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MCM610

Mass Communication Law & Ethics

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Mass Media Laws and Ethics MCM610

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LESSON 1**INTRODUCTION TO ETHICS****WHAT IS ETHICS?**

A few years ago, sociologist Raymond Baumhart asked business people, “What do ethics mean to you?” Among the replies were the following:

- “Ethics has to do with what my feelings tell me is right or wrong.”
- “Ethics has to do with my religious beliefs.”
- “Being ethical is doing what the law requires.”
- “Ethics consists of the standards of behavior our society accepts.”

These replies might be typical of your own. The meaning of “ethics” is hard to pin down and views of many rest on shaky ground.

Many people tend to equate ethics with their feelings. But being ethical is clearly not a matter of following one’s feelings. A person following his or her feelings may not do what is right. In fact, feelings frequently deviate from what is ethical.

Nor should one identify ethics with religion. Most religions, of, course, advocate high ethical standards. Yet if ethics were confined to religion, then ethics would apply only to religious people. But ethics applies as much to the behavior of the atheist as to that of the saint. Religion can set high ethical standards and can provide intense motivations for ethical behavior. Ethics, however, cannot be confined to religion nor is it the same as religion.

Being ethical is not the same as following the law. The law often incorporates ethical standards to which most citizens subscribe. But laws, like feelings, can deviate from what is ethical. Our own pre-Civil War slavery laws and the apartheid laws of South Africa are examples that deviate from what is ethical.

Finally, being ethical is not the same as doing “whatever society accepts.” In any society, most people accept standards that are ethical. But standards of behavior in society can deviate from what is ethical. An entire society can become ethically corrupt. Nazi Germany is good example of a morally corrupt society.

Moreover, if being ethical were to do “whatever society accepts” then to find out what is ethical, one would have to find out what society accepts. To decide what I should think about abortion, for example, I would have to take a survey of the American society and then conform my beliefs to whatever society accepts. But no one ever tries to decide an ethical issue by doing a survey. Further, the lack of a consensus on many issues makes it impossible to equate ethics with whatever society accepts. Some people accept abortion but many others do not. If being ethical is to do whatever society accepts, one would have to find an agreement on issues, which does not, in fact, exist.

What then, is ethics? Ethics is two things. First, ethics refers to well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues. Put another way anytime you ask yourself “what you should do,” the question involves an ethical decision. Ethics, for, example, refers to those standards that impose the reasonable obligations to refrain from rape, stealing, murder, assault, slander, and fraud. Ethical standards also include those that enjoin the virtues of honesty, compassion, and loyalty. And ethical standards include standards relating to rights, such as the right to life, the right to freedom from injury, and the right to privacy. Such standards are adequate standards of thinking because they are supported by consistent and well-founded reasons.

Secondly, ethics refers to the study and development of one’s ethical standards. In other words, ethics are standards or rules you set for yourself that you use to guide your efforts do what is right and wrong, or what you should do. For example, if a friend asks you to copy your homework, you must choose whether or not you will tell the teacher. Whenever you have to make a decision where your actions will impact someone else, you face an ethical dilemma. The decision is ethical because you must decide what your obligation is

(especially when another person is involved), and it's a dilemma because there is more than one option to choose from. A decision you make is ethical when you choose to do the right thing.

Everyone has ethics that they live by. You get your ethics from values and principles. Virtues are the things that you consider to be important, or have worth. You probably value your family and friends because they're important to you. You also may value your free time, or a possession that you have. In addition to things that you value, you also have some ideas about the way you'd like to live your life, and what you want to become. This is especially true when you think about how you want to treat the things you value and the way you want to be treated with them. For, example, if you value friends, you probably want to be a friend. That might mean that you want to be trustworthy and faithful to your friends. Trustworthiness and faithfulness are principles – they are ideas about the kind of person you want to be.

As mentioned above, feelings, laws, and social norms can deviate from what is ethical. So it is necessary to consistently examine one's standards to ensure that they are reasonable and well founded. Ethics also means, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help shape, live up to standards that are reasonable and solidly based.

THINKING ETHICALLY: A FRAMEWORK FOR MORAL DECISION MAKING

We make decisions on daily basis. Moral issues greet us each morning in the newspapers; confront us in our work or at school. We are bombarded daily with questions about the justice of our foreign policy, the morality of medical technologies that prolong our lives, the rights of the homeless, and the fairness of teachers.

Dealing with these moral issues is often perplexing. How exactly, should we think through an ethical issue/ what questions should we ask? What factors should we consider?

The first step in analyzing moral issues is obvious but not always easy: Get the facts. Some moral issues create controversies simply because we do not bother to check the facts. This first step, although obvious is also among the most important and the most frequently overlooked. 

But having the facts is not enough. Facts by themselves only tell us what is; they do not tell us what ought to be. In addition to getting the facts, resolving an ethical issue also requires an appeal to values.

Although ethics deals with right and wrong, it is not a discipline that always leads everyone to the same conclusions. Deciding an ethical issue can be equally difficult for conservatives and liberals. Of course, there are situations that are wrong by any standard.

But there are other issues where right and wrong is less clear. To guide our reflection on such difficult questions, philosophers, religious teachers and other thinkers have shaped various approaches to ethical decision-making. The five different approaches to values to deal with moral issues are: *The Utilitarian, the Rights, Fairness and Justice, the Goodness, and the Virtues.*

THE UTILITARIAN APPROACH

Utilitarianism was conceived in the 19th century by Jeremy Bentham and John Stuart Mill to help legislators determine which laws were morally best. Both men suggested that ethical actions are those that provide the greatest balance of good over evil.

To analyze an issue using the utilitarian approach, we first identify the various courses of actions available to us. Second we ask who will be affected by each action and what benefits of harms will be derived from each. And third, we choose the action that will produce the greatest benefits and the least harm. The ethical action is the one that provides the greatest good for the greatest number.

THE UTILITARIAN APPROACH

Focuses on the consequences that actions or policies have on the well being (“utility”) of all persons directly or indirectly affected by the action or policy.

The principle states: “Of any two actions, the most ethical one will produce the greatest balance of benefits over harm.”

Or another way viewing this approach is asking: Which option will do the most good and the least harm for the most people? You can see this analysis at work in discussions of smallpox vaccinations for health care workers or for all Americans. Is the risk of a terrorist attack with small pox serious enough to justify the risk of adverse reactions to the vaccination itself?

THE RIGHTS APPROACH

The second important approach to ethics has its roots in the philosophy of the 18th century thinker Immanuel Kant and others like him who focused on the individual’s right to choose for her or himself. According to these philosophers, what makes human beings different from mere things is that people have dignity based on their ability to choose freely what they will do with their lives, and they have a fundamental moral right to have these choices respected. People are not objects to be manipulated; it is a violation of human dignity to use people in ways they do not freely choose.

Many different but related rights exist besides this basic one. These other rights can be thought of as different aspects of the basic right to be treated as we choose. Among these rights are:

- The Right To The Truth: We have a right to be told the truth and to be informed about matters that significantly affect choices.
- The Right of Privacy: We have the right to do, believe, and say whatever we choose in our personal lives so long as we do not violate the rights of others.
- The Right Not Be Injured: We have the right not to be harmed or injured unless we freely and knowingly do something to deserve punishment or we freely and knowingly choose to risk such injuries.
- The Right To What Is Agreed: We have the right to what has been promised those with whom we have freely entered into a contract or agreement.

In deciding whether an action is moral or immoral using this approach, we must ask, does the action respect the moral rights of everyone? Actions are wrong to the extent they violate the rights of individuals; the more serious the violation, the more wrongful the action.

THE RIGHTS APPROACH

Identifies certain interests tests or activities that our behavior must respect, especially those areas of our lives that are of such value to us that they merit protection from others.

Each person has a fundamental right to be respected and treated as free and equal rational person capable of making his or her own decisions.

This implies other rights (e.g. privacy free consent, freedom of conscience, etc.) that must be protected if a person is to have the freedom to direct his or her own life.

The rights approach focuses on the legitimate claims we make on each other, such as life and liberty. One current rights question is, Can cyber criminals be prevented from using the Internet once they have served their sentences? Courts in different areas of the country have disagreed about whether the Internet has become so integral to daily life that restricting access is too great an infringement on the ex-convicts liberty.

The principle states: “An action or policy is morally right only if those persons affected by the decision are not used merely as instruments for advancing some goal, but are fully informed and treated only as they freely and knowingly consented to be treated.

THE FAIRNESS OR JUSTICE APPROACH (SOCIAL JUSTICE APPROACH)

The fairness or justice approach to ethics has its roots in the teachings of the ancient Greek philosopher Aristotle who said that “equals should be treated equally and unequals unequally”. The basic moral question in this approach is: How fair is an action? Does it treat everyone in the same way, or does it show favoritism and discrimination?

Favoritism gives benefits to some people without a justifiable reason for singling them out; discrimination imposes burdens on people who are no different from those on whom the burdens are not imposed. Both favoritism and discrimination are unjust and wrong.

This question is always at the heart of discussions about affirmative action, a debate that resurfaced with the Supreme Court’s decision to hear a case challenging race- conscious admissions policies at the University of Michigan.

President Bush weighed in against the program, which he likened to a quota system that unfairly rewards or penalizes prospective students based solely on their race,” But proponents of affirmative action argued it’s also unfair if “the use of narrow academic criteria results in wholesale exclusion by race or socioeconomic class.”

THE FAIRNESS APPROACH

Focuses on how fairly or unfairly our actions distribute benefits and burdens among the members of a group. This approach asks what is fair for all stakeholders, or people who have an interest in the outcome.”

Fairness requires consistency in the way people are treated.

The principle states: “Treat people the same unless there are morally relevant differences between them.”

THE COMMON GOOD APPROACH

This approach to ethics assumes a society compromising individuals whose own good is inextricably linked to the good of the community. Community members are bound by the pursuit of common values and goals.

The common good is a notion that originated more than 2000 years ago in the writings of Plato, Aristotle, and Cicero. More recently, contemporary ethicist John Rawls defined the common good as “certain general conditions that are.... equally to everyone’s advantage.”

In this approach, we focus on ensuring that the social policies, social customs, institutions, and environments on which we depend are beneficial to all. Examples of “goods” common to all include affordable health care, effective public safety, peace among nations, a just legal system, and an unpolluted environment.

Appeals to the common good urge us to view ourselves as members of the same community, reflecting on broad questions concerning the kind of society we want to become and how we are to achieve that society. While respecting and valuing the freedom of individuals to pursue their own goals, the common good approach challenges us also to recognize and further those goals, we share in common.

Presents a vision of society as a community whose members are joined in a shared pursuit of values and goals they hold in common.

The community is comprised of individuals whose own good is inextricably bound to the good of the whole.

The principle states, “What is ethical is what advances the common good.”

THE VIRTUE APPROACH

The virtue approach to ethics assumes that there are certain ideals toward which we should strive, which provide for the development of our humanity. These ideals are discovered through thoughtful reflection on what kind of people we have potential to become.

Virtues are attitudes or character traits that enable us to be and to act in ways that develop our highest potential. They enable us to pursue the ideals we have adopted. Honesty, courage, compassion, generosity, fidelity, integrity, fairness, self- control, and prudence are all examples of virtues.

Virtues are like habits that once acquired they become the characteristic of a person. Moreover, a person who has developed virtues will be naturally disposed to act in ways consistent with moral principles. The virtuous person is the ethical person.

In dealing with an ethical problem using the virtue approach, we must ask, what kind of person should I be? What will promote the development of character within my community and me?

Focuses on attitudes, dispositions, or character traits that enable us to be and to act in ways that develop our human potential. It asks whether any given action demonstrates human behavior at its best. Examples: honesty, courage, faithfulness, trustworthiness, integrity, etc.

The principle states: “What is ethical is what develops moral virtues in us and our communities.”

The five approaches mentioned above suggest that once we have ascertained the facts, we should ask ourselves five questions when trying to resolve a moral issue.

- What benefits and what harms will each course of action produce, and which alternative will lead to the best overall consequences? (Utilitarian)
- What moral rights do the affected parties have, and which course of action best respects those rights? (Rights)
- Which course of action treats everyone the same, except where there is a morally justifiable reason not to, and does not show favoritism or discrimination? (Fairness/Social Justice)
- Which course of action advances the common good? (Common Good)
- Which course of action develops moral virtues? (Virtues)

ETHICAL PROBLEM SOLVING PARADIGM

Each person may weigh the ethical arguments differently. But a systematic approach can clarify complex situations and help us to come to an answer that represents people striving to be their best.

This method, of course, does not provide an automatic solution to moral problems. It is not meant to. The method is merely meant to help identify most of the important ethical considerations. In the end, we must deliberate on moral issues for ourselves, keeping a careful eye on both the facts and on the ethical considerations. Below you are given a more detailed outlined for analyzing ethical dilemmas:

- Define the Problem. What is the ethical dilemma?
- Gather the Necessary Facts.
- List Possible Alternative Solutions.
- Analyze the Consequences of Each Alternative.
- Recommend a Plan of Action.

In summary, consciously thinking through these ethical approaches can improve our understanding and our decisions. But it does not guarantee unambiguous answers. It's possible that the choice suggested by one approach may conflict with that suggested by another.

LESSON 2

THE ESSENCE AND PURPOSE OF ETHICS

While law consists of the laid-down rules that guide people's behavior in a state, the disobedience of which attracts penalties, ethics is the branch of philosophy which deals with judgment as to the rightness or wrongness, desirability or undesirability, approval or disapproval of our actions. Webster Seventh New Collegiate Dictionary defines ethics as the discipline dealing with what is good and bad and with moral duty and obligation. Ethics can also be defined as a normative science of conduct which is concerned with the right thing to do.

Ethics and morality are often used interchangeably. But Odunewu (2000) points out the difference as follows: "while morality refers to behaviour that is acceptable, ethics deals with the criteria by which decisions about right and wrong are made". Those who lead ethical lives are generally regarded as "good" people. The Josephson Institute for the Advancement of Ethics (Josephson Institute, 2003) identifies certain values as being essential to ethical life. ☰

They are:

- a) Honesty
- b) Integrity
- c) Promise-keeping
- d) Fidelity
- e) Fairness
- f) Caring for others
- g) Respect for others
- h) Responsible citizenship
- i) Pursuit of excellence
- j) Accountability.

