

UNDERSTANDING MEDIA ETHICS

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CONTENTS

<i>List of Tables</i>	xi
<i>Preface</i>	xii
<i>Acknowledgements</i>	xiii
PART I FOUNDATIONS	1
INTRODUCTION	3
Why Media Ethics?	3
Defining Media Ethics	5
Morality and Legality	6
Facts and Values	8
Overview of the Book	9
1 MORAL JUDGEMENTS	12
Obstacles to Moral Judgements	14
Responding to Moral Scepticism	18
Chapter Review	26
Further Reading	27
How to Use This Article	27
PART II DESIRABLE ENDS	29
2 PLEASURE	31
Right Action and the Public Interest	32
The Russell Brand and Jonathan Ross Controversy	35
Bentham and the Democracy of Pleasures	39
Limitations of Bentham's System	43
Chapter Review	46
Further Reading	47
How to Use This Article	48

3	MARKETS	49
	Pleasure as a Guide to Judgements about Media Content	50
	The Murdochs' Attack	51
	Higher and Lower Pleasures	58
	Chapter Review	64
	Further Reading	65
	How to Use This Article	65
4	LIBERTY	67
	Restricting Free Speech	69
	The Private Sphere	71
	The Public Sphere: Freedom of Thought and Discussion	77
	Chapter Review	81
	Further Reading	82
	How to Use This Article	83
5	VIOLENCE	84
	Depictions of Violence: Arguments to Restriction	85
	Anatomy of the Argument from Emulation	89
	Dilemmas of Depiction	92
	Chapter Review	95
	Further Reading	96
	How to Use This Article	97
6	PORNOGRAPHY	98
	Sexuality and Pornography	99
	Conservative Arguments	104
	Liberal Arguments	107
	Feminist Arguments	110
	Chapter Review	113
	Further Reading	114
	How to Use This Article	114
	PART III OBLIGATIONS	117
7	TRUTH	119
	Threats to Truthfulness	120
	A Deontological Perspective	122
	The Supreme Principle of Morality	124
	Is Lying Ever Permissible?	130
	Chapter Review	133
	Further Reading	135
	How to Use This Article	136

8 IMAGES	137
The Authority of Images	138
Subverting the Authority of Images	141
Can there be Legitimate Fakery for a ‘Benevolent Motive’?	148
Chapter Review	153
Further Reading	153
How to Use This Article	154
9 STEREOTYPING	156
Stereotyping: A Moral Issue	157
The Logic of Stereotyping	160
The Immorality of Stereotyping	165
The Relevance of Kant’s Categorical Imperative	167
Chapter Review	170
Further Reading	171
How to Use This Article	171
10 PRIVACY	173
Defining Privacy	175
Privacy Wars	179
Chapter Review	188
Further Reading	188
How to Use This Article	189
PART IV NEW DIRECTIONS?	191
11 SECURITY	193
WikiLeaks	194
The Right to Information Argument	199
The Public Interest Argument: Whistle-blowing	201
WikiLeaks: A Puzzle Case	203
Chapter Review	204
Further Reading	205
How to Use This Article	206
12 DIGITAL ETHICS	207
Emergent Media	209
Computer Ethics	209
Digital Media Ethics	215
A Radical Alternative: Information Ethics	217
Chapter Review	221
Further Reading	222
How to Use This Article	223

13 WRONG-DOING	224
Reason and Reasons	225
Blameworthiness	229
Some Sources of Wrong-doing	232
Conclusion: The Real and the Ideal	236
Further Reading	237
How to Use This Article	238
<i>References</i>	239
<i>Index</i>	248

4

LIBERTY

We take it as axiomatic that freedom of speech is fundamental to the operation of all media. However, few would want to argue that that freedom should be unfettered and absolute. The value of free speech is relative and contingent upon circumstances. There is broad agreement that there are grounds for the regulation of certain kinds of speech – hate speech, for example – and legitimate restrictions on the disclosure of certain kinds of information, such as information relating to national security. In this chapter we will consider the moral value of freedom of speech and publication. But equally, we need to consider where it may be legitimate to draw the line between free speech and restriction of free speech. What are the moral grounds on which it is proper to impose limits on free speech? For example, we will consider the principles relevant to defining the boundaries between the private and the public spheres. In trying to understand these questions, we will focus on a seminal text on individual liberty and freedom of the press by John Stuart Mill (1806–1873). Mill’s essay ‘On Liberty’ is widely regarded as one of the definitive defences of individual liberty and freedom of the press. Mill is writing in the middle of the nineteenth century in the context of the growth of the modern state and the growth of the power of public opinion. Mill was equally concerned that both of these phenomena were potential threats to individual liberty. Broadly, Mill’s main idea was that individual liberty and free speech (the two are inseparably connected) ought to be restricted only if my action or speech is liable to harm others, or is a failure to act in accordance with a duty to others, or violates the good manners required in a public place. Mill considers all other grounds for interference to be illegitimate. (Consider the example in Box 4.1.)

