all. When the truth is unknowable, how does one reconcile such a moral dilemma? What when the truth is knowable as far as the legal system goes – as is the case with Roman Polanski?

In contrast to Allen, Roman Polanski did not just have allegations of child sexual abuse against him but actual charges were filed and a trial was initiated against him. While he denied all charges initially, he eventually accepted a plea bargain which substantially reduced the charges levelled against him. Upon discovering that he would be jailed and deported, he fled to France and has since avoided travelling to countries which are likely to extradite him to USA.[40] In 2009, he was detained at the airport in Zurich in relation to the charges awaiting him in the US but he was eventually let off.[41] While he walks a free man even today, the charges filed in Los Angeles remain pending against him as more and more women speak about sexual abuse at his hands.[42]

Similar is the case with R Kelly who had numerous charges of sexual assault filed against him since early 2000. The accusations are graphic with one recorded instance of a video where he urinates on a 15 year old girl before proceeding to engage in sexual activities with her.[43] And yet none of the charges filed has resulted in a trial – Kelly continues to pay off his victims exorbitant sums of money to buy their and their families' silence;[44] all this while he has maintained top position on

40 *The slow-burning Polanski saga*, BBC News, http://news.bbc.co.uk/2/hi/entertainment/8278256.stm (September 28, 2009) [last accessed May 1, 2014].

41 *Id.*

42 *Edith Vogelhut: Roman Polanski Raped, Drugged, Handcuffed Me*, Huffington Post Entertainment, http://www.huffingtonpost.com/2010/07/27/edith-vogelhut-roman-pola_n_661194.html (July 27, 2010) [last accessed May 1, 2014].

43 Madeleine Davies, *What We Absolutely Must Talk About When We Talk About R. Kelly*, Jezebel, http://jezebel.com/what-we-absolutely-must-talk-about-when-we-talk-about-r-1484481115 (December 17, 2013) [last accessed May 1, 2014].

44 Kyle McGovern, *R. Kelly's Alleged Sex Crimes Are Still Horrific 13 Years Later*, Spin, http://www.spin.com/articles/r-kelly-sex-crimes-jim-derogatis/ (December 16, 2013) [last accessed May 1, 2014].

the Billboard Charts as USA's top R&B artist.[45] His commercial success affords him the luxury to coerce his young victims, who are generally between 15-17 years of age, into withdrawing their complaints. His criminal behaviour and gross disrespect for young women's bodily integrity does not seem to have hampered the sale of his music and this is what I find most problematic. While in the instances of Allen, Gibson, Card, etc. offensive statements were made, there was no real criminality involved – no one was actually harmed in the making of those statements. Moreover, continued purchase of their art work did not in any way fund their unacceptable behaviour like in the case of Polanski and Kelly.

I say Polanski in the same breath as Kelly because I do believe that had there been a social boycott of Polanski's movies when he fled jurisdictions to avoid prison, it would have led to him suffering great losses and thus he would have been forced to return to USA to continue to make movies. This would have ensured that he was held accountable for his crimes and not allowed to live scot free for over 30 years. Kelly's case is more obvious – a social boycott of his music would dry his cash flow rendering him unable to pay off his victims once he was done sexually abusing them.

The commercial angle to the fundamental problem of separating the author from his work raises more questions than were originally anticipated. It is difficult to hinge arguments for social boycott solely on the fact that not boycotting some movie or music would allow the artist to reap commercial benefits and thereby fund his illicit activity. And yet it poses a moral dilemma; no one wants to aid sexual abuse. So where do we draw the line, and how do we justify it?

In The End, Does It Even Matter?[46]

It is an accepted fact that public figures or celebrities as we now call them are highly influential so much so that their endorsement can actually affect political

45 Mariel Concepcion, *The Juice Presents Top 50 R&B / Hip-Hop Artists of the Past 25 Years*, Billboard, http://www.billboard.com/articles/columns/the-juice/950658/the-juice-presents-top-50-rbhip-hop-artists-of-the-past-25-years (November 18, 2010) [last accessed May 1, 2014].

46 *In the End, It Doesn't Even Matter* is a popular song by the band Linkin Park.

outcomes. One need only see the success of the government's polio vaccine programme after advertisements with Amitabh Bachchan were released to know the power of the celebrity. Given the media's constant buzz in our lives, we are always with the celebrity – the idea of the public and private has all but vanished for persons in the public eye. This has even been recognised by the UK courts when they said that "footballers are role models for young people and undesirable behaviour on their part can set an unfortunate example."[47] Sportspersons, actors, movie-makers, all play an important role in shaping society today and must be wary of their personal and political endorsements.

If we do a quick re-run of the people we've discussed so far, we had Wagner who was accused of anti-Semitism and providing material for the founding of the Nazi ideology, then we had Oscar Scott Card who had strong homophobic views, Mel Gibson who was outwardly anti-Semitic and yet denied all allegations, Steven Moffat who is sexist and misogynist, Woody Allen who was accused but never prosecuted for child sexual abuse, Roman Polanski who was tried for child sexual abuse but escaped consequences, and finally R. Kelly who was charged with but never tried for child sexual abuse. The offences are varied but can broadly be classified as offensive or criminal.[48] The various considerations to be borne in mind are that of the conflict between the relevance of the intention of the author and his responsibility in cases of misappropriation, between free speech and its limits, between moral compunctions against commercial exploitation and the problem of generalisation.

The nature of the issue, in my opinion plays an essential role in determining one's approach to it. The very fact that the misdemeanour is of mere offence tends to invoke a sense of tolerance while cases involving crimes, especially sexual abuse, alienate all feelings of compassion. The commercial angle plays out heavily in instances where the celebrity is charged with a crime since it is the monetary power and social status that privilege him to escape the law. However, it is impossible to chalk out a strict categorisation based on the nature of the issue – while some may

47 A v B plc (Flitcroft v. MGN Ltd), [2002] 2 All ER 545 (March 11, 2002).

48 As for Wagner, he could be put in either category, depending on one's position on authorial responsibility and misappropriation of meaning.

find only sexual abuse as inviting harsh criticism and social boycott, some may find homophobic remarks as worthy of social sanctions too. Similarly, the commercial benefits accruing to the celebrity need to be weighed out on a case by case basis keeping in mind one's moral priorities and the nature of the misdemeanour. To concretise or lay down a framework to determine all future cases is not only impossible but illogical for each instance comes with its unique baggage – each celebrity with its own faults and redeeming features. It is upon you to determine what outweighs what and make a judgment on whether you want to continue purchasing into their work or not. It is, in the end, an individual moral assessment of the situation based entirely on one's own priorities and experiences and the separation of the work from the author is not a universal truth but a choice that an individual makes.

Trying to find a clear answer has been a journey for me; I questioned my own belief system when the feminist in me came in conflict with the law student. On one hand, even extensive reporting on an issue does not take us much beyond mere allegations; unless the Courts have declared a person to be guilty, on what grounds do we justify any boycott of his art? On the other hand, sexual abuse demands the gravest of reprimands and to see an artist evade the judicial process because of his wealth and fame is frustrating. But justice is best served by the judicial system – we cannot as citizens take the law into our hands and punish the person by boycotting his work. Art, as Barthes explained, has life of its own and it lives and breathes within us and yet along us. We constitute culture in much the same way that culture constitutes us. The marketplace of ideas provides an avenue for a shared experience of this culture. It enables diversity and encourages counter-narratives to dominant opinions. Our role as citizens of a liberal society is to encourage free expression and thus, unless any art is prejudicial to a community, we must allow it public space. The politics of the artist cannot be allowed to overshadow the merits of the art itself.