Let us now take these concepts one by one and discuss what they mean or imply in their ordinary sense, at least.

- a) **Honesty** implies telling the truth always. Honest people are generally respected even if they are poor. The universal belief is that such people will be ultimately rewarded. Hence, the popular maxim: "Honesty is the best policy".
- b) **Integrity** is being in a "state of entireness, or wholeness, or an unimpaired state of uprightness, honesty and purity".
- c) **Promise-keeping** means discharging obligations and honouring agreements.
- d) **Fidelity** means being loyal and faithful to one's spouse, friend, business partner, associate, comrade, or beliefs.
- e) **Fairness** involves treating each person or each case equally and according to the rules or law.
- f) **Caring for others** is the mark of kindness and generosity.
- g) **Respect for Others** is a mark of humility, tolerance and patience.
- h) **Responsible Citizenship** means being law-abiding, doing one's civic duties, such as paying tax, voting and respecting constituted authority and maintaining peace and tranquility in one's neighborhood and work place.
- i) **Pursuit of Excellence** means commitment to the highest standards both in personal life and in the world of work. It implies not given to the acceptance of mediocrity, and being willing to go the extra mile to ensure that things are done properly, regardless of personal cost.

- j) **Accountability** means proving that one has performed one's duty creditably and is willing to submit oneself for scrutiny.

WHY SHOULD PEOPLE LEAD ETHICAL (OR MORAL) LIVES?

This writer has identified 10 reasons why people should lead moral lives. They are as follows:

- i) God our maker expects us to lead moral lives.
- ii) The society expects us to lead moral lives.
- iii) Our families expect us to lead moral lives.
- iv) We need to lead moral lives to be in harmony with our fellow humans.
- v) We need to lead moral lives to be at peace with our consciences.
- vi) We need to lead moral lives to live long.
- vii) We need to lead moral lives to be healthy.
- viii) We need to lead moral lives to be productive.
- ix) We need to lead moral lives to show good examples to the younger generation.
- x) We need to lead moral lives to serve the society better and win respect for ourselves and our professions.

WHY ETHICS PERTAINS ONLY TO HUMANS

From the foregoing it is evident that only the higher animal, that is, man should be concerned with ethics. The lower animals cannot show concern for ethics, nor can they be held accountable for their actions.

What then are the things about humans that make them concerned about ethics? Okunna (1995: 3) identifies the following as the characteristics of humans which predispose them to being ethical beings:

- a) Human beings are rational
- b) Human beings are social
- c) Human beings are learning beings
- d) Human beings have feelings

a) HUMAN BEINGS ARE RATIONAL

Humans are endowed with intellect which enables them to reason. The lower animals do not have intellect but instinct. It is this instinct which enables them to live their lives: catching their prey, eating, escaping from danger and procreating. Even though some animals like dolphins, apes and dogs exhibit what one might be tempted to call intelligence, they are still regarded by experts as not to be ascribed intelligence, which is the preserve of man.

At the same time, some human beings sometimes act in ways which tend to suggest that they are just like animals, that is, behaving irrationally or out of instinct. This is probably why the ethical philosopher, Immanuel Kant, believes that the greatest good can be achieved if humans will follow their rational nature and suppress their instincts.

b) HUMAN BEINGS ARE SOCIAL ANIMALS

Also, according to Kant, man's relationship with other humans is his motivation for being ethically-minded. Indeed, according to another philosopher, Erich Fromm, man finds fulfillment only in relation with his fellow man. It is this social nature of man that is also responsible for human progress. If man lived on earth merely to satisfy his biological needs, it would not have mattered how other human beings regard him.

But human beings are concerned about what others think about them, and indeed, how they will be remembered when they die.

c) HUMAN BEINGS HAVE FEELINGS

Only humans have the capacity to feel compassion for others. This is the compelling reason why the mass media publish human interest stories, that is, stories about humans which make others stop and think: “this is a human being like myself”. Because humans have feelings they act in morally acceptable ways which promote solidarity and togetherness.

d) HUMAN BEINGS ARE LEARNING BEINGS

Only humans learn from experience, and this enables them to cultivate norms of ethical conduct aimed at ensuring societal continuity. If there is no experience there will be no foresight. Knowledge is acquired not only from personal experience but also from other people’s experiences recorded in books and the other mass media, or passed on as oral tradition from one generation to another.

LAW AND ETHICS COMPARED AND CONTRASTED

Law and ethics may have the same basic objective, namely, to ensure order, protect the rights of the individual and preserve the state. Yet, they differ in their peculiar characteristics and processes. The following are the basic differences between law and ethics.

- a) Law is imposed by the outer society, while ethics is self-imposed and self-enforced (e.g. by a professional body for its members).
- b) Law has a definite effective date while ethics has no effective date.
- c) Law can expire, or be repealed, but ethics is continuous.
- d) Law has more formal institutions, such as the legislature, police, judiciary (the courts, tribunals, court-martials, etc.) penitentiary (prison, reformatory, etc), but ethics has less formal institutions for its formulation and enforcement. Indeed, the chief enforcer of ethics is the conscience. Moreover,
- e) “While morality protects a way of life by tabooing immoral action even before it takes place, laws only provide a resource after the deed has been done”, according to Caster (1983).

CONCLUSION

A good man is so regarded because he is ethically minded and leads his life in morally acceptable ways. On the other hand, a bad man is bad because he is not morally upright. In all societies there are standards by which actions can be regarded as good or bad. Without a concern for ethics there will be no difference between a human being and an animal.

SUMMARY

In this unit, we have discussed the essence and purpose of ethics. We saw several definitions of ethics and the difference between ethics and morality, even though they are often used interchangeably. We also listed and explained 10 values which are essential to the ethical life. They are honesty, integrity, promise-keeping, fidelity, fairness, caring for others, respect for others, responsible citizenship, pursuit of excellence and accountability.

Also covered were 10 reasons why people should lead ethical or moral lives. In this unit also, it was pointed out that ethics is of particular concern to humans because they are rational, sociable, capable of learning and have feelings. The lower animals are not bothered about ethics, and you know why.

Finally, we compared and contrasted ethics with law, drawing the similarities and differences.

LESSON 3, 4**THEORIES OF ETHICS****INTRODUCTION**

Different people are likely to behave differently when faced with the same ethical situation. This is because of their divergent ethical orientations. An individual's ethical orientation is responsible for his ethical response. This is why it is necessary to understand ethical theories.

ETHICAL THEORIES

Theories are ways of explaining phenomena. Theories of ethics are ways of explaining ethical orientations. Okunna (1995:9) points out that ethical theories generally attempt to do one or a combination of the following: explain, describe, prescribe or predict ethical behaviour or standards. They are explanatory when they give reasons why humans take whatever moral decisions in their dealing with others. They are descriptive when they tell us the nature of ethics in general. They are prescriptive when they stipulate how people should behave in certain ethical situations. They are predictive if they indicate how people are likely to behave under certain ethical situations.

Following are some of the most famous ethical theories:

1. Subjective Relativism
2. Cultural Relativism
3. Divine Command Theory
4. Ethical Egoism
5. Kantianism
6. Act Utilitarianism
7. Rule Utilitarianism
8. Social Contract Theory

1. SUBJECTIVE AND CULTURAL RELATIVISM

A lot of people think that the subjectivity of morality is obvious. If so, it should be relatively easy to produce good reasons in support of the subjectivist point of view. What might these reasons be? Among the most commonly cited are three. The first is that people hold all sorts of conflicting moral opinions; the second is that they do so because of the impossibility of proving the superiority of one moral view over another; and the third is that proof is impossible since there are no observable moral 'facts'. One way of assessing the plausibility of subjectivism, then, is to ask about the truth of these claims and what, if they are indeed true, they actually imply.

Now the first proposition – that there are serious moral disagreements between people – can hardly be denied. Nor is this just a matter of individual disagreement; from ancient times it has been noted that such differences are to be found between entire cultures. The ancient Greek historian Herodotus, for example, recounts an episode in which the King of Persia induced horror on the part of both Greeks and Callatians by asking them to adopt each other's funeral practices. What the Greeks took to be right and proper – burning their dead – the Callatians regarded as utterly abhorrent.

But since, by contrast, fire burned just the same in both Greece and Persia, Herodotus's implication is that moral practices are unlike physical phenomena in being relative to cultural contexts. While the laws of nature remain the same everywhere, rules of conduct differ from place to place. This example has often been used to illustrate the position known as 'ethical relativism', the belief that ethical views are always relative to some particular culture or other. What this says (continuing with this example) is that cremation of the dead is right

for the Greeks, but wrong for the Callatians. By implication, there is nothing right or wrong per se, or universally.

But why stop at differences between groups of people? There are also differences of this kind to be found between individuals. Something that truly horrifies one person, another can find quite acceptable. What is called 'subjectivism' is really just an extension of relativism from the level of the social group to the level of the individual. But if moral differences are relativized to individuals, this seems to suggest that, when it comes to ethics, there is no truth of the matter to be discovered.

It is not hard to find examples from our own time and culture that lead people to this subjectivist conclusion. One of the most vexed moral issues of the modern Western world is abortion. While everyone can easily agree what medical procedures will result in an abortion, there does not appear to be anything like the same agreement on whether abortion is morally right or wrong. That is to say, when it comes to abortion, agreement is easily reached on matters of medical science, whereas on matters of medical ethics it is not. Moreover it seems that the examples can be multiplied very easily. For instance, everyone can agree on the relative effectiveness of different methods of capital punishment – lethal injection versus the electric chair say. What they cannot agree about is whether either method is morally justified or not.

So, at any rate, it appears. But appearance is not reality. Is it really the case that there is far more difference of opinion on moral than on medical or scientific matters? One point worth making is that, while moral disagreement hogs the headlines, so to speak, there is actually a lot of moral agreement in the contemporary world. It would be difficult to find anyone who thought rape, murder or theft a good thing, or believed honesty, loyalty and generosity to be evil things. Everyone condemns slavery, the sexual molestation of children and cheating at sport. This is not to say that there are no cheats and child molesters, or even that there are no slaves.

But there is no one who openly owns up to these things as a matter of pride. This marks these off from the sort of example that impressed Herodotus. The Athenians and the Spartans were proud of the way they did things, and horrified by the practices of others. Often child molesters are not suitably horrified by what they have done; but they are never openly proud of it as an alternative lifestyle, and in those relatively rare cases when they do not seem to be at all ashamed of their deviant behaviour, this is usually some indication of mental illness.

Moral differences of opinion can be exaggerated, then. While abortion, euthanasia and capital punishment are indeed the subject of much dispute and disagreement, there is in fact a very large range of issues on which there is little moral disagreement. A similar point can be made in the opposite direction; the degree of scientific or factual agreement can be exaggerated. At every stage in its history, including the present, natural science has been marked by radical disagreement between expert practitioners.

The greatest names in science – Bacon, Newton, Darwin, Einstein – generally had difficulty in getting their ideas accepted and the everyday practice of science is one in which people are constantly claiming to refute and disprove each other. Even more importantly, the history of science reveals dramatic disagreements across time. The mechanics of Sir Isaac Newton completely displaced the Aristotelian physics that had dominated science for many centuries, and then Newtonianism in its turn was displaced two centuries later by Einstein's theory of relativity. This is par for the course, in fact. Science lives by one generation disputing the hypotheses of the generation that preceded it.

Even so, it might be said, there is still a striking difference between science and ethics. Einstein didn't just disagree with Newton; he disproved him. Science does not merely change; it progresses. In ethics and morality, by contrast, though opinions change, they don't progress. This is because there is no possibility of proof or disproof, just disagreement. Moral opinions can't be conclusively proved or refuted. Here we encounter the second of the reasons subjectivists tend to advance in favour of their view – that there is no such thing as moral proof.

Sometimes philosophers have felt challenged by this claim to produce some moral proofs, but this rarely accomplishes much because such 'proofs' are invariably contentious and generally unconvincing to most of

the people to whom they are offered. A more telling reply to this second subjectivist point is to draw attention to the fact that proof properly so called seems in short supply, not just in morality, but in almost every context. It is only an especially notable feature of morality that it doesn't admit of proof, if most other spheres of human discourse do. But they don't. It may be the case that in mathematics and logic there is scope for formal proofs (though it is worth noting that even mathematicians and logicians can, and do, disagree), but once we pass beyond mathematics and logic, conclusive proof seems very hard to come by. In the law, for example, where there is certainly talk of proof, the actual standard is not absolute or conclusive proof, but simply establishing a case beyond reasonable doubt, in criminal cases, and even more weakly in civil cases, showing that the balance of probability is in favour of the claim you are making. Now if we were to apply a similar concept of 'proof' in morality, it would not be so obvious that there could be no moral 'proofs', because there are often occasions when individuals who are determined to dispute some moral view or other do seem to go beyond the realms of 'reasonable doubt'. It may be impossible to prove some moral belief to be false. This does not mean that it cannot be shown to be unreasonable.

That the absence of proof is not unique to ethics is even clearer when we look beyond logic and the law to other areas of factual inquiry, notably history. Consider just a simple example. It is impossible to prove, i.e. demonstrate beyond doubt, on which day of the week Henry VIII married Anne Boleyn. The sort of evidence that would clinch the matter – church records, etc. – no longer exist. However, there is unquestionably a fact of the matter on which day it was, and from this we should conclude that even simple straightforward factual matters cannot always be proved.

The general point is that ethical or moral beliefs and propositions are only striking by not admitting of proof if they differ dramatically in this respect from other sorts of belief. But as we have just observed, this is not the case. There are plenty of factual matters that don't admit of proof. The example just given of Henry's marriage to Anne Boleyn is only one instance, and the study of history provides indefinitely many more. But so do such natural sciences as geomorphology, climatology and physiology.

Just where the last ice cap extended, whether the hypothesis of global *warming is true and what* the cause of motor neurone disease is are all matters of perplexity and dispute. It is not only false but facile to think that, in contrast to moral issues, these are matters of fact upon which informed and disinterested minds are sure to agree. People who are equally well informed and experienced in the subject often disagree profoundly, and even the best minds frequently admit to uncertainty and ignorance.