It is often useful to try to understand the significance of something by contemplating its absence. This technique is employed to great effect in George Orwell’s novel *1984*, which depicts a totalitarian state in which not only is there total control and censorship, but also newspaper accounts of the past are constantly changed in the interest

of the dictatorship. We briefly consider The People's Republic of China as an example of control over all forms of media, both internal and foreign media. With the example of censorship in China in mind, we will then examine Mill's argument for liberty of the individual. Mill, for his time, makes a radical distinction between the private and the public spheres. The private sphere is the bastion of individual liberty, where the state, or indeed the sanctions of public opinion, has no right to interfere. The contemporary relevance of this can be seen in contemporary debates on privacy and media intrusions. As we saw in the last chapter, Mill is a utilitarian and his interpretation of liberty and free speech is underpinned by his utilitarian theory. Ultimately, moral questions about free speech and media freedoms must be resolved by making reference to consequences. The test for the limits of free speech must be determined, all things considered, by that which produces the best outcome, weighing the costs and benefits of restriction against the costs and benefits of freedom: 'I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being' (Mill, 1964b, p. 74).

4.1 A JUDGEMENT CALL

The London School of Economics (LSE) and the T-shirt ban

In October 2013 two students at the LSE wore T-shirts depicting Jesus and the Prophet Mohammad. The students were wearing the T-shirts to promote the Atheist, Secularist and Humanist Society at the LSE's Freshers' Fair. For Muslims, the picturing of the Prophet is blasphemous and offensive. Equally, Christians may be offended by inappropriate depictions of Jesus. Security staff at the Fair threatened the two students with expulsion from the event on the grounds that displaying an image of Mohammad is forbidden under Islamic law and may constitute the harassment of a religious group. The students agreed to cover up the offending T-shirts. However, they subsequently launched a formal complaint to the university authorities. The students argued that there was no evidence that any students had complained about the T-shirts and, on the contrary, on the day the response to the T-shirts had been very positive. The T-shirts did not offend or harass anyone. More importantly, the students were simply exercising their right to freedom of expression, to which they were entitled as much as religiously inclined students were entitled to wear religious symbols, or indeed T-shirts, to give expression to their faith. The students' complaint was upheld and the LSE authorities in a formal statement acknowledged that 'with hindsight, the wearing of the T-shirts did not amount to harassment or contravene the law or LSE policies'.

Was this the morally right outcome? Would it have made a difference if there had been actual complaints from offended students?

Source: Burns (2013)

RESTRICTING FREE SPEECH

The case of the London School of Economics and the T-shirt ban described in Box 4.1 may seem like a storm on a teacup (if not a T-shirt!). However, it does in its own way raise the complexities of when it may be right or wrong to curtail some aspect of free speech. Initially, the actions of the members of the university in threatening the T-shirt-wearing students had been upheld by the university authorities. However, the students won an apology from the university when their complaint was upheld. Professor Kelly, representing the university in a BBC interview, admitted that they had got it wrong but described the situation as a 'grey area'. He argued that the law in such matters was complex. The UK has no US First Amendment guaranteeing freedom of speech 'without qualification'. The university had to take legal advice on the Human Rights Act, the 2010 Equality Act and the 1986 Universities Extension Act, given that the case potentially cut across all these pieces of legislation. In addition, Professor Kelly stressed that the Freshers' Fair was a welcome event involving international students from 130 countries. The students maintained that the apology was insufficient in that it did not recognise the harassment they had suffered and the fundamental fact that this was a suppression of freedom of speech.

What this case also raises from a moral point of view is whether or not offending an individual or group is really sufficient grounds for restricting expression. It is clear, however, given that the range of what may offend us is very wide, ranging from mere irritations through nuisances to deep psychological hurts, that the category of offence needs close specification. Raphael Cohen-Almagor (2005, p. 22) argues that four elements ought to be considered to establish whether or not restriction of free speech on grounds of psychological offence is justified: 'the content of the expression; the tenor and manner of the expression; the intentions and motives of the speaker; and the objective circumstances in which the advocacy is to take place'.

In the case we have just been looking at there was a formal process in which the competing claims could be adjudicated. This is a characteristic of liberal democracies. But even in 2010 in many, if not the majority, of countries around the world this is not the case. For example, this can be illustrated by the fate of the 2010 Nobel Peace Prize winner Liu Xiaobo. In spite of globalization, one of the world's most dynamic and powerful societies, The People's Republic of China, remains committed to censorship and the centralized control of the flow of information. The scope of individual liberty and freedom of thought and discussion is highly circumscribed.

China's response to the awarding of the prize in Oslo on 10 December 2010 was to block BBC and CNN programmers (Mail Foreign Service, 2010). The Chinese government's Internet Censors did their utmost to delete any posts that referred to the Peace Prize Ceremony or Liu Xiaobo. China's media blackout was backed up by a diplomatic campaign to encourage other countries not to go to the award

ceremony. Seventeen other countries were persuaded to stay away from the ceremony, including Russia, Pakistan, Iran, Venezuela and Cuba. At the same time, Liu Xiaobo's wife was under house arrest, as well as over 100 other prominent dissidents. China's state media dismissed the ceremony as a 'farce'. *The Global Times*, part of the group of newspapers which includes the Chinese Communist Party's paper, *People's Daily*, wrote that 'It's unimaginable that such a farce, the like of which is more commonly seen in cults, is being staged on the civilized continent of Europe' (quoted in Foster, 2010, p. 11).

The prize winner's chair at the ceremony was empty (Swami, 2010, p. 20). Liu Xiaobo was jailed for 11 years on Christmas Day 2009 for allegedly subverting state power and for being the leading author of Charter 08, which called for democratic reforms. Liu Xiaobo is a prominent campaigner for civil liberties in the People's Republic and had been a prominent leader of the Tiananmen Square protestors in 1989. From his prison cell Liu requested that the prize be dedicated to 'the lost souls from the 4th of June', the day of the massacre of student protestors. The Chinese government's treatment of Liu Xiaobo is a paradigm case of an authoritarian regime's repression of individual liberty and of the political control and censorship of news media. The actions of the Chinese government transgressed Mill's concept of the scope of individual liberty. But we must be clear that, for Mill, this would not be a question of 'natural' or 'human' rights. Mill believed in freedom of thought and discussion because that was ultimately the 'best' path for both individual and social development, defined in utilitarian terms. It may be a genuine belief on the part of the leadership of the Communist Party of China that unrestricted freedom of the media (and especially the internet) is likely to lead to social disorder and to damage the country's general development and overall welfare. However, for Mill, authoritarianism is simply antithetical to the progressive development of the individual and freedom of speech is a vital part of that progressive development.

Even in the face of civil disorder we may still argue that the curbing of free speech may not be acceptable. The case outlined in Box 4.2 illustrates the question of limits in relationship to social media and political action. The positive role of social media had been exemplified in the Arab Spring and in response to the earthquake disaster in Japan in 2011 (Asai, 2011). Social networking had been used as a means of coordinating rather than replacing social action, functioning as an information hub and as a means of organizing and enhancing 'social capital'. But the social risks inherent in social networking were also exposed in the British riots of August 2011. In response to the rioting, David Cameron, the British Prime Minister, in an emergency parliamentary debate, said that the government, police and intelligence services were looking at whether there should be limits on the use of social media sites. Twitter and Facebook, or services such as Blackberry Messenger, were being used to spread organized disorder. Blackberry Messenger, in particular, was being used by rioters to mobilize and target specific areas (and shops!). The proposal, only briefly considered, was whether to turn off social networks or stop people texting during times of social unrest. The onus for the shut-down would have been

on the internet service providers and clearly this would be a major restriction of freedom of speech. The fact that the social media were being used to inflict harm on communities and individuals would provide clear grounds for some form of restriction of speech. As we will see later in this chapter, Mill thought that incitement to violence was a legitimate ground for state interference.

4.2 A JUDGEMENT CALL

Social networking and freedom of speech

In August 2011 many of Britain's city centres witnessed nights of rioting and looting, largely perpetrated by young men and women, teenagers and even children. The looters came from a mix of ethnic and social backgrounds. Whatever the ultimate sociological explanation for these actions, it was the case that social networking played an important role in the looters being able to coordinate their activities and to target particular locations, primarily shops and shopping centres. This altogether negative use of social networking was in stark contrast with the widely praised positive use of social networking to help coordinate protest movements in the Arab Spring movement. In both cases, however, governments considered shutting down social networking sites. In either instance this would clearly have been a form of censorship.

In the British case, given the social harm and disorder, should service providers have been made, or encouraged, to volunteer to shut them down? What differentiates this case from the Arab Spring case?

THE PRIVATE SPHERE

The Importance of Mill's 'On Liberty'

Having looked at a number of examples where free expression is problematic, we will now go on to consider John Stuart Mill's ideas in more detail. As suggested, the arguments that Mill presented in 'On Liberty', first published in 1859, effectively created a framework for a continuing discussion of freedom of speech and the limits of free expression (Mill, 1964a; see also Cohen-Almagor, 2005; Skorupski, 2006). Mill makes no appeal to natural rights. Liberty, according to Mill, is not an intrinsic good but good in as much as it promotes happiness and the progressive development of human beings. He argues that freedom of thought and discussion must be presumed: the onus is always upon those who want to restrict the application of the principle to show good cause why this should be so. Still, he wants to derive the liberty of the individual from utilitarian principles. Mill's principle is that liberty may only be circumscribed to prevent tangible and demonstrable harm to others. The liberty of thought and discussion (including the 'liberty of the press') is a subset of Mill's general principle (see Box 4.3).

4.3 DEFINITION

The liberty principle

‘The principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant.’