Faced with these reminders of how different avenues of human inquiry actually proceed, moral subjectivists are unlikely to concede defeat however. There is still a crucial difference, they will contend. While it may indeed be the case that in history, geomorphology, medicine and so on, there are irresolvable disagreements, this is a contingent matter, something that just happens to be the case. Historical and scientific facts could in principle be uncovered to prove the case one way or another. As it happens we don't know on which day of the week Henry married Anne, but we could. In morality, on the other hand, disagreements are unprovable in principle. This is because there are no moral facts.

MORAL RELATIVISM

It is on the basis of this third claim that subjectivism is sometimes called, in more technical language, 'non-cognitivism', which means 'not a matter of knowledge'. What some people believe to be right, others believe to be wrong, and of course, both sides may well speak of their moral disagreement as though it was a dispute about matters of fact, how things really are. But according to the non-cognitivist, it isn't. In the history of philosophy this view was most famously expressed and endorsed by the eighteenth century Scottish philosopher David Hume.

Take any action allow'd to be vicious: Wilful murder, for instance.

Examine it in all lights, and see if you can find that matter of fact, or real existence, which you call vice. In which-ever way you take it, you find only certain passions, motives, volitions and thoughts. There is no other matter of fact in the case. The vice entirely escapes you, as long as you consider the object. You can never find it, till you turn your reflexion into your own breast, and find a sentiment of disapprobation, which arises

in you, towards this action. Here is a matter of fact; but 'tis the object of feeling, not of reason. It lies in yourself, not the object (Hume, 1739, 1967: 484).

The view that Hume is opposing here is often called 'moral realism', the theory that moral values, such as wicked and generous, are real properties of people and their actions in the way that hard and soft are properties of physical objects. Now such a view faces a major problem: if there actually were such moral properties, compared with ordinary everyday physical properties they would be decidedly 'queer' (as the philosopher J L Mackie famously put it).

Three aspects of this 'queerness' are usually cited. First, while properties like light and dark, hot and cold, loud and soft, sweet and sour, can be discovered through the senses of seeing, hearing, touch and taste, we can't see or hear or feel right and wrong, good and bad. Second, as Gilbert Harman once pointed out, even if we could observe moral properties, they would still differ from physical properties like hot and cold. For, while physical properties figure in explanations of why we observe them, this doesn't seem to be true of moral properties. Observation plays a role in science that it does not seem to play in ethics. The difference is that you need to make assumptions about certain physical facts to explain the occurrence of the observations that support a scientific theory, but you do not seem to make assumptions about any moral facts to explain the occurrence of so-called moral observation. . . . You need only make assumptions about the psychology . . . of the person making the moral observation. In the scientific case, theory is tested against the world (Harman 1977: 6).

Harman's idea (and example) is this. Suppose I see boys setting a cat on fire. To explain my feeling the heat of the flames, there has to be heat there. To explain my feeling of moral revulsion, on the other hand, it is only necessary to appeal to my moral beliefs; there doesn't have to be any 'moral horror' out there in the world for me to feel.

The third objection to supposed moral properties is one that Hume makes, and more recently J L Mackie. Hume thinks that the perception of properties is 'inert'. That is to say, merely seeing or hearing something will not of itself lead to action. But the essence of ethics is action – recommending and following courses of conduct. From this it would seem to follow that moral 'properties', if they did exist, would be lacking in the very thing we want – what philosophers sometimes call 'action guiding force'. Mackie puts the point this way. Moral reasoning has to yield 'authoritatively prescriptive conclusions', but if 'we ask the awkward question, how can we be aware of this authoritative prescriptivity . . . none of our ordinary accounts of sensory perception . . . will provide a satisfactory answer' (Mackie 1977: 39). You cannot literally see what you ought to do.

This third point is closely related to a problem widely referred to as 'the naturalistic fallacy'. Once again, it is David Hume to whom we owe one of the most famous articulations of the problem. Towards the end of that section of the *Treatise* from which the passage quoted earlier comes, he says:

I cannot forbear adding to these reasonings an observation, which may, perhaps, be found of some importance. In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning . . . ; when of a sudden I am surpriz'd to find that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but it is however, of the last consequence (Hume 1739, 1967: 469).

Hume thinks that trying to derive an 'ought' from an 'is' is logically invalid; statements of fact cannot of themselves have prescriptive implications. If so, then propositions referring to 'real' moral properties could provide no rational basis for action since, being descriptions of how the world is, we could not infer from them how the world ought to be.

Actually, the position is worse than this for the moral realist, because according to another version of the naturalistic fallacy, we cannot even infer good and bad from is and is not. This can be shown by what is known as the 'open question argument'. For any natural property, it always makes sense to ask 'Is it good?', and the fact that this question always makes sense shows that 'good' and 'bad' cannot be the names of natural

properties in the way that 'hard' and 'soft' are. For example, suppose someone claims that happiness, say, is a naturally good thing.

We can always wonder about this, can always ask 'Is happiness good?' Now if happiness were good in and of itself this question would make no more sense than the question 'Does happiness make people happy?'. But it does make sense, and so we have to conclude that goodness is not a property of happiness. This version of the naturalistic fallacy was formulated by the twentieth-century Cambridge philosopher G E Moore in a very influential book entitled *Principia Ethica* (The Principles of Ethics). Not everyone has been persuaded by the 'open question' argument, but even if it is a good one, it does not necessarily amount to a refutation of moral realism. Curiously, Moore was himself a kind of moral realist who believed that there are moral properties. His response to the difficulty that he himself formulated was to declare that goodness is a 'non-natural' property, indefinable in the way a colour like 'yellow' is. We can't give a definition of 'yellow' that will enable us to class all yellow things together; we just see that yellow things have the property of yellowness in common. In a similar fashion, Moore thought, by a special faculty of moral intuition, we just 'see' that things have the indefinable property of goodness, and in *Principia Ethica* he lists some of the main things that he believed to have this non-natural property.

For a time, Moore's view was found persuasive, but most philosophers would probably agree that having identified a major difficulty for moral realism in his analysis of the naturalistic fallacy, Moore simply dug himself in deeper with the appeal to non-natural properties and a faculty of intuition. If the naturalistic fallacy shows that we cannot infer value judgments from natural facts by means of ordinary perception, the introduction of 'non-natural' facts and a special evaluative 'intuition' simply shrouds the whole issue in mystery.

MORAL RATIONALISM

There is, however, a different tack to be taken. In the *Treatise*, Hume allows for two spheres in which reason can operate – 'matters of fact' and 'relations of ideas'. The first of these is the one we have been concerned with so far. Are there matters of moral fact that we can perceive and refer to? The moral realist wants to say 'yes' but there seem to be major obstacles to doing so. What, though, about 'relations between ideas'? In his use of this expression, Hume clearly has in mind mathematics and logic.

It is true that ' $2 + 2 = 4$ ', for example, and yet this is not something we can open our eyes and see, or put our hands on and touch. Now Hume assumes that moral judgments could not be like this, but it is an assumption we might question. Consider this little argument.

1 You promised to pay back the money you borrowed.

2 Promises ought to be kept.

So

3 You ought to pay back the money you borrowed. From the point of view of logic, this argument is valid. That is to say, anyone who accepts the premises (propositions 1 and 2) is logically obliged to accept the conclusion. But since the conclusion (proposition 3) takes the form of a moral prescription – a proposition that tells us what the morally right thing to do is – it seems, contrary to Hume and subjectivists in general, that we can arrive at moral conclusions on the basis of reason.

Of course, it will be replied that this type of example doesn't prove very much because while the first premise (You promised to pay the money you borrowed) is factual, a claim about something that happened, the second (Promises ought to be kept) is not. It is a moral principle to which the person to whom the argument is addressed needs to subscribe before he or she is obliged to accept the conclusion.

Now this seems plausible. 'Promises ought to be kept' does sound like a moral principle, and if the arguments against moral realism are sound, we have to agree that it cannot be construed as a factual claim about some special sort of moral property – 'to-be-keptness' – that promises have. It can nevertheless be argued that this second premise, in something like the manner of a mathematical proposition, is true in virtue of 'relations between ideas'. That is to say, if you understand the concept of a promise and if you understand what

‘obligation’ means, you will have to agree that promises ought to be kept. In other words, the ideas of promising and being obliged to keep your promises are related, and accordingly the principle ‘Promises ought to be kept’ can be said to express a relation between ideas.

This is not quite the relation Hume had in mind. He thought that relations between ideas always took the form of analytic truths, or propositions that were true by definition. But the relation between making a promise and being obliged to keep it is more complex than this, and has been explored in detail in a very famous essay by the American philosopher John Searle – ‘How to derive “ought” from “is”’. Searle draws a distinction between regulative rules and constitutive rules.

Some rules regulate antecedently existing forms of behaviour. For example, the rules of polite table behaviour regulate eating, but eating exists independently of these rules. Some rules, on the other hand, do not merely regulate but create or define new forms of behaviour; the rules of chess, for example, do not merely regulate an antecedently existing activity called playing chess; they . . . create the possibility of . . . that activity . . . The institutions of marriage, money and promising are like the institutions of baseball or chess in that they are systems of such constitutive rules.

The ideas of making a promise and be obliged to keep it are related not by linguistic definition, but by a constitutive rule. By this account then Hume is partly right – reason does range over relations between ideas – and partly wrong – moral matters can be reasoned about, because at least some moral principles concern relations between ideas. The moral realist models moral reasoning on perception and Hume is right to reject this model. But there is an alternative model, which we may call ‘moral rationalism’ which construes moral reasoning on something like the model of mathematics. Now the advantage of this account is that it regards reasoning about morality as no different from reasoning in general.

Whereas moral realism requires a special kind of moral seeing or intuition, moral rationalism need only hold that in morality as in anything else, we have to pay attention to facts (you did actually promise), we have to understand concepts properly (promising to do something puts the promiser under an obligation), and we have to combine our knowledge of the facts and our understanding of the concepts in logically valid patterns of reasoning. All three considerations are illustrated in the example just outlined, and though this is a simple instance of reasoning, much more complex cases can be analyzed in the same way. On this conception, then, moral reasoning is no different from the sort of reasoning that goes on in a court of law, say, where advocates on either side try to construct good and convincing arguments based upon both factual evidence and legal concepts, and no different from the sort of reasoning that goes into public hearings or planning inquiries when people are ranged on different sides.

There are of course differences. One straightforward difference is that most laws and legal principles are established by law-making bodies – Parliaments and so on – for which there is no obvious moral equivalent.

Even so, the parallel is enough to provide an answer to the Sophists and other subjectivists. Morality is an aspect of human life that can engage our rational faculties as well as our feelings, in just the way that many other aspects of life can. I cannot reason about whom to fall in love with, but I can reason about whether it would be right to cheat on the person I love.

The parallel with law is instructive in another way. We can construct good and less good legal arguments that have clear conclusions about right and wrong and about what ought to be done. These arguments never amount to conclusive proof beyond all possibility of doubt or disagreement, but only proof beyond reasonable doubt or in accordance with what seems most probable. In this way legal reasoning falls short of logic and mathematics. Even so, as the existence and persistence of legal systems throughout the world demonstrate, legal argument is a good way of resolving disagreements, a good way of deciding what to believe about the allegations that are made against people, about what principles we ought to subscribe to, and what decisions it would be right and proper to take. Of course this is not the case in every instance. There are intractable legal disputes, both at the level of particular cases and general legal principles. But it would be an unwarranted counsel of despair to claim that because not every issue admits of rational resolution and reasoned agreement, we should never entertain the slightest hope of doing so. On the contrary, the

reasonable position seems to be that we should set out in every case with the hope of rational resolution, doing the best we can, and accepting that we may not always succeed.

Exactly the same can be said for morality. Moral rationalists need not hold that reason has the means to answer every moral question at every level, and thus the power to resolve every disagreement conclusively.

Rather, they need make only the following relatively modest claims. First, there are no grounds to declare reason powerless with respect to morality from the outset, which is to say, before even we start to think about the issues. Second, provided we accept that our conclusions will in all likelihood fall short of absolute proof or incontrovertible demonstration, the most plausible and intelligent approach to moral questions and disagreements is just to see how far clear and cogent reasoning – assembly of the relevant facts, analysis of the relevant concepts and adherence to the rules of logic – can take us.

OBJECTIVISM

Moral rationalism is a form of objectivism. This chapter has been concerned with the ancient philosophical dispute between objectivists and subjectivists. Although usually construed as a straightforward opposition, we can in fact distinguish not just two but four positions here. We might label these four positions: 1 hard subjectivism; 2 soft subjectivism; 3 hard objectivism; 4 soft objectivism. Hard subjectivism holds, as the Sophists are generally thought to have held, that in moral and evaluative questions there are never any ‘right’ answers. Soft subjectivism holds that in many such questions there are no right answers.

Hard objectivism holds that for every moral question there is a right answer, and soft objectivism holds that for any moral question there may be a right answer. Now set out in this way we can see, I think, that the combination of moral rationalism and soft objectivism is the most plausible philosophical position to adopt. Why rule out in advance, as hard subjectivism does, the very possibility of resolving moral questions rationally? But if we don’t rule it out altogether, then the claim of the soft subjectivist becomes irrelevant. It is of no consequence to know that some moral questions do not admit of rational resolution unless we know what these are, and without investigation we can’t tell whether the questions that interest us are among those that have no answer. Hard objectivism, on the other hand, seems scarcely less dogmatic than hard subjectivism. It too is a pronouncement about what must be the case. But just as there can be legal cases (and historical investigations for that matter) that ultimately prove intractable, so too some moral disagreements may be too deep and difficult to admit of resolution.

On these grounds the first three positions are unattractive. That leaves soft objectivism as the best position to endorse – which is to say, the position that for any moral matter reason may be able to point us to a resolution that (remembering the legal parallel once more) is clearer and more cogent than any other and which it would be logically possible but unreasonable to dispute.

Soft objectivism is the underlying philosophical position of the remainder of this book. A few further observations are in order, however. To begin with it is worth noting that even if we don’t come up with very clear-cut answers to the questions with which the rest of this book is concerned, there is still point in investigating them. Sometimes, it is more important to travel than to arrive, and mostly what we gain from tackling a philosophical problem lies in a better understanding of the issues than in an answer to the question.

Second, moral reflection proceeds on different levels. The most contentious questions in morality tend to be first-order ones, that is to say explicit moral problems – the rights and wrongs of abortion or capital punishment, say. Often disputes at these levels presuppose ideas at a higher or second order level, ideas about rights and values in general, about freedom, well-being and happiness, for example, and though philosophers can usefully contribute to debates about first-order moral problems, it is when we turn to consider underlying values that moral philosophy proper begins.