Mill (1964a, p. 73)

The Private Sphere and Individual Liberty

Mill begins with a powerful statement of his fundamental principle:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society and the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. The principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. (Mill, 1964a, p. 73)

This principle demarcates the private sphere, where an individual has absolute liberty, from the public sphere. The private sphere, according to Mill, encompasses three elements. It consists firstly of our private thoughts and conscience. We have absolute liberty to believe, feel and speculate on whatever we wish. Secondly, we are free to pursue our own tastes, likings and dislikings, and are free to frame our plan for our life in accordance with our character and inclinations. We are free to do what we wish as long as we are not harming anyone, even though our conduct is foolish, perverse and wrong. Thirdly, out of this liberty of each of us we can also combine with other individuals as long as the same provision is met, that is, we are not harming anyone (Mill, 1964a, p. 75). Even a group of sadomasochists may get together and as long as the harm they inflict on each other is consensual and they do not inflict harm on anyone else, they must be free to do so.

It is in the realm of the public sphere where harm to others (‘the harm principle’) is the chief ground which justifies regulation or interference. In the private sphere, I am entirely at liberty to perform ‘self-regarding’ actions, even if those actions are self-harming. Consider the case of the pro-ana websites (see Box 4.4). Pro-ana organizations and websites differ widely in their outlooks. Some claim that they are there to provide non-judgemental environments for anorexics, to

provide fora to discuss their illness, and to help those who choose to enter recovery. Many websites, however, deny that anorexia nervosa is a mental illness. What they aim to promote is anorexia as a 'lifestyle choice' that should be respected by doctors and family members. If I choose to harm myself, according to Mill, then that is my business. However, it is a different case if I'm actively inciting others to harm themselves. On the face of it, this may provide grounds for restricting the availability of pro-ana websites. If my actions – and making a website available is an action – are liable to harm others, then society may have a legitimate reason for interfering with my individual freedom of speech and action. In as much as what I do only affects myself, then society has no legitimate ground for intervention, even if my action is likely to harm myself.

However, this does not, for Mill, make the private sphere a morality-free zone. As we saw in the last chapter in the discussion about the higher pleasures, Mill believed that we all had an obligation to engage in self-improvement because only in that way can we fully realize ourselves and attain true happiness. I may be persuaded to take the path of self-improvement but not coerced. But in these self-regarding matters I must be entirely at liberty to pursue my own path.

4.4 A JUDGEMENT CALL

Should pro-ana websites be banned?

Pro-ana refers to the active promotion of the eating disorder anorexia nervosa. The lesser-used term, pro-mia, refers likewise to bulimia nervosa and is sometimes used interchangeably with pro-ana. There are many websites that style themselves pro-ana websites and promote anorexia. The information on anorexic practices on the pro-ana sites is, in effect, incitement to self-harm. Anorexics and bulimics who subscribe to such sites share among themselves crash dieting techniques and recipes; they share techniques on how to decline food in socially acceptable ways (for example, by adopting an extreme vegan diet); they generate solidarity among anorexics and bulimics through collective fasts or setting up competitions in weight loss; they commiserate with one another over the web after breaking a fast or a bout of binge eating; and the sites provide advice on how best to induce vomiting and how best to use laxatives and emetics. The sites also provide advice on how to hide weight loss from parents and doctors. Other kinds of information on the websites include methods to reduce the side-effects of anorexia, and the ways and means of suppressing hunger pangs. Finally, the web provides a means of soliciting affirmation and acceptance through the publication of individuals' weight, body measurements, diet regimen and often, most shockingly, pictures of their emaciated bodies.

If we adopt Mill's approach to individual liberty and the private sphere, should pro-ana websites be banned?

The Importance of the Liberty Principle

As we have seen, Mill places great emphasis on the liberty of individuals in the sense of being able to determine their own life plan. You ought to be able to live your life according to values you choose and identify with. This meant for Mill that your values and lifestyle should not be dictated to by others (particularly, in the context of the nineteenth century, religious institutions). Alternatively, you should not choose your values and way of life unthinkingly, according to some set of stale conventions. Mill believed that individual liberty benefits not just the individual person, but everyone. The pursuit of individuality expresses the ways in which people are different, and leads to diversity. The liberty of individuals requires diversity so that people can choose and develop their own lifestyles (Mulgan, 2011, p. 116). We will see later that this also requires, as Mill argues, the freedom of publication in order to make available to people information about those varieties of lifestyles.

Mill was concerned not only to defend the liberty of the individual against the power of government, he was also deeply anxious about the threat to individuality from social pressures to conform – ‘the tyranny of the majority’. He believed that, at least in England, the threat to individual liberty came less from despotic government and rather more from a kind of tyranny of a public opinion that enforced a collective mediocrity. The perception of such a threat, a levelling down, explains the concern in his essay for the need to defend freedom as a social good and the ideal of progressive self-development. His subsidiary argument in Chapter II of the essay, ‘Of the liberty of thought and discussion’, maintains that freedom to express and publish diverse opinions and beliefs is essential to this process of the progressive self-development of individuality.