The course of life presents us with both possibilities and constraints. Some of these arise from our nature, others from the circumstances of life – ‘the human condition’ as it is sometimes referred to. Given these possibilities and constraints, what is the best sort of life to aim for? What values should we focus on and cling to? How should we strive to live, given the facts of human nature and the human condition? It is these second-order issues with which most of this book is concerned, and these issues to which we now turn.

2. DIVINE COMMAND THEORY

Divine Command Theory is the first moral theory that we looked at. It answers the following three questions:

1) What makes an action right/wrong?

2) How do I know?

3) Why should I care?

1) According to Divine Command Theory what makes an action right or wrong is the commandments of God. Murder is immoral because God commands us to not murder. Giving to charity is morally good because God commands us to give to charity. It is God's attitude towards a particular action that determines whether or not it is moral

2) In order to know if an action is right or wrong you have to know what God commands about a particular action. Some claim that we can use sacred texts to learn what God thinks about an action. Others might claim that God tells each of us personally what he wants us to do. The important point to note is that in order to know what is right and what is wrong one must know what God commands.

3) The reason one should care about acting morally is because ultimately it is in your self-interest to act morally. Perhaps in this world you can live a happy life being an immoral person. However, in the afterlife you will be punished for your evil actions.

Divine Command Theory restated: Whether an action is right/wrong ultimately depends on what God Commands.

PROBLEMS WITH DIVINE COMMAND THEORY:

1) One problem with the Divine Command Theory is that it presupposes a lot. It presupposes: a) God exists b) God commands us to do certain things and forbids others c) we can know what God commands and what he forbids. If any one of these claims turns out to be false, the Divine Command Theory would not work.

2) Even if we accept all of the above presuppositions, the Divine Command Theory is difficult to work with. What should we do when two people who accept the Divine Command Theory disagree about what God commands? One person might believe that God commands us to fight wars to spread the word of God. Another person might believe that God commands us to live a passive, peaceful life. What should we do with such a disagreement? Who is right? In order to answer this we would have to know what God thinks about a particular action. This is difficult if not impossible.

3) Logical Problem. One final problem with the Divine Command Theory is a problem raised by Plato. If we modify Plato's question to fit the Divine Command Theory we can ask: "Is an action good because God commands it, or does God command an action because it is good?" Let's look at the two possibilities.

a) An action is good because God commands it. This entails that no action is right or wrong independent of God's commandment. God commanded us to not rape other human beings. He could have just as easily commanded us to rape other human beings. According to this interpretation, if God commanded us to rape then rape would become a morally good thing to do! We can also ask "why did God command us to not rape other people?" This view claims that God MAKES morality.

b) God commands an action because he knows it is good. According to this interpretation God recognized that rape was wrong therefore he told us to not rape people. According to this interpretation rape is wrong independent of God's commandment. Even God could not make rape morally right. Right and wrong exist independent of God and since God is all-knowing he

recognizes that certain things are right and certain things are wrong and he commands us to act accordingly. What this really entails is that there is an independent standard of right or wrong that is separate from God. God RECOGNIZES what is right and wrong and commands us to act according to that standard.

The divine command theory postulates the existence of a God, one that is under no constraint, who is able to, by free choice, will a set of human principles which are to be accepted as moral, or rather, are accepted as moral by humans. Another key idea would be that the God is able to will the exact opposite of moral principles that was chosen. E.g. God wills that homicide is immoral, but He could also will that homicide is moral and acceptable.

The theory thus attempts to provide answers to questions relating to the authority of moral laws. In this respect, the divine command theory is deontological in nature, as it focuses on the inherent “right” or “wrong” of actions as commanded by divine authority. Humans are thus unable to, on their own, conceive of any end purpose of morality that God may have in mind, although some versions of arguments do not show a clear distinction between a teleological and deontological approach.

WILLIAM OF OCKHAM

William of Ockham’s works contain a number of political works concerned with his time, where the authority of the Pope had been called into question. Ockham wrote a long treatise called ‘Eight Questions concerning the Power of the Pope’. Several of the questions relevant to the Divine Command Theory include:

- Can one man rightfully be supreme both in affairs of the Church and the State?
- Is secular authority derived immediately from God?
- Has the Pope right to grant secular jurisdiction to the Emperor (of Germany) and other Princes?

Ockham argues that since God is omnipotent, He can do anything save for that which is logically impossible. The criterion of logical impossibility is contradiction. So, if a statement is not contradictory, then the situation is at least logically possible (even if it is false), and may be realized by God. Since moral statements pose no contradiction, God may will it to be so. Thus, the only way that this is possible would be that permissibility, requirement, and prohibition (of actions) are willed by God.

He also identifies certain limitations to this theory, such as natural law theory playing a part in moral judgment; the difficulty in accounting for legalistic character of some moral requirements, and that the omnipotence of God must imply that moral order could not be reversed by anything save God’s will.

Thus, it is clear that Ockham argues for a Divine Command Theory based on the premises of God being an omnipotent being which is able to realise all logically possible statements, even those we take to be morally false.

Several other ideas have been associated with the divine command theory, although these are not necessary to it.

1. God’s grace is required for humans to live a life of moral rectitude.
2. God must somehow make known those laws that humans are obliged to observe. (E.g. Religious scriptures)
3. How much one follows these moral principles will determine the individual’s happiness (E.g. A person who follows these principles will ascend to heaven.)

The following are several divine command theories made by Christians, St. Augustine and St. Thomas.

St. Augustine

For St. Augustine, being and goodness are complimentary, so whatever God makes is good. Evil is but an absence of good, something which we notice when we notice something to be less good of objects or others

of the same kind. Augustine believes, however, that things of even the least good would have a place in God's glory, and the world would be less perfect without them. Observing the infinite varieties of God's expression with our limited minds is impossible, so we focus on small, disagreeable parts, and deem them evil.

Augustine believes in a hierarchy of goodness, with the final end, or infinite goodness, to be God, and admits that the only true evil is the desire of things more than they deserve. An example would be a person desiring worldly wealth for as the final end more than God.

Augustine also believes that we have no moral capacity for choosing the greater good, as evidenced by the Christian Bible, which depicts Adam's fall by choosing to disobey God and following Eve. He believes that we only act for the gratification of our own desires. Thus, although God has let us know what he expects us to do, we do not have the moral capacity to do it, at least not as we should. Thus, humans require God's aid to be capable of choosing the moral decision, and God's aid comes with the coming of the Christ.

Pelagius, an Irish monk, objects to this view, and argues that Adam was the only one who suffered the consequences of his own actions, as God would not be as unjust as to command as to do what He himself had made it impossible for us to do. We retain the freedom of judgment and moral capacity.

ST. THOMAS

St. Thomas agrees with the Augustinian version of the hierarchy of goodness. He believes that God's eternal wisdom is contained in the eternal law, which leads each kind of thing to work for the common good as it strives to attain its own natural end. Human beings participate in this eternal law through our reason, and the result is the natural law, which directs our striving for our natural end, earthly happiness.

Laws of nature may be explained by seeing that they instruct beings with our nature about their proper good. For example, we know that it is wrong to kill because we as animals desire and strive for life. Natural laws also instruct us to worship God and do whatever facilitates life in a community of rational beings. Thus, we should draw our understanding of what we are to do from the laws of nature.

LIMITATIONS OF THE DIVINE COMMAND THEORY

The divine command theory suggests that a scenario of the world being a place where rape and murder is morally praiseworthy is in fact, a possibility that could have been willed by God. While this seems absurd, this aspect has been suggested by most divine command theorists, and openly embraced by some.

One of the strongest objections to the theory is known as the Euthyphro dilemma, named after a dialogue written by Plato that discusses God and morality. In this dialogue, one of the characters, Euthyphro, attempts to define holiness as what all the Gods love, and that unholiness is what they all hate. Socrates, the other character in this dialogue, responds by questioning whether the Gods love holiness because it is holy, or if it is holy because they love it.

If we were to take the second stance, that it is holy because the Gods love it, then it would seem that it would be equally good if the Gods had required us to do the opposite of what is right. If, on the other hand, we were to take the first stance, that God sees the truth and commands morality based on it, the divine command theory becomes a redundant explanation of divine authority, since it suggests that good and evil are independent of God's will.

3. ETHICAL EGOISM

Morality requires we balance our own interests against the interests of others.

This way of thinking involves a general assumption about our moral duties – assumed we have moral duties to other people. We have natural duties to others **simply** because they are people who could be helped or harmed by our actions.

Ethical egoism is the idea that each person ought to pursue their self interest exclusively; different from Psychological egoism – which is a theory of human nature about how people **do** behave – says people always pursue their own interests.

Ethical egoism – is a normative theory, a theory about how we ought to behave, no moral duty to do except what is best for ourselves.

What it doesn't say	What it does say
Doesn't say promote ones own interests and the interests of others.	Only duty is to promote one's own interests
	One ultimate principle of conduct, principle of self-interest
	You can help others – if this benefits others this is not what makes the act right – what makes it right if it has some advantage to you.
	In pursuing interests or pleasure shouldn't always do what you want (smoking /drinking) – should do what is your advantage in the long run.

3 ARGUMENTS IN FAVOUR OF ETHICAL EGOISM

- First argument has several variations each suggesting the same general point: We are all uniquely placed to pursue our own wants and needs effectively. We only know the desires & needs of others imperfectly – and we are not well placed to pursue them.
- Policy of 'looking out for others' is an intrusion into other people's privacy – would essentially be a policy of minding others business.
- Making other people the object of your charity 'degrades' them and robs them of their self-respect. Offer of charity says that a person is not competent to look after themselves – therefore they become resentful and not appreciative.

Overall point is a policy of NOT looking out for other people. The suggestion is if everyone looks after their own interests more likely people be better off both physically and emotionally.

This is a point Robert Olsen makes in his book – 'The morality of self-interest' (1965)

So the theory goes:

- We ought to do whatever will promote the best interests of everyone alike.
- The interests of everyone will be best promoted if each of us adopts the policy of pursuing our interests exclusively
- Therefore each of us should adopt the policy of pursuing our own interests exclusively. Yet why should this matter to an Ethical egotist? As it means we are doing things to help others not merely because we think it will be beneficial to ourselves.
- Second argument put forward by a person called Ayn Rand (woman) – very popular on campuses in the 60s & 70s, wrote a book called 'The virtue of Selfishness'. For her it was the only ethical philosophy that respected the integrity of the individual human life. Her argument can be summarized as follows:
- A person has only one life to live, if we place any value on the individual – if they have any moral worth, then that life must be of supreme importance.
- The ethics of altruism regard the life of the individual as something you must be ready to sacrifice for the good of others.

- Therefore the ethics of altruism does not take seriously the value of the human individual.
- Ethical egoism allows everyone to view their own life as being of ultimate value – does take the individual seriously and should be the philosophy that is accepted.

Problem with this argument is:

- Altruism is taken to the extreme where you sacrifice yourself for anything – and your own interests have no value at all.

3. Third Argument: Looks to interpret Ethical Egoism as a way that accepts common-sense morality and looks to show that it is the basis of this code. In everyday life there are certain rules which we assume we are obligated to carry out, don't hurt other people, speak the truth, keep promises etc. Ethical egoism tries to provide explanations for these duties, such as:

- If we make a habit of harming people then people will also harm us. People won't do favours etc for us. If we seriously injure we will go to prison – it is to our advantage to avoid harming others.
- If we lie, we will not be trusted and we can not expect people to be honest to us in return – therefore to our advantage to be truthful.
- It is to our advantage to enter into mutually beneficial arrangements with people – to benefit we need to rely on others, we need them to keep their promises and likewise we need to keep ours. Therefore from a self interest point of view we need to keep our promises.
- Thomas Hobbes suggested that the principle of Ethical Egoism leads to the Golden rule – do unto others because others are then more likely to do unto us.

PROBLEM WITH THIS?

- Shows as a general rule it is it is best for instance not to harm people but doesn't show that this is always so. It could be in your self interest/gain to hurt someone.
- Another difficulty say giving to a famine relief charity was somehow to your advantage – doesn't mean that this is the only reason could be also to help the starving people – your own advantage might only be a secondary less important consideration.
- Unless you believe that there are no other reasons than self-interest then you can believe in Ethical egoism.

THREE ARGUMENTS AGAINST ETHICAL EGOISM:

No 20th Century philosopher has argued in favour of ethical egoism.

The following two arguments are standard refutations by philosophers:

1. 'The Moral point of view' (1958) Kurt Baier argues can't be right because it can't provide solutions for conflicts of interests. Says we need moral rules because our interests come into conflict. Ethical egoism does not resolve conflicts of interests it only enflames them.
2. The view that ethical egoism is not consistent in that, an ethical egotist will act in their own self-interest and require that everyone else should act in their own self-interest – yet for instance if I am a sales person I want people to pay full price yet this would not be in their best interest to do this. If I am an ethical egoist then I am committed to them paying full price and not paying full price which is inconsistent.
3. Ethical egoism is a theory that advocates that we in fact split the world up into two categories of people, ourselves and the rest. And that we regard the first group as more important than the interests of the second group. Yet what is it that justifies us placing

ourselves in this special category? What makes me so special? This shows Ethical egoism to be an arbitrary doctrine – as it advocates treating people differently even though there are no differences between them to justify this, and therefore unacceptable.

It is this realisation that we are on par with one another, which is the reason why our morality must include some recognition of the needs of others and this is why Ethical egoism fails as a moral theory.

4. KANTIANISM

An advocate of deontological ethics, Immanuel Kant (1724-1804), formulated the duty ethics, now named after him. He maintains that a good man is one who habitually acts rightly, and that a right action is that which is done from a sense of duty. In other words, duty ethics calls on people to act from a sense of obligation. And this obligation springs from reason rather than experience. Thus a moral principle will not depend on empirical data and will be binding on everyone. This is what Kant calls the Categorical Imperative.

A good action, according to Kant, is not good because it produces result, but rather because it is a moral action done from a sense of duty to the moral law.