Actions and policies are to be judged, as we have seen, on their tendency to produce more or less happiness. Mill’s problem was to connect or reconcile his commitment to individual freedom and the idea of happiness as the ultimate good for human beings. As we say in the previous chapter, Mill makes a distinction between higher and lower pleasures, modifying Jeremy Bentham’s rather cruder characterization of the doctrine of utilitarianism as the goal to maximize pleasure. It was this distinction that allowed Mill to connect liberty and happiness. We might paraphrase George Orwell and say that ‘all pleasures are equal but some are more equal than others’. For Mill, rather like Aristotle, self-development is the condition of the enjoyment of highest forms of happiness. Freedom of thought and discussion are conditions for this process of individual flourishing. Censorship and repression can only be an obstacle by keeping people in ignorance.

Mill concludes that the institutions of a democratic liberal state are those under which individuals may be happiest. Liberty of thought and expression in the nineteenth century essentially meant a free press and the ability to publish, without censorship, books and pamphlets. ‘Other beings’, he argues, might flourish under different institutions. But liberty is fundamental to enabling human beings to pursue ‘personal objects within the limits consistent with the essential interests

of others' (Mill, 1964a, p. 75). This is Mill's essential dialectic between 'self-regarding' and 'other-regarding' actions. Mill's notion of happiness is therefore something like self-fulfilment (but not at the expense of others), enabling the development of all our potential as human beings.

Limits of the Private Sphere

We have already suggested that the limits of the private sphere are defined by 'the harm principle'. The interpretation of 'harm', however, has been much debated (Ellis, 1998). For example, there are clearly physical harms but also psychological harms; there are tangible harms and intangible harms. There are harms arising from what I do and harms that may arise from what I fail to do, for example, warning of an unexploded bomb in the road. So while the statement of the principle is relatively straightforward the method of its application may be less so: 'As a utilitarian, Mill recognized no fundamental difference between doing and allowing. My duty to help others is as strong as my duty not to kill others. Because harm is comparative, a failure to assist is a harm. I have absolute liberty to read what I like. But if I keep reading while a child drowns at my feet, then I harm her' (Mulgan, 2011, p. 118).

Mill has a very broad notion of harm, with the implication that the private sphere is rather more circumscribed than it first appears. This is particularly the case where my private acts may harm others even though still within a physically private, domestic space. For example, consider domestic violence where women and children are abused by their husband and father. Even though children do not enjoy the same scope for liberty as adults because they are not reasonable judges of their own welfare, they should not be harmed. This was a more significant point to make in Victorian England when a man's private sphere was considered to include how he behaved towards his wife and children and, if he could employ them, his servants. Similarly, acts performed in private by consenting adults may also become of public concern if physical or psychological harm is involved. Again, this is because even adults are not necessarily the 'infallible' judges of their own welfare. Despite Mill's general principle, it may be justifiable to exercise power to interfere with harmful activities even if performed in private (Mulgan, 2011, pp. 117–118).

We can apply the principle to the consumption of media goods. For example, my 'absolute' liberty refers only to the consumption of content in whatever form. It does not cover the manufacture, distribution, or sale of that content. Commercial activities may harm consumers, competitors or others who may want the resources used for other purposes (Mulgan, 2011, p. 117). I might, for example, be psychologically susceptible to the portrayal of extreme violence and thus may be harmed by viewing films or videos with extremely violent content. Under these conditions Mill's principle would warrant intervention, not necessarily to prevent my consumption of the material, but intervention to censor the producers and distributors. This is recognized by laws in most states which either regulate or censor media

content of extreme violence in general and sexual violence in particular. The various classification schemes for film and video reflect the view that it is right to control the distribution of goods to certain age categories on the grounds of the potential harm to those who are not psychologically mature.

Mill draws an important distinction between freedom of thought and freedom of speech. My thoughts are private to myself; they are absolutely private. My thoughts cannot harm others. However, the articulation of those thoughts in speech (or through any other medium) may harm others. We recognize this in the concept of 'hate speech'. If the expression of hateful sentiments is injurious to others, then it falls beyond the private sphere and this may give grounds for society to intervene to prevent harm. In this sense, speech is not private. Again, self-regarding behaviour in private becomes a public matter. If I *offend* you, then this may also be a genuine harm.

However, the fact that some private activity may lead to harm may not be sufficient in itself. Mill, as a utilitarian, always wants us to balance the potential cost of suppressing speech against the public benefit of freedom of thought and discussion, for example, in the case of giving offence. One of Mill's primary values is that of individuality, and although he clearly recognizes offence as a genuine harm, this can never outweigh the value of individuality. The progressive development of individuality needs diversity and even the offended person benefits from liberty. For the same reason, Mill prefers regulation to outright censorship or prohibition (Mulgan, 2011, p. 118).