Kantian ethics is an ethical theory first proposed by the German philosopher Immanuel Kant based on the idea of moral duty. It asserts that a good will is the only intrinsically good thing and that an action is only good if performed out of duty, rather than out of practical need or desire. This was based on Kant's emphasis on reason for developing moral laws and his belief in the need to be able to universalise moral decisions, which led to the principle of the categorical imperative. Kant proposed five formulations of his ethical theory: The Categorical Imperative, from which all other formulations were derived, states that moral actions must be performed out of duty to the moral law. The Formula of Universal Law asserts that the principles behind an action must be universalisable. The Formula of Humanity as an End in Itself ensures that the motivation behind every action must be the good of humanity; this was the basis he gave to the categorical imperative. The Formula of Autonomy expresses the idea that a rational agent is bound to the categorical imperative by their will, rather than any outside influence. The Kingdom of Ends suggests that moral agents should act as if their maxims will set the laws in a 'Kingdom of Ends'. It has been suggested that Kant's influences included his parents' Pietism, his teacher Martin Knutzen, the political philosopher Jean-Jacques Rousseau, the contemporary debate between rationalism and empiricism, and the influence of natural law in ethical theory. Kantian ethics has influenced other scholars, including Jürgen Habermas's theory of discourse ethics, John Rawls's political theory, and Jacques Lacan's contribution to psychoanalysis. Kant's ethics has been criticized by philosophers for failing to provide specific enough ethics to affect decision-making and for dealing with abstract ideas, rather than practical situations. The stress of duty over desire has been criticized for possibly denying human nature, as well as for leading to immoral acts if moral good is done out of duty, rather than a desire to do good.

Although all of Kant's work contains relations to his ethical theories, he clearly defined them in the works *Groundwork of the Metaphysics of Morals*, *Critique of Practical Reason* and *Metaphysics of Morals*. Kant did not attempt to tell people what to do, but to help people determine how to behave by using their reason. Kant worked during the period of the Enlightenment where thinkers began to embrace the use of reason. As a part of this tradition, Kant based his ethical theory on the belief that reason should be used to determine what ought to be done. In doing so, he developed five formulations of his moral law: his first formulation was the categorical imperative; from this, he derived the Formula of Universal Law, the Formula of Humanity as an End in Itself, the Formula of Autonomy and the Kingdom of Ends.

In his combined works Kant constructed a basis for an ethical law, which he defined as morality, based on the concept of duty. Kant used the term "duty" to differentiate it from selfish motives, or motives to reach a

certain goal. He argued that the only thing in the world which could be intrinsically good is a good will — he defended this by arguing that an action is only "good" if it is performed out of duty towards the moral law. Kant believed that all human behavior is based on maxims, the reason and principles behind a moral action.

In his Groundwork of the Metaphysics of Morals Kant constructed his ethical theory; in his Critique of Practical Reason he described the moral law as divine and described it as an essential a priori law of every free will in itself. Later, he connected his moral philosophies with politics and law in his Metaphysics of Morals.

CATEGORICAL IMPERATIVE

The primary formulation of Kant's ethics is the categorical imperative, from which he derived his other four formulations. Kant believed that an action can only be morally worthy if it is performed in accordance with the categorical imperative, meaning that it is performed out of a sense of duty to the moral law. For a maxim to be in line with the categorical imperative, Kant proposed that it must be universally applicable to all autonomous beings. Actions which are performed because of some other motive Kant referred to as acting according to the hypothetical imperative, which he did not equate with moral worthiness. Maxims which could not be universally applied fell under the hypothetical imperative.

FORMULA OF UNIVERSAL LAW

Kant rejected the idea that ethics could be determined by the status quo but should instead be determined by reason and logic, requiring that they can be universalised. Kant's Formula of Universal Law requires that one's actions are based only on maxims that would be accepted as universal law. This means that the principle behind any action should be applicable in any situation. This was based on a principle of non-contradiction: Kant believed that the maxim (or principle) upon which one acts should not cause a contradiction. A contradiction would occur if moral actions would become impossible were others to adopt the principle behind any action performed.

Kant believed that morality was the objective law of reason: just as objective physical laws necessitate physical actions (apples fall down because of gravity, for example), objective rational laws necessitate rational actions. He thus believed that a perfectly rational being must also be perfectly moral because, a perfectly rational being will subjectively find it necessary to do what is rationally necessary. Because humans are not perfectly rational (they act in part on instinct), Kant believed that humans must conform their subjective will with objective rational laws, which he called conformity obligation.

Kant argued that the objective law of reason is a priori, existing externally from rational being. Just as physical laws exist prior to physical beings, rational laws (morality) exist prior to rational beings. Therefore, according to Kant, rational morality is universal and cannot change depending on circumstance. From this understanding of an objective morality, Kant derived his first Categorical Imperative: Act only on the maxim whereby thou canst at the same time will that it should become a universal law.

FORMULA OF RATIONAL BEINGS AS ENDS IN THEMSELVES

Kant held rational beings to the same level as the rational law: morality. He concluded that all rational agents were co-legislators of the rational law because they were in part ends of the law. Simply by existing, rational agents constrain the moral actions of others, legislating that others cannot morally treat them as a mere means to an end. Kant noted that all humans are rational and so the law developed for rational agents applies to them. From this, Kant made his second formulation of the categorical imperative.

So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only.

Kant justified this second formulation by asserting that moral obligation is rational necessity. Therefore, that which is rationally willed (i.e. conforms to the rational necessity) is morally right (i.e. conforms to moral obligation). All rational agents rationally will themselves to be an end and never merely a means, entailing that it is morally obligatory that all rational agents be treated as ends in themselves, never merely as means.

FORMULA OF AUTONOMY

Kant's Formula of Autonomy expresses the idea that it is a rational will which obliges an agent to obey the categorical imperative, rather than any other outside influence. Kant believed that any moral law which was based on fulfilling some other interest would deny the categorical imperative, leading him to argue that moral law must only arise from a rational will. This principle requires people to recognize the right of other people to act autonomously and means that, as moral laws must be universalisable, what is required of one person is required of all.

INFLUENCES ON KANTIAN ETHICS

The philosopher Louis Pojman has suggested four strong influences on Kant's ethics. The first suggested is the Lutheran sect Pietism, to which Kant's parents subscribed. Pietism emphasised honesty and moral living over doctrinal belief, more concerned with feeling than rationality. Kant believed that rationality is required, but that it should be concerned about morality and good will. Manfred Kuehn, Kant's biographer, suggested that the values Kant's parents held, of "hard work, honesty, cleanliness, and independence", set him an example and influenced him more than their Pietism did. In the Stanford Encyclopedia of Philosophy, Michael Rohlf suggested that Kant was influenced by his teacher, Martin Knutzen, himself influenced by the work of Christian Wolff and John Locke, and who introduced Kant to the work of English physicist Isaac Newton. Pojman also suggested that Kant was influenced by the political philosopher Jean-Jacques Rousseau and that his work, *The Social Contract*, influenced his view on the fundamental worth of human beings. Pojman suggested that Kant was influenced by the contemporary debate between rationalism and empiricism: rationalists believed that morality is a form of moral knowledge, while empiricists argued that morality is based on human desire. Kant rejected the idea that morality is based on human nature and argued that reason, rather than human desire, can determine what is moral. Finally, Pojman suggested that Kant was influenced by natural law and intuitionist moral theories.

Jürgen Habermas proposed a theory of discourse ethics which he claimed to be a descendant of Kantian ethics. His theory encapsulated the idea that an action should be based on communication between those involved, where the interests and intentions are discussed so that they can be understood by all. Habermas believed that agreement between the parties was crucial for a moral decision to be reached: he rejected any form of coercion or manipulation. Like Kantian ethics, discourse ethics is a cognitive ethical theory, in that it supposes that there can be truth and falsity in ethical questions. It also formulates a rule by which ethical actions can be determined, in a similar way to Kantian ethics. Finally, Habermas proposed that ethical actions should be universalisable, as Kant did.

Habermas argued that his ethical theory improved upon the ethics proposed by Kant. Habermas rejected Kant's belief in a dual world and did not base his ethical theory on such a belief. Kant distinguished between the phenomena, the world which can be sensed and experienced by humans, and the noumena, the spiritual world, inaccessible to humans; he based his ethical theory on this dichotomy. For Kant, a moral agent could

determine what was moral by consulting their own reason; Habermas argued that what is moral can be determined through discourse with other agents.

JOHN RAWLS

John Rawls constructed a political theory based on his interpretation of Kantian ethics in his work *A Theory of Justice*. Rawls admired Kant's ethical theory and it influenced his development of a social contract theory in which he proposed the use of a veil of ignorance on the original position. Rawls proposed that the order of a society, the social contract, should be decided upon from behind a veil of ignorance in an attempt to produce a fair society, interpreting Kant's idea of equality as equal respect. He based his theory of justice on the belief that individuals are free, equal, and moral; he believed human morality consists of their reasonableness and rationality. Rawls proposed the concept of full autonomy, similar to Kant's moral autonomy, which suggested that autonomous agents act from the principle of justice. Like Kant's, Rawls's philosophy attempts to achieve an ethical ideal through the use of practical reason. Rawls dismissed much of Kant's dualism, arguing that the structure of Kantian ethics is clearer without it, once reformulated—he described this as one of the goals of *A Theory of Justice*.

5. ACT UTILITARIANISM

There are theories that give us principles that guide our actions by telling us what is morally right and wrong. Can you think of any common examples of moral principles? (Examples: the Ten Commandments, the Golden Rule). The main moral theories that we will look at are: Consequentialist Ethics, Duty-Defined Ethics, Divine Command Theory, and Virtue Theory.

Consequentialism: Utilitarianism is the main consequentialist moral theory. On this view, an action is right if it has the **best consequences** for people. Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873) are two of the main classical utilitarians. Utilitarianism is the basis for modern cost-benefit analysis.

Theory of the good: Classical utilitarians are hedonists. They aim at happiness, which they understand in terms of pleasure and freedom from pain.

Mill states, "...the theory of life on which this theory of morality is grounded – namely, that pleasure and freedom from pain are the only things desirable as ends; that all desirable things are desirable either for pleasure inherent in themselves or as means to the promotion of pleasure and the prevention of pain."

Greatest Happiness Principle: This principle says what is morally right. Utilitarians define what is morally right in terms of their definition of what is good. What is right is what maximizes happiness for the greatest number of people.

Mill States, "...the 'greatest happiness principle' holds that **actions are right** in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure."

Act Utilitarianism: The main theory of utilitarianism. This view endorses a maximizing conception of right action: The right act is the one that, compared to all the alternative acts open to the agent, produces the greatest net amount of goodness. For each alternative action, add up the pleasures (benefits) and subtract the pains (burdens) that would result as a consequence of performing each action. The morally right action is the one that would produce the greatest amount of happiness for people, taking into account **everyone who would be affected by the action**.

Act-Utilitarianism's Criterion of Rightness:

- Criterion of Rightness: An act is **morally right** if and only if it produces at least as much utility (i.e., aggregate welfare) as any other available alternative act would.

- An act is **morally obligatory** (morally required to do it) if and only if it has a higher utility than any other available alternative.
- An act is **morally wrong** if and only if it has less utility than some other available alternative.
- An act is **morally optional** if and only if it is, in terms of utility production, tied for first place with at least one other available alternative.

6. RULE UTILITARIANISM

This is different from act utilitarianism. Rule utilitarianism applies the utilitarian principle to rules (e.g., always tell the truth), not to each individual act. The idea is that if following a moral rule produces the greatest amount of happiness in the long-run, then it is right to follow it even though following the rule may not produce the greatest happiness in the particular case at hand.

OBJECTIONS TO CLASSICAL UTILITARIANISM

Experience Machine Objection to the idea that pleasure defines the good: Imagine that you could hook up to a machine that would keep you alive and give you an extremely pleasurable virtual fantasy life (like in the movie *The Matrix*) for the rest of your life. Would you hook up?

The Doctrine-Worthy-Of-Swine Objection to the idea that pleasure defines the good. If life has no better end than pleasure, then utilitarianism is a doctrine that is undignified for human beings, since it directs us to become no better than pleasure-filled pigs or animals.

Response: Man is capable of higher, more valuable pleasures (e.g., pleasures of the intellect, of the imagination, and of the moral sentiments). The quality of pleasures varies, and some pleasures are of such high quality that no one would prefer a much larger amount of a lesser pleasure. "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied." So one must take into account the quality of the pleasures.

Exercise: Do you agree with John Stuart Mill that some activities are of such high qualitative character that no amount of pleasure coming from some lower-quality activity could ever be better than any amount of the pleasure coming from these higher-quality activities? If possible, produce a qualitative ranking of the following activities.

- | | |
|-------------------------------------|--|
| 1. Exercising regularly. | 8. Writing letters or a diary. |
| 2. Working in a job that pays well. | 9. Watching TV. |
| 3. Eating in good restaurants. | 10. Being politically active in one's community. |
| 4. Owning a big house. | 11. Watching movies. |
| 5. Having friends. | 12. Having a lover. |
| 6. Helping people in need. | 13. Having a good sense of humor. |
| 7. Having children. | 14. Listening to good music. |

The Godless Objection: Utilitarianism does not recognize God as the supreme law of morals.

Response: If God desires happiness for His creatures, then whatever God reveals about morality necessarily fulfills utilitarianism. Utilitarianism fits the Golden Rule of Jesus of Nazareth.

The No-Time-To Calculate Objection: It would be impossible to apply the principle of utility to acts because it would take too much time to make the calculations. We could never decide to do anything.

Response: It is not necessary to use the principle of utility for every act. We live with the experiences of the whole past duration of the human species. We are all brought up to learn a common morality (secondary rules). This common morality gives us the correct moral intuitions to guide us in our everyday lives. The only time one needs to use the principle of utility is to correct the common morality or to resolve conflicts in

common morality. Common morality is sometimes based on unjust social relations and relations of domination (e.g., slavery and the subjugation of women).

Supererogatory acts: acts that seem to go beyond the call of duty. These are heroic acts. For example, imagine a UPS man delivering a package to a house that is on fire. The firemen say that there is a baby in one of the upstairs rooms, but the fire is too intense to get to it. The UPS man dashes upstairs and brings out the baby. A second example would be the case of a soldier who jumps on a grenade to save the lives of others.

SUPEREROGATORY ACTS HAVE TWO IMPORTANT CHARACTERISTICS:

(1) No one is morally obligated or morally required to do a supererogatory act. It is not morally wrong to avoid such actions. (For example, it would not have been morally wrong if the UPS man had decided not to save the baby.) (2) Supererogatory acts deserve great moral praise. It would be a very good thing if someone did a supererogatory act.

Supererogation Objection: Act utilitarianism seems to imply that there are no supererogatory acts. Contrary to characteristic (1), act utilitarianism seems to require people to do supererogatory acts if these acts produce the greatest amount of happiness. So supererogatory acts are not “beyond the call of duty,” but they are what utilitarianism requires you to do. But if a supererogatory act does not produce the greatest amount of happiness in a given situation, then act utilitarianism says that it is the morally wrong act to perform, which goes against (2).

Response to the objection: Act utilitarianism does not require people to perform supererogatory acts because usually people are not capable of doing them. A person can have an obligation to perform an act only if it is the sort of act that people are usually capable of doing.

Promises objection: Act utilitarianism says that what makes keeping a promise morally right is that it produces more happiness than breaking it. So if breaking a promise produces more happiness, then one should break it. But that is incorrect. What makes keeping a promise morally right is the fact that we have promised, not that it produces more happiness.

Example 1: Let's say that you sincerely promised to pay back \$100 to a friend who loaned it to you. But it turns out that more happiness would be produced if you broke your promise and didn't return the money. Imagine that you would be much better off keeping the \$100, and your friend would hardly miss it because a family crisis has made him forget that he loaned you the money, and he is not poor. Act utilitarianism implies that you should break your promise. Is this right? What would you do?

Example 2: An elderly woman living alone (in poor circumstances with few friends or relatives is dying) and you are at her bedside. She draws your attention to a small case under her bed, which contains some mementos along with the money she has managed to save over the years, despite her apparent poverty. She asks you to take the case and to promise to deliver its contents after she dies to her nephew living in another state. Moved by her plight and by your affection for her, you promise to do as she bids. After a tearful goodbye, you take the case and leave. A few weeks later the old woman dies, and when you open her case you discover that it contains \$50,000. No one else knows about the money or the promise that you made. Now suppose further that the nephew is a compulsive gambler and heavy drinker and that you know -- that if you were to give him the \$50,000 as promised -- he would rapidly squander the money. What would a utilitarian do in this situation? What would you do? What is morally required?

Punishment Objection: Act utilitarianism says that we should punish someone for wrongdoing only if this would produce more happiness in the world than doing something else. So if letting a criminal go unpunished would produce more happiness, then this is what should be done. But this is incorrect. A person simply deserves punishment for the wrong they have done, and the consequences of punishment are irrelevant or have secondary importance.

Response: Punishment will always result in more happiness because it rehabilitates the criminal, it deters others from committing crime, and it satisfies the victim, those who know the victim, and those who want revenge for the criminal act.

JUSTICE OBJECTIONS:

A. Punishing the innocent: Act utilitarianism seems to imply that punishing an innocent person may be the morally right thing to do if it leads to the best consequences. But this is incorrect. It is simply unjust to punish an innocent person, even if this results in the most happiness for everyone.

B. Unjust distributions of benefits and burdens: Act utilitarianism implies that an unjust distribution of benefits and burdens is morally right if it produces the most happiness. But this is not correct.

Imagine that we have a choice between two taxation schemes for a society made up of equal numbers of men and women who all work:

- (a) Tax everyone equally at 10%.
- (b) Don't tax the men and tax the women at 20%.

Imagine that these two schemes produce the same revenue, and equal amounts of happiness result after (a) or (b). Other things being the same, act utilitarianism says that there is no moral difference between (a) and (b). But this is incorrect. There is a moral difference because it violates justice to tax the women at a greater rate, unless there is something to justify the unequal treatment.

C. Killing the innocent: Let's say that there are three people in a hospital. They are going to die (within six months to a year). We cannot save two of them, but we can save the third person (i.e., he will live another 50 years) if we kill the other two and harvest their organs right now. There are no other options to save the third person. Utilitarianism says that we should kill the other two people to save the one person. But this is morally wrong.

OBJECTIONS ABOUT BLAMING AND PRAISING PEOPLE

Example 1: Imagine Joe is a doctor and has an emergency patient with a heart problem. Joe does a quick diagnosis and correctly determines that the patient has a dangerous heart condition P. Joe quickly decides that the best alternative is to give the patient medicine M, which is the standard treatment for patients that have heart problem P. But unknown to Joe and medical knowledge, the patient is a person who will react very badly to medicine M. It turns out that the patient reacts very badly and dies because of the medicine. The patient would not have died had Joe not prescribed medicine M. What are we to say about Joe's decision? Utilitarianism seems to say that Joe did what was morally wrong because Joe's action did not produce the best consequences. But it does not seem that we can blame Joe for what he did. In fact, we might praise him.

Example 2: Imagine that if Hitler's nurse had killed him in the crib, the world would have been much better off than it would have been had she not killed him. Suppose that she killed Hitler in his crib. Did she do the morally right act? Utilitarianism seems to say "Yes" because her killing Hitler would have produced the most good. But it seems that we should not praise the nurse but blame her for killing a child.

Utilitarianism also has problems incorporating our special obligations as parents, siblings, or relatives into our moral thinking. The following example illustrates this problem:

Suppose you are the parent of a beautiful 3-year-old son. This summer you are cruising the Atlantic on an expensive cruise ship. Disaster strikes. The ship sinks. You somehow manage to get on a lifeboat with a motor. All around you, people are drowning and crying for help. Suddenly you see your son 100 yards away. He is frantically trying to stay afloat. In order to save your son you must immediately drive the lifeboat to him. However, just as you are about to do that, you see that two children are about to drown 10 yards away in the opposite direction.

What would you do? What would utilitarianism require you to do? What do you think is the morally right thing to do?

Rights-based objections: Let's say that there are three people in a hospital. They are going to die (within six months to a year). We cannot save two of them, but we can save the third person (i.e., he will live another 50 years) if we kill the other two and harvest their organs right now. There are no other options to save the third

person. Utilitarianism says that we should kill the other two people to save the one person. But this is morally wrong. It is wrong to violate innocent people's right to life.

7. SOCIAL CONTRACT THEORY

(Adapted from the Internet Encyclopedia of Philosophy)

Social Contract Theory, nearly as old as philosophy itself, is the view that persons' moral and/or political obligations are dependent upon a contract or agreement between them to form society. Socrates uses something quite like a social contract argument to explain to Crito why he must remain in prison and accept the death penalty. However, Social Contract Theory is rightly associated with modern moral and political theory and is given its first full exposition and defense by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best known proponents of this enormously influential theory, which has been one of the most dominant theories within moral and political theory throughout the history of the modern West. In the twentieth century, moral and political theory regained philosophical momentum as a result of John Rawls' Kantian version of social contract theory, and was followed by other revisitings of the subject by David Gauthier and others. More recently, philosophers from different perspectives have criticized Social Contract Theory. In particular, feminists and race-conscious philosophers have argued that social contract theory is at least an incomplete picture of our moral and political lives, and may in fact camouflage some of the ways in which the contract is itself parasitical upon the subjugations of classes of persons.

SOCRATES' ARGUMENT

In the early Platonic dialogue, *Crito*, Socrates makes a compelling argument as to why he must stay in prison and accept the death penalty, rather than escape and go into exile in another Greek city. He personifies the Laws of Athens, and, speaking in their voice, explains that he has acquired an overwhelming obligation to obey the Laws because they have made his entire way of life, and even the fact of his very existence, possible. They made it possible for his mother and father to marry, and therefore to have legitimate children, including himself. Having been born, the city of Athens, through its laws, then required that his father care for and educate him. Socrates' life and the way in which that life has flourished in Athens are each dependent upon the Laws. Importantly, however, this relationship between citizens and the Laws of the city are not coerced. Citizens, once they have grown up, and have seen how the city conducts itself, can choose whether to leave, taking their property with them, or stay. Staying implies an agreement to abide by the Laws and accept the punishments that they mete out. And, having made an agreement that is itself just, Socrates asserts that he must keep to this agreement that he has made and obey the Laws, in this case, by staying and accepting the death penalty. Importantly, the contract described by Socrates is an implicit one: it is implied by his choice to stay in Athens, even though he is free to leave.

In Plato's most well-known dialogue, *Republic*, social contract theory is represented again, although this time less favorably. In Book II, Glaucon offers a candidate for an answer to the question "what is justice?" by representing a social contract explanation for the nature of justice. What men would most want is to be able to commit injustices against others without the fear of reprisal, and what they most want to avoid is being treated unjustly by others without being able to do injustice in return. Justice then, he says, is the conventional result of the laws and covenants that men make in order to avoid these extremes. Being unable to commit injustice with impunity (as those who wear the ring of Gyges would), and fearing becoming victims themselves, men decide that it is in their interests to submit themselves to the convention of justice. Socrates rejects this view, and most of the rest of the dialogue centers on showing that justice is worth having for its own sake, and that the just man is the happy man. So, from Socrates' point of view, justice has a value that greatly exceeds the prudential value that Glaucon assigns to it.

These views, in the *Crito* and the *Republic*, might seem at first glance inconsistent: in the former dialogue Socrates uses a social contract type of argument to show why it is just for him to remain in prison, whereas in the latter he rejects social contract as the source of justice. These two views are, however, reconcilable. From Socrates' point of view, a just man is one who will, among other things, recognize his obligation to the state by obeying its laws. The state is the morally and politically most fundamental entity, and as such deserves our

highest allegiance and deepest respect. Just men know this and act accordingly. Justice, however, is more than simply obeying laws in exchange for others obeying them as well. Justice is the state of a well-regulated soul, and so the just man will also necessarily be the happy man. So, justice is more than the simple reciprocal obedience to law, as Glaucon suggests, but it does nonetheless include obedience to the state and the laws that sustain it. So in the end, although Plato is perhaps the first philosopher to offer a representation of the argument at the heart of social contract theory, Socrates ultimately rejects the idea that social contract is the original source of justice.

MODERN SOCIAL CONTRACT THEORY

A. THOMAS HOBBS

Thomas Hobbes, 1588-1679, lived during the most crucial period of early modern England's history: the English Civil War, waged from 1642-1648. To describe this conflict in the most general of terms, it was a clash between the King and his supporters, the Monarchists, who preferred the traditional authority of a monarch, and the Parliamentarians, most notably led by Oliver Cromwell, who demanded more power for the quasi-democratic institution of Parliament. Hobbes represents a compromise between these two factions. On the one hand he rejects the theory of the Divine Right of Kings, which is most eloquently expressed by Robert Filmer in his *Patriarcha* or the Natural Power of Kings, (although it would be left to John Locke to refute Filmer directly). Filmer's view held that a king's authority was invested in him (or, presumably, her) by God, that such authority was absolute, and therefore that the basis of political obligation lay in our obligation to obey God absolutely. According to this view, then, political obligation is subsumed under religious obligation. On the other hand, Hobbes also rejects the early democratic view, taken up by the Parliamentarians, that power ought to be shared between Parliament and the King. In rejecting both these views, Hobbes occupies the ground of one who is both radical and conservative. He argues, radically for his times, that political authority and obligation are based on the individual self-interests of members of society who are understood to be equal to one another, with no single individual invested with any essential authority to rule over the rest, while at the same time maintaining the conservative position that the monarch, which he called the Sovereign, must be ceded absolute authority if society is to survive.

Hobbes' political theory is best understood if taken in two parts: his theory of human motivation, Psychological Egoism, and his theory of the social contract, founded on the hypothetical State of Nature. Hobbes has, first and foremost, a particular theory of human nature, which gives rise to a particular view of morality and politics, as developed in his philosophical masterpiece, *Leviathan*, published in 1651. The Scientific Revolution, with its important new discoveries that the universe could be both described and predicted in accordance with universal laws of nature, greatly influenced Hobbes. He sought to provide a theory of human nature that would parallel the discoveries being made in the sciences of the inanimate universe. His psychological theory is therefore informed by mechanism, the general view that everything in the universe is produced by nothing other than matter in motion. According to Hobbes, this extends to human behavior. Human macro-behavior can be aptly described as the effect of certain kinds of micro-behavior, even though some of this latter behavior is invisible to us. So, such behaviors as walking, talking, and the like are themselves produced by other actions inside of us. And these other actions are themselves caused by the interaction of our bodies with other bodies, human or otherwise, which create in us certain chains of causes and effects, and which eventually give rise to the human behavior that we can plainly observe. We, including all of our actions and choices, are then, according to this view, as explainable in terms of universal laws of nature as are the motions of heavenly bodies. The gradual disintegration of memory, for example, can be explained by inertia. As we are presented with ever more sensory information, the residue of earlier impressions 'slows down' over time. From Hobbes' point of view, we are essentially very complicated organic machines, responding to the stimuli of the world mechanistically and in accordance with universal laws of human nature.

In Hobbes' view, this mechanistic quality of human psychology implies the subjective nature of normative claims. 'Love' and 'hate', for instance, are just words we use to describe the things we are drawn to and repelled by, respectively. So, too, the terms 'good' and 'bad' have no meaning other than to describe our appetites and aversions. Moral terms do not, therefore, describe some objective state of affairs, but are rather reflections of individual tastes and preferences.

In addition to Subjectivism, Hobbes also infers from his mechanistic theory of human nature that humans are necessarily and exclusively self-interested. All men pursue only what they perceive to be in their own individually considered best interests - they respond mechanistically by being drawn to that which they desire and repelled by that to which they are averse. This is a universal claim: it is meant to cover all human actions under all circumstances – in society or out of it, with regard to strangers and friends alike, with regard to small ends and the most generalized of human desires, such as the desire for power and status. Everything we do is motivated solely by the desire to better our own situations, and satisfy as many of our own, individually considered desires as possible. We are infinitely appetitive and only genuinely concerned with our own selves. According to Hobbes, even the reason that adults care for small children can be explicated in terms of the adults' own self-interest (he claims that in saving an infant by caring for it, we become the recipient of a strong sense of obligation in one who has been helped to survive rather than allowed to die).

In addition to being exclusively self-interested, Hobbes also argues that human beings are reasonable. They have in them the rational capacity to pursue their desires as efficiently and maximally as possible. Their reason does not, given the subjective nature of value, evaluate their given ends, rather it merely acts as "Scouts, and Spies, to range abroad, and find the way to the things Desired". Rationality is purely instrumental. It can add and subtract, and compare sums one to another, and thereby endows us with the capacity to formulate the best means to whatever ends we might happen to have.