A Test for Intrusion

Central to the Leveson Inquiry has been a debate about the grounds on which a person's private life, celebrity or not, becomes a matter of legitimate public interest and thereby a legitimate object of journalistic investigation. Remember, in this regard Mill makes no claims about some natural right to liberty. The question must hinge on the question of harm. We might paraphrase Mill's statement of the principle of liberty in the following way: 'The principle is that the sole end for which mankind are warranted, individually or collectively, in making public the private acts of one of their number, is self-protection. That the only purpose for which journalists can be rightfully intrude into the private sphere of any member of a civilized community, against his will, is to prevent harm to others' (Mill, 1964a, pp. 72–73).

Thus we can apply the principle to the question of press intrusions into the private lives of individuals (see Box 4.3). Even with the qualifications we have just discussed, the justification for press intrusion into someone's private life, whether they are a celebrity or not, can only be that the private behaviour of the person gives rise to some harm which puts it into the public sphere. If private behaviour does give rise to harm, then, on Mill's principle, it becomes a public matter and falls outside the private sphere. But there is a subsidiary question, even where harm has been committed: 'Is the cost of allowing press intrusion and public exposure less than the potential harm to the progressive development of individuality?'

THE PUBLIC SPHERE: FREEDOM OF THOUGHT AND DISCUSSION

Thinking whatever we want to think is a ‘self-regarding’ action and therefore ought, on the liberty principle, to be free from interference. When we publish our thoughts via the media, these are ‘other-regarding’ actions – they move from the private to the public domain. Nevertheless, Mill’s presumption is that without a right to free speech the defence of free thought would be absurd (Ryan, 1974, p. 136). But the ultimate defence is not from the privateness of my thoughts, but – and here Mill is using a supplementary argument – the value of truth. This to some extent is a breach of the original principle. The harm that censorship does is that it hinders the testing and emergence of truth. According to Mill, ‘The truth of an opinion is part of its utility’ (Mill, 1964a, p. 84). Mill’s argument against the suppression of the free circulation of political (and religious ideas) is based on utilitarian grounds that in the long run the costs of censorship outweigh the benefits. For Mill, as a social reformer, individual and social progress is grounded in the discovery of the truth. The sole rational attitude in confronting the world and trying to understand it is that of open-mindedness. And such openness should be reflected in our institutions.

Mill’s Arguments for Free Speech

For Mill, the importance of free speech is grounded in the need to discover, as far as possible, truths about the natural and social world. He deploys four arguments.

Firstly, ‘the fallibility assumption’: human beings are notoriously fallible. Whatever we say or write may turn out to be wrong. Our opinions and beliefs are frequently shown to be mistaken (corrigible). Anything we can claim to know about the social and natural world at any specific time or place is contingent; that is, we may subsequently find that we were mistaken. But we must be free to say and publish in order precisely to discover our errors. Mill often contrasts this view with the dogmas of religion, which assume infallibility. In consequence, ‘if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our infallibility’ (Mill, 1964a, p. 111). Thus all authoritarian regimes and dictatorships, in repressing contrary views, implicitly, if not explicitly, assume their own infallibility. However, it is not clear that this conclusion follows. I can have reasonable grounds for believing what I do believe without assuming my infallibility. I can argue, for example, that given the scientific evidence it is likely, but not a certainty, that the Earth is subject to global warming brought about by human activities.

Secondly, ‘the partial truths assumption’: Mill believed that in order to arrive at truth, at least provisionally, there needs to be a diversity of opinions so that the collision of adverse opinions would lead to the production of truth. This is an essential idea in defence of the need for plurality and diversity of the media. We each may hold a portion of the truth:

... though the silenced opinion be in error, it may, and very commonly does, contain a portion of the truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied. (Mill, 1964a, p. 111)

However, Mill underestimates the extent to which much public discourse may be of a frivolous nature. The internet is packed with false and crazy ideas. Do all of these merit attention? Is the volume of material such that it might obscure the emergence of truth rather than provide a foil against which we might discriminate truth from error? For example, the documentary *Loose Change* (2006), which was globally available on YouTube, promoted the belief that the terrorist attack on the Twin Towers and the Pentagon on 9/11 was in fact a conspiracy by the US security services.

Thirdly, ‘the requirement for testing assumption’: established and received truths should be constantly tested, ‘even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension of its rational grounds’ (Mill, 1964a, pp. 111–112). All knowledge is provisional; there are no final answers. We progress by a constant process of argument and testing. Suppression or censorship of ideas clearly inhibits this process. Again, we might raise the problem of frivolous discourse, or even malicious discourse. Where it is expensive to collect, organize, process and evaluate information, it is simply not possible to consider every utterance (Mulgan, 2011, p. 120).

Fourthly, the need for active belief: practical rationality demands that we understand the grounds of our beliefs. To be rational, social and moral agents we must be capable of justifying what it is we do believe. This is essentially an argument about the psychology of belief. Mill writes that ‘the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience’ (Mill, 1964a, p. 112). Here Mill is arguing that we must be able to give good reasons for our beliefs. However, we may have reasons in a motivational sense that drive us to hold certain beliefs even though the reasons, as evidential grounds for belief, may be very weak. Open debate may be dangerous in that it assumes that the clash of beliefs and arguments will lead to the emergence of truth, if not immediately, then eventually. Conflict, on the contrary, rather than testing our assumptions may lead us to more intransigent positions. Mill defends his view with reference to history.

Mill’s Historical Perspective

In the opening pages of ‘On Liberty’ Mill presents a brief and sweeping (but primarily Euro-centric) outline of human history which is characterized as the struggle between liberty and authority. This may be contrasted with Karl Marx’s view of all history as the story of class struggle (Marx and Engels, 1976, pp. 477–519).

But what unites Mill with Marx is that, for both, human history has a pattern and develops in progressive stages through struggle. Although, for Mill, democracy is a desirable form of government, and an outcome of this progressive social development, yet there are signal dangers for individual liberty in the kinds of social pressures and conformity that may accompany it. Therefore, forms of institutional protection are required for freedom of thought and expression. Mill assumes that civilizations progress through the discovery of truth – truth about the natural world and about the social world. Laws and institutions must be founded on rational debate and evidence. It is partly the role of what we would now call media institutions to safeguard the liberty of the individual and restrain the authoritarian instincts of the state, on the one hand, and the tyranny of the majority on the other.

The progressive development of individuals and society, according to Mill, requires the growth of knowledge. The publication of ideas and freedom of thought and discussion are essential. History is the battle between authority and liberty, where authority constantly seeks to repress social progress. The truth is always vulnerable to the ‘dungeon and stake’. Much of ‘On Liberty’ trawls the historical record for examples of persecution and the stemming of social progress through repression to support this view. A liberal society requires a free ‘market-place of ideas’, which will operate against an assumption of infallibility. Mill’s opposition to censorship was firmly based on the idea, as we have seen, that (a) censorship and repression hinder progress towards truth; (b) truth needs to be tested; (c) without testing the rational grounds for truth claims cannot be established. This is not an argument suggesting that truth has an intrinsic value or is an intrinsic good. Repression leads to the promotion of dogma and not just for politics, but also for aesthetic and moral judgement (see Box 4.5).

4.5 A JUDGEMENT CALL

Should we restrict publication by climate change sceptics?

One horn of the dilemma is that the threat of climate change is such that our failure to moderate our ways of life now may lead potentially to significant catastrophic effects on future generations if not the potential of global extinction for the human race. If the arguments of the climate sceptics should persuade people to ignore the threat, and the threat is true, this would be disastrous. So we ought to ban climate change scepticism, but this would be to deny the fundamental freedom of thought and discussion.

The second horn of the dilemma is that if we ban or suppress climate change scepticism and the effects for global warming turn out to be greatly exaggerated or false, we will have hindered the emergence of truth through censorship and engaged in a range of unnecessary policies at the expense of the welfare of current and future generations.

If we adopt Mill’s arguments for freedom of speech, which horn of the dilemma is more attractive?

Press Freedom and its Limits

Mill understands that there are legitimate areas for state or community intervention but such interventions must be justified by reference to the principle of harm. Incitement to violence would clearly be grounds for the restriction of free speech. He makes a distinction between opinions or beliefs, and actions. He gives the following example to illustrate what he means:

No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn dealers are starvers of the poor or that private property is robbery ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. (Mill, 1964a, p. 114)

There are two notable elements here. Firstly, the concept of incitement represents ‘a positive instigation’, an attempt to move people to ‘mischievous’ action. That is not simply giving information or establishing the truth, but the action being contemplated is violent and disorderly. Secondly, the point that the audience (‘the mob’), by definition, is not in a rational state of mind means there is considerable importance attached to the context in which remarks are uttered or views disseminated. Mill thought that the liberty principle did not apply to those who are not capable of rational thought. So for those who could not rationally govern their own lives, it would be appropriate to intervene. On this basis, for example, public policy to protect children through mechanisms such as film classification is an appropriate policy. Children, by definition, are not in a position to make rational judgements about their own welfare.

The media therefore have a responsibility to consider the importance of the context in which reports are made. Thus actions are not as free as opinions! The press and broadcast media have a responsibility to consider the possible social costs of their reporting. Freedom is limited by the harm principle, although this again will have differential effects depending on whether we are talking about the private or the public sphere. If I rage and shout at the television screen in the privacy of my own house, no one has any justification for interfering. But if I do the same in the public road, then I can expect to be restrained.

4.6 EXAMPLE: Article 10 of the European Convention on Human Rights

‘The exercise of [the freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the

interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

European Court of Human Rights (2010, Article 10)

We can see that the harm principle informs the way Article 10 of the European Convention on Human Rights has been framed (Box 4.6). Although apparently couched in the language of rights, it nevertheless may be interpreted in a utilitarian way with its emphasis on weighing the costs and benefits of freedom of expression against possible social harms. From a utilitarian perspective, there is no absolute right to freedom of thought and discussion. Article 10 makes it clear that there must be limits and those limits are determined by consequences in terms of general social well-being (utility). Firstly, the exercise of freedom of expression must take place within the existing legal framework since, in principle at least, our laws are framed in the wider interests of society. Secondly, we can see that the article's concern is with the harm that may be done to individuals through disclosure of information. Wider considerations of social and individual well-being are grounds for placing limits on media freedoms.