From these premises of human nature, Hobbes goes on to construct a provocative and compelling argument for why we ought to be willing to submit ourselves to political authority. He does this by imagining persons in a situation prior to the establishment of society, the State of Nature.

According to Hobbes, the justification for political obligation is this: given that men are naturally self-interested, yet they are rational, they will choose to submit to the authority of a Sovereign in order to be able to live in a civil society, which is conducive to their own interests. Hobbes argues for this by imagining men in their natural state, or in other words, the State of Nature. In the State of Nature, which is purely hypothetical according to Hobbes, men are naturally and exclusively self-interested, they are more or less equal to one another, (even the strongest man can be killed in his sleep), there are limited resources, and yet there is no power able to force men to cooperate. Given these conditions in the State of Nature, Hobbes concludes that the State of Nature would be unbearably brutal. In the State of Nature, every person is always in fear of losing his life to another. They have no capacity to ensure the long-term satisfaction of their needs or desires. No long-term or complex cooperation is possible because the State of Nature can be aptly described as a state of utter distrust. Given Hobbes' reasonable assumption that most people want first and foremost to avoid their own deaths, he concludes that the State of Nature is the worst possible situation in which men can find themselves. It is the state of perpetual and unavoidable war.

The situation is not, however, hopeless. Because men are reasonable, they can see their way out of such a state by recognizing the laws of nature, which show them the means by which to escape the State of Nature and create a civil society. The first and most important law of nature commands that each man be willing to pursue peace when others are willing to do the same, all the while retaining the right to continue to pursue war when others do not pursue peace. Being reasonable, and recognizing the rationality of this basic precept of reason, men can be expected to construct a Social Contract that will afford them a life other than that available to them in the State of Nature. This contract is constituted by two distinguishable contracts. First, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the State of Nature. Second, they must imbue some one person or assembly of persons with the authority and power to enforce the initial contract. In other words, to ensure their escape from the State of Nature, they must both agree to live together under common laws, and create an enforcement mechanism for the social contract and the laws that constitute it. Since the sovereign is invested with the authority and power to mete out punishments for breaches of the contract which are worse than not being able to act as one pleases, men have good, albeit self-interested, reason to adjust themselves to the artifice of morality in general, and justice in particular. Society becomes possible because, whereas in the State of Nature there was no power able to "overawe them all", now there is an artificially and conventionally superior and more powerful person who can force men to cooperate. While living under the authority of a Sovereign can be harsh (Hobbes argues that because men's passions can be expected to



overwhelm their reason, the Sovereign must have absolute authority in order for the contract to be successful) it is at least better than living in the State of Nature. And, no matter how much we may object to how poorly a Sovereign manages the affairs of the state and regulates our own lives, we are never justified in resisting his power because it is the only thing which stands between us and what we most want to avoid, the State of Nature.

According to this argument, morality, politics, society, and everything that comes along with it, all of which Hobbes calls 'commodious living' are purely conventional. Prior to the establishment of the basic social contract, according to which men agree to live together and the contract to embody a Sovereign with absolute authority, nothing is immoral or unjust - anything goes. After these contracts are established, however, then society becomes possible, and people can be expected to keep their promises, cooperate with one another, and so on. The Social Contract is the most fundamental source of all that is good and that which we depend upon to live well. Our choice is either to abide by the terms of the contract, or return to the State of Nature, which Hobbes argues no reasonable person could possibly prefer.

Given his rather severe view of human nature, Hobbes nonetheless manages to create an argument that makes civil society, along with all its advantages, possible. Within the context of the political events of his England, he also managed to argue for a continuation of the traditional form of authority that his society had long since enjoyed, while nonetheless placing it on what he saw as a far more acceptable foundation.

B. JOHN LOCKE

For Hobbes, the necessity of an absolute authority, in the form of a Sovereign, followed from the utter brutality of the State of Nature. The State of Nature was completely intolerable, and so rational men would be willing to submit themselves even to absolute authority in order to escape it. For John Locke, 1632-1704, the State of Nature is a very different type of place, and so his argument concerning the social contract and the nature of men's relationship to authority are consequently quite different. While Locke uses Hobbes' methodological device of the State of Nature, as do virtually all social contract theorists, he uses it to a quite different end. Locke's arguments for the social contract, and for the right of citizens to revolt against their king were enormously influential on the democratic revolutions that followed, especially on Thomas Jefferson, and the founders of the United States.

Locke's most important and influential political writings are contained in his *Two Treatises on Government*. The first treatise is concerned almost exclusively with refuting the argument of Robert Filmer's *Patriarcha*, that political authority was derived from religious authority, also known by the description of the Divine Right of Kings, which was a very dominant theory in seventeenth-century England. The second treatise contains Locke's own constructive view of the aims and justification for civil government, and is titled "An Essay Concerning the True Original Extent and End of Civil Government".

According to Locke, the State of Nature, the natural condition of mankind, is a state of perfect and complete liberty to conduct one's life as one best sees fit, free from the interference of others. This does not mean, however, that it is a state of license: one is not free to do anything at all one pleases, or even anything that one judges to be in one's interest. The State of Nature, although a state wherein there is no civil authority or government to punish people for transgressions against laws, is not a state without morality. The State of Nature is pre-political, but it is not pre-moral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the Law of Nature. The Law of Nature, which is on Locke's view the basis of all morality, and given to us by God, commands that we not harm others with regards to their "life, health, liberty, or possessions". Because we all belong equally to God, and because we cannot take away that which is rightfully His, we are prohibited from harming one another. So, the State of Nature is a state of liberty where persons are free to pursue their own interests and plans, free from interference, and, because of the Law of Nature and the restrictions that it imposes upon persons, it is relatively peaceful.

The State of Nature therefore, is not the same as the state of war, as it is according to Hobbes. It can, however devolve into a state of war, in particular, a state of war over property disputes. Whereas the State of Nature is the state of liberty where persons recognize the Law of Nature and therefore do not harm one another, the state of war begins between two or more men once one man declares war on another, by stealing from him, or by trying

to make him his slave. Since in the State of Nature there is no civil power to whom men can appeal, and since the Law of Nature allows them to defend their own lives, they may then kill those who would bring force against them. Since the State of Nature lacks civil authority, once war begins it is likely to continue. And this is one of the strongest reasons that men have to abandon the State of Nature by contracting together to form civil government.

Property plays an essential role in Locke's argument for civil government and the contract that establishes it. 

According to Locke, private property is created when a person mixes his labor with the raw materials of nature. So, for example, when one tills a piece of land in nature, and makes it into a piece of farmland, which produces food, then one has a claim to own that piece of land and the food produced upon it. (This led Locke to conclude that America didn't really belong to the natives who lived there, because they were, on his view, failing to utilize the basic material of nature. In other words, they didn't farm it, so they had no legitimate claim to it, and others could therefore justifiably appropriate it.) Given the implications of the Law of Nature, there are limits as to how much property one can own: one is not allowed to take so more from nature than oneself can use, thereby leaving others without enough for themselves. Because nature is given to all of mankind by God for its common subsistence, one cannot take more than his own fair share. Property is the linchpin of Locke's argument for the social contract and civil government because it is the protection of their property, including their property in their own bodies, that men seek when they decide to abandon the State of Nature.

According to Locke, the State of Nature is not a condition of individuals, as it is for Hobbes. Rather, it is populated by mothers and fathers with their children, or families - what he calls "conjugal society". These societies are based on the voluntary agreements to care for children together, and they are moral but not political. Political society comes into being when individual men, representing their families, come together in the State of Nature and agree to each give up the executive power to punish those who transgress the Law of Nature, and hand over that power to the public power of a government. Having done this, they then become subject to the will of the majority. In other words, by making a compact to leave the State of Nature and form society, they make "one body politic under one government" and submit themselves to the will of that body. One joins such a body, either from its beginnings, or after it has already been established by others, only by explicit consent. Having created a political society and government through their consent, men then gain three things which they lacked in the State of Nature: laws, judges to adjudicate laws, and the executive power necessary to enforce these laws. Each man therefore gives over the power to protect himself and punish transgressors of the Law of Nature to the government that he has created through the compact.

Given that the end of "men's uniting into common-wealths" is the preservation of their wealth, and preserving their lives, liberty, and well-being in general, Locke can easily imagine the conditions under which the compact with government is destroyed, and men are justified in resisting the authority of a civil government, such as a King. When the executive power of a government devolves into tyranny, such as by dissolving the legislature and therefore denying the people the ability to make laws for their own preservation, then the resulting tyrant puts himself into a State of Nature, and specifically into a state of war with the people, and they then have the same right to self-defense as they had before making a compact to establish society in the first place. In other words, the justification of the authority of the executive component of government is the protection of the people's property and well-being, so when such protection is no longer present, or when the king becomes a tyrant and acts against the interests of the people, they have a right, if not an outright obligation, to resist his authority. The social compact can be dissolved and the process to create political society begun anew.

Because Locke did not envision the State of Nature as grimly as did Hobbes, he can imagine conditions under which one would be better off rejecting a particular civil government and returning to the State of Nature, with the aim of constructing a better civil government in its place. It is therefore both the view of human nature, and the nature of morality itself, which account for the differences between Hobbes' and Locke's views of the social contract.

C. JEAN-JACQUES ROUSSEAU

Jean-Jacques Rousseau, 1712-1778, lived and wrote during what was arguably the headiest period in the intellectual history of modern France--the Enlightenment. He was one of the bright lights of that intellectual

movement, contributing articles to the *Encyclopédie* of Diderot, and participating in the salons in Paris, where the great intellectual questions of his day were pursued.

Rousseau has two distinct social contract theories. The first is found in his essay, *Discourse on the Origin and Foundations of Inequality Among Men*, commonly referred to as the *Second Discourse*, and is an account of the moral and political evolution of human beings over time, from a State of Nature to modern society. As such it contains his naturalized account of the social contract, which he sees as very problematic. The second is his normative, or idealized theory of the social contract, and is meant to provide the means by which to alleviate the problems that modern society has created for us, as laid out in the *Second Discourse*.

Rousseau wrote his *Second Discourse* in response to an essay contest sponsored by the Academy of Dijon. (Rousseau had previously won the same essay contest with an earlier essay, commonly referred to as the *First Discourse*.) In it he describes the historical process by which man began in a State of Nature and over time 'progressed' into civil society. According to Rousseau, the State of Nature was a peaceful and quixotic time. People lived solitary, uncomplicated lives. Their few needs were easily satisfied by nature. Because of the abundance of nature and the small size of the population, competition was non-existent, and persons rarely even saw one another, much less had reason for conflict or fear. Moreover, these simple, morally pure persons were naturally endowed with the capacity for pity, and therefore were not inclined to bring harm to one another.

As time passed, however, humanity faced certain changes. As the overall population increased, the means by which people could satisfy their needs had to change. People slowly began to live together in small families, and then in small communities. Divisions of labor were introduced, both within and between families, and discoveries and inventions made life easier, giving rise to leisure time. Such leisure time inevitably led people to make comparisons between themselves and others, resulting in public values, leading to shame and envy, pride and contempt. Most importantly however, according to Rousseau, was the invention of private property, which constituted the pivotal moment in humanity's evolution out of a simple, pure state into one characterized by greed, competition, vanity, inequality, and vice. For Rousseau the invention of property constitutes humanity's 'fall from grace' out of the State of Nature.

Having introduced private property, initial conditions of inequality became more pronounced. Some have property and others are forced to work for them, and the development of social classes begins. Eventually, those who have property notice that it would be in their interests to create a government that would protect private property from those who do not have it but can see that they might be able to acquire it by force. So, government gets established, through a contract, which purports to guarantee equality and protection for all, even though its true purpose is to fossilize the very inequalities that private property has produced. In other words, the contract, which claims to be in the interests of everyone equally, is really in the interests of the few who have become stronger and richer as a result of the developments of private property. This is the naturalized social contract, which Rousseau views as responsible for the conflict and competition from which modern society suffers.

The normative social contract, argued for by Rousseau in *The Social Contract* (1762), is meant to respond to this sorry state of affairs and to remedy the social and moral ills that have been produced by the development of society. The distinction between history and justification, between the factual situation of mankind and how it ought to live together, is of the utmost importance to Rousseau. While we ought not to ignore history, nor ignore the causes of the problems we face, we must resolve those problems through our capacity to choose how we ought to live. Might never makes right, despite how often it pretends that it can.

The *Social Contract* begins with the most oft-quoted line from Rousseau: "Man was born free, and he is everywhere in chains". This claim is the conceptual bridge between the descriptive work of the *Second Discourse*, and the prescriptive work that is to come. Humans are essentially free, and were free in the State of Nature, but the 'progress' of civilization has substituted subservience to others for that freedom, through dependence, economic and social inequalities, and the extent to which we judge ourselves through comparisons with others. Since a return to the State of Nature is neither feasible nor desirable, the purpose of politics is to restore freedom to us, thereby reconciling who we truly and essentially are with how we live together. So, this is the fundamental philosophical problem that *The Social Contract* seeks to address: how can we be free and live

together? Or, put another way, how can we live together without succumbing to the force and coercion of others? We can do so, Rousseau maintains, by submitting our individual, particular wills to the collective or general will, created through agreement with other free and equal persons. Like Hobbes and Locke before him, and in contrast to the ancient philosophers, all men are made by nature to be equals, therefore no one has a natural right to govern others, and therefore the only justified authority is the authority that is generated out of agreements or covenants.

The most basic covenant, the social pact, is the agreement to come together and form a people, a collectivity, which by definition is more than and different from a mere aggregation of individual interests and wills. This act, where individual persons become a people is "the real foundation of society". Through the collective renunciation of the individual rights and freedom that one has in the State of Nature, and the transfer of these rights to the collective body, a new 'person', as it were, is formed. The sovereign is thus formed when free and equal persons come together and agree to create themselves anew as a single body, directed to the good of all considered together. So, just as individual wills are directed towards individual interests, the general will, once formed, is directed towards the common good, understood and agreed to collectively. Included in this version of the social contract is the idea of reciprocated duties: the sovereign is committed to the good of the individuals who constitute it, and each individual is likewise committed to the good of the whole. Given this, individuals cannot be given liberty to decide whether it is in their own interests to fulfill their duties to the Sovereign, while at the same time being allowed to reap the benefits of citizenship. They must be made to conform themselves to the general will, they must be "forced to be free".