CHAPTER REVIEW

In this chapter we have been concerned with the liberty of the individual and the value of freedom of speech. Given that few would maintain that unfettered freedom of speech is morally permissible, we have been considering what the limits of freedom are. We have examined media freedoms from the perspective of utilitarianism. More specifically, we have drawn a distinction between 'self-regarding' actions and 'other regarding' actions. This distinction is fundamental to Mill's liberty principle, by which he seeks to prescribe the nature and limits of individual liberty and the freedom of thought and discussion. He argues that to the extent that an individual's actions affect only him- or herself ('self-regarding' actions), then those actions should be absolutely free from interference either by the state or society more generally. This sets boundaries between the private and the public. If an individual's actions are purely self-regarding, there can be no ground for intrusion or interference. But to the extent that our actions (including the activities of the media) impinge on others and lead to harm, then there may, but not necessarily, be grounds for intervention by the state.

Mill has two types of argument for his 'liberty principle' when applied to the freedom of the press. The first set of arguments concern the importance of free media as a means for providing the conditions under which truth may emerge and lead to the progressive development of individuals and society. For truth about the social or natural world to emerge it is vital to have the freest possible diversity of

beliefs expressed and for these to be open to criticism. To foreclose a debate by censorship is to risk the hindering of progress. The second type of argument is historical. In his essay, 'On Liberty', he provides many instances in which the suppression of ideas and beliefs, especially by religious authorities, has hindered social progress. For Mill, social progress is defined in terms of the expansion of the liberty of the individual towards the greatest possible fulfilment and self-realization. If the media are useful in conveying information, educating the public and providing 'higher pleasures', they should remain unfettered.

Mill's 'liberty principle' is a touchstone of liberal thinking on the need for the liberty of the press, in particular, and the liberty of the media more generally (Box 4.6). According to this, in the public sphere the regulation or censorship of the media must be considered as a balancing of harms – the harm principle. Free speech may only be curtailed if the harm brought about by production, publication and dissemination outweighs the harm of censorship or regulation. For example, incitement to violence may be sufficient ground for censorship. But, for Mill, the presumption must always be in favour of freedom. A balance must be struck between media freedoms and the potential harmful and corrupt abuse of such freedom and the potential harm of state-controlled regulation, preventing the media from 'speaking truth to power'. The first qualification of freedom of speech is that it may be curtailed or restricted if it causes harm. We also introduced a related notion that there may also be grounds for restriction if speech or publication leads to offence, 'the offence principle', which we will explore in more detail in later chapters.

FURTHER READING

Asai, R. (2011) 'Social media as a tool for social change', in A. Bissett (ed.), *Proceedings of the Twelfth International Conference: The Social Impact of Social Computing, ETHICOMP 2011, Sheffield Hallam University, Sheffield UK, 14–16 September 2011*. Sheffield: Sheffield Hallam University, pp. 44–50. Useful as a review of recent cases where social media have been used in contexts of the struggle for social change.

Cohen-Almagor, R. (2005) *Speech, Media and Ethics*. London: Palgrave Macmillan. Chapter 1 gives a full account of the harm principle, the offence principle and hate speech.

Furedi, F. (2011) *On Tolerance: A Defence of Moral Independence*. London: Continuum. See particularly Chapter 7 for a useful critique of the idea of 'offence' as a sufficient ground for the curtailment of freedom of speech.

King, G., Pan, J. and Roberts, M.E. (2013) 'How censorship in China allows government criticism but silences collective expression', *American Political Science Review*, May: 1–18. Good for empirical examples of the scope and nature of censorship in action. The article analyses social media in China and the role of censorship. It shows that censorship is oriented primarily to forestalling collective action and protest.

Sanders, K. (2006) *Ethics and Journalism*. London: Sage. See particularly Chapter 6, 'Freedom's scope' (pp. 63–76), for a philosophical discussion of freedom in general and freedom of the press in particular.

Skorupski, J. (2006) *Why Read Mill Today?* London: Routledge. See particularly, Chapter 3, 'Liberty' (pp. 39–64), for an analysis of Mill's ideas on the nature of liberty in general and freedom of thought and discussion in particular.



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Dimbleby, J. (2013) 'On freedom of expression', *Index on Censorship*, 42: 142–144.

Use this article as an example of an impassioned defence of freedom of expression by a veteran broadcaster and journalist and a previous chair of the Index on Censorship. Dimbleby extols the virtues of freedom of expression as 'a precious human right' and 'a defining characteristic of a civilized society'. He places the origins of his commitment to freedom of speech precisely in the work of John Stuart Mill and Jeremy Bentham. He then briefly reflects on the fact that all the principles remain the same yet the context in which they need to be applied are in some ways radically different.