For Rousseau, this implies an extremely strong and direct form of democracy. One cannot transfer one's will to another, to do with as he or she sees fit, as one does in representative democracies. Rather, the general will depend on the coming together periodically of the entire democratic body, each and every citizen, to decide collectively, and with at least near unanimity, how to live together, i.e., what laws to enact. As it is constituted only by individual wills, these private, individual wills must assemble themselves regularly if the general will is to continue. One implication of this is that the strong form of democracy which is consistent with the general will is also only possible in relatively small states. The people must be able to identify with one another, and at least know who each other are. They cannot live in a large area, too spread out to come together regularly, and they cannot live in such different geographic circumstances as to be unable to be united under common laws. (Could the present-day U.S. satisfy Rousseau's conception of democracy? It could not.) Although the conditions for true democracy are stringent, they are also the only means by which we can, according to Rousseau, save ourselves, and regain the freedom to which we are naturally entitled.

Rousseau's social contract theories together form a single, consistent view of our moral and political situation. We are endowed with freedom and equality by nature, but our nature has been corrupted by our contingent social history. We can overcome this corruption, however, by invoking our free will to reconstitute ourselves politically, along strongly democratic principles, which is good for us, both individually and collectively.

3. MORE RECENT SOCIAL CONTRACT THEORIES

A. JOHN RAWLS' A THEORY OF JUSTICE

In 1972, the publication of John Rawls' extremely influential *A Theory of Justice* brought moral and political philosophy back from what had been a long hiatus of philosophical consideration. Rawls' theory relies on a Kantian understanding of persons and their capacities. For Rawls, as for Kant, persons have the capacity to reason from a universal point of view, which in turn means that they have the particular moral capacity of judging principles from an impartial standpoint. In *A Theory of Justice*, Rawls argues that the moral and political point of view is discovered via impartiality. (It is important to note that this view, delineated in *A Theory of Justice*, has undergone substantial revisions by Rawls, and that he described his later view as "political liberalism".) He invokes this point of view (the general view that Thomas Nagel describes as "the view from nowhere") by imagining persons in a hypothetical situation, the Original Position, which is characterized by the epistemological limitation of the Veil of Ignorance. Rawls' original position is his highly abstracted version of the State of Nature. It is the position from which we can discover the nature of justice and what it requires of us as individual persons and of the social institutions through which we will live together cooperatively. In the original

position, behind the veil of ignorance, one is denied any particular knowledge of one's circumstances, such as one's gender, race, particular talents or disabilities, one's age, social status, one's particular conception of what makes for a good life, or the particular state of the society in which one lives. Persons are also assumed to be rational and disinterested in one another's well-being. These are the conditions under which, Rawls argues, one can choose principles for a just society which are themselves chosen from initial conditions that are inherently fair. Because no one has any of the particular knowledge he or she could use to develop principles that favor his or her own particular circumstances, in other words the knowledge that makes for and sustains prejudices, the principles chosen from such a perspective are necessarily fair. For example, if one does not know whether one is female or male in the society for which one must choose basic principles of justice, it makes no sense, from the point of view of self-interested rationality, to endorse a principle that favors one sex at the expense of another, since, once the veil of ignorance is lifted, one might find oneself on the losing end of such a principle. Hence Rawls describes his theory as "justice as fairness." Because the conditions under which the principles of justice are discovered are basically fair, justice proceeds out of fairness.

In such a position, behind such a veil, everyone is in the same situation, and everyone is presumed to be equally rational. Since everyone adopts the same method for choosing the basic principles for society, everyone will occupy the same standpoint: that of the disembodied, rational, universal human. Therefore all who consider justice from the point of view of the original position would agree upon the same principles of justice generated out of such a thought experiment. Any one person would reach the same conclusion as any other person concerning the most basic principles that must regulate a just society.

The principles that persons in the Original Position, behind the Veil of Ignorance, would choose to regulate a society at the most basic level (i.e., prior even to a Constitution) are called by Rawls, aptly enough, the Two Principles of Justice. These two principles determine the distribution of both civil liberties and social and economic goods. The first principle states that each person in a society is to have as much basic liberty as possible, as long as everyone is granted the same liberties. That is, there is to be as much civil liberty as possible as long as these goods are distributed equally. (This would, for example, preclude a scenario under which there was a greater aggregate of civil liberties than under an alternative scenario, but under which such liberties were not distributed equally amongst citizens.) The second principle states that while social and economic inequalities can be just, they must be available to everyone equally (i.e., no one is to be on principle denied access to greater economic advantage) and such inequalities must be to the advantage of everyone. This means that economic inequalities are only justified when the least advantaged member of society is nonetheless better off than she would be under alternative arrangements. So, only if a rising tide truly does carry all boats upward, can economic inequalities be allowed for in a just society. The method of the original position supports this second principle, referred to as the Difference Principle, because when we are behind the veil of ignorance, and therefore do not know what our situation in society will be once the veil of ignorance is lifted, we will only accept principles that will be to our advantage even if we end up in the least advantaged position in society.

These two principles are related to each other by a specific order. The first principle, distributing civil liberties as widely as possible consistent with equality, is prior to the second principle, which distributes social and economic goods. In other words, we cannot decide to forgo some of our civil liberties in favor of greater economic advantage. Rather, we must satisfy the demands of the first principle, before we move on to the second. From Rawls' point of view, this serial ordering of the principles expresses a basic rational preference for certain kinds of goods, i.e., those embodied in civil liberties, over other kinds of goods, i.e., economic advantage.

Having argued that any rational person inhabiting the original position and placing him or herself behind the veil of ignorance can discover the two principles of justice, Rawls has constructed what is perhaps the most abstract version of a social contract theory. It is highly abstract because rather than demonstrating that we would or even have signed to a contract to establish society, it instead shows us what we must be willing to accept as rational persons in order to be constrained by justice and therefore capable of living in a well ordered society. The principles of justice are more fundamental than the social contract as it has traditionally been conceived. Rather, the principles of justice constrain that contract, and set out the limits of how we can construct society in the first place. If we consider, for example, a constitution as the concrete expression of the social contract, Rawls' two principles of justice delineate what such a constitution can and cannot require of us. Rawls' theory of justice

constitutes, then, the Kantian limits upon the forms of political and social organization that are permissible within a just society.

B. DAVID GAUTHIER

In his 1986 book, *Morals by Agreement*, David Gauthier set out to renew Hobbesian moral and political philosophy. In that book, he makes a strong argument that Hobbes was right: we can understand both politics and morality as founded upon an agreement between exclusively self-interested yet rational persons. He improves upon Hobbes' argument, however, by showing that we can establish morality without the external enforcement mechanism of the Sovereign. Hobbes argued that men's passions were so strong as to make cooperation between them always in danger of breaking down, and thus that a Sovereign was necessary to force compliance. Gauthier, however, believes that rationality alone convinces persons not only to agree to cooperate, but to stick to their agreements as well.

We should understand ourselves as individual Robinson Crusoes, each living on our own island, lucky or unlucky in terms of our talents and the natural provisions of our islands, but able to enter into negotiations and deals with one another to trade goods and services with one another. Entering into such agreements is to our own advantage, and so rationality convinces us to both make such agreements and stick to them as well.

Gauthier has an advantage over Hobbes when it comes to developing the argument that cooperation between purely self-interested agents is possible. He has access to rational choice theory and its sophisticated methodology for showing how such cooperation can arise. In particular, he appeals to the model of the Prisoner's Dilemma to show that self-interest can be consistent with acting cooperatively. (There is a reasonable argument to be made that we can find in Hobbes a primitive version of the problem of the Prisoner's Dilemma.)

According to the story of the Prisoner's Dilemma, two people have been brought in for questioning, conducted separately, about a crime they are suspected to have committed. The police have solid evidence of a lesser crime that they committed, but need confessions in order to convict them on more serious charges. Each prisoner is told that if she cooperates with the police by informing on the other prisoner, then she will be rewarded by receiving a relatively light sentence of one year in prison, whereas her cohort will go to prison for ten years. If they both remain silent, then there will be no such rewards, and they can each expect to receive moderate sentences of two years. And if they both cooperate with police by informing on each other, then the police will have enough to send each to prison for five years. The dilemma then is this: in order to serve her own interests as well as possible, each prisoner reasons that no matter what the other does she is better off cooperating with the police by confessing. Each reasons: "If she confesses, then I should confess, thereby being sentenced to five years instead of ten. And if she does not confess, then I should confess, thereby being sentenced to one year instead of two. So, no matter what she does, I should confess." The problem is that when each reasons this way, they each confess, and each goes to prison for five years. However, had they each remained silent, thereby cooperating with each other rather than with the police, they would have spent only two years in prison.

According to Gauthier, the important lesson of the Prisoner's Dilemma is that when one is engaged in interaction such that others' actions can affect one's own interests, and vice versa, one does better if one acts cooperatively. By acting to further the interests of the other, one serves one's own interests as well. We should, therefore, insofar as we are rational, develop within ourselves the dispositions to constrain ourselves when interacting with others. We should become "constrained maximizers" (CMs) rather remain the "straightforward maximizers" (SMs) that we would be in a State of Nature.

Both SMs and CMs are exclusively self-interested and rational, but they differ with regard to whether they take into account only strategies, or both the strategies and utilities, of those with whom they interact. To take into account the others' strategies is to act in accordance with how you expect the others will act. To take into account their utilities is to consider how they will fare as a result of your action and to allow that to affect your own actions. Both SMs and CMs take into account the strategies of the other with whom they interact. But whereas SMs do not take into account the utilities of those with whom they interact, CMs do. And, whereas CMs are afforded the benefits of cooperation with others, SMs are denied such advantage. According to Gauthier, when interacting in Prisoner's Dilemma-like situations, where the actions of others can affect one's own

outcome, and vice versa, rationality shows that one's own interest is best pursued by being cooperative, and therefore agents rationally dispose themselves to constrain the maximization of their own utility by adopting principles of morality. According to Gauthier, rationality is a force strong enough to give persons internal reasons to cooperate. They do not, therefore, need Hobbes' Sovereign with absolute authority to sustain their cooperation. The enforcement mechanism has been internalized. "Morals by agreement" are therefore created out of the rationality of exclusively self-interested agents.

CONTEMPORARY CRITIQUES OF SOCIAL CONTRACT THEORY

Given the longstanding and widespread influence that social contract theory has had, it comes as no surprise that it is also the objects of many critiques from a variety of philosophical perspectives. Feminists and race-conscious philosophers, in particular, have made important arguments concerning the substance and viability of social contract theory.

A. FEMINIST ARGUMENTS

For the most part, feminism resists any simple or universal definition. In general though, feminists take women's experiences seriously, as well as the impact that theories and practices have for women's lives. Given the pervasive influence of contract theory on social, political, and moral philosophy, then, it is not surprising that feminists should have a great deal to say about whether contract theory is adequate or appropriate from the point of view of taking women seriously. To survey all of the feminist responses to social contract theory would carry us well beyond the boundaries of the present article. I will concentrate therefore on just three of those arguments: Carole Pateman's argument about the relation between the contract and women's subordination to men, feminist arguments concerning the nature of the liberal individual, and the care argument.

THE SEXUAL CONTRACT

Carole Pateman's 1988 book, *The Sexual Contract*, argues that lying beneath the myth of the idealized contract, as described by Hobbes, Locke, and Rousseau, is a more fundamental contract concerning men's relationship to women. Contract theory represents itself as being opposed to patriarchy and patriarchal right. (Locke's social contract, for example, is set by him in stark contrast to the work of Robert Filmer who argued in favor of patriarchal power.) Yet the "original pact" (2) that precedes the social contract entered into by equals is the agreement by men to dominate and control women. This 'original pact' is made by brothers, literally or metaphorically, who, after overthrowing the rule of the father, then agree to share their domination of the women who were previously under the exclusive control of one man, the father. The change from "classical patriarchy" to modern patriarchy is a shift, then, in who has power over women. It is not, however, a fundamental change in whether women are dominated by men. Men's relationships of power to one another change, but women's relationship to men's power does not. Modern patriarchy is characterized by a contractual relationship between men, and part of that contract involves power over women. This fact, that one form of patriarchy was not overthrown completely, but rather was replaced with a different form, in which male power was distributed amongst more men, rather than held by one man, is illustrated by Freud's story of the genesis of civilization. According to that story, a band of brothers, lorded over by a father who maintained exclusive sexual access to the women of the tribe, kill the father, and then establish a contract among themselves to be equal and to share the women. This is the story, whether we understand Freud's tale to be historically accurate or not, of modern patriarchy and its deep dependence on contract as the means by which men control and dominate women.

Patriarchal control of women is found in at least three paradigmatic contemporary contracts: the marriage contract, the prostitution contract, and the contract for surrogate motherhood. Each of these contracts is concerned with men's control of women, or a particular man's control of a particular woman generalized. According to the terms of the marriage contract, in most states in the U.S., a husband is accorded the right to sexual access, prohibiting the legal category of marital rape. Prostitution is a case in point of Pateman's claim that modern patriarchy requires equal access by men to women, in particular sexual access, access to their bodies. And surrogate motherhood can be understood as more of the same, although in terms of access to women's reproductive capacities. All these examples demonstrate that contract is the means by which women are

dominated and controlled. Contract is not the path to freedom and equality. Rather, it is one means, perhaps the most fundamental means, by which patriarchy is upheld.

THE NATURE OF THE LIBERAL INDIVIDUAL

Following Pateman's argument, a number of feminists have also called into question the very nature of the person at the heart of contract theory. The Liberal Individual, the contractor, is represented by the Hobbesian man, Locke's proprietor, Rousseau's "Noble Savage", Rawls's person in the original position, and Gauthier's Robinson Crusoe. The liberal individual is purported to be universal: raceless, sexless, classless, disembodied, and is taken to represent an abstract, generalized model of humanity writ large. Many philosophers have argued, however, that when we look more closely at the characteristics of the liberal individual, what we find is not a representation of universal humanity, but a historically located, specific type of person. C.B. Macpherson, for example, has argued that Hobbesian man is, in particular, a bourgeois man, with the characteristics we would expect of a person during the nascent capitalism that characterized early modern Europe. Feminists have also argued that the liberal individual is a particular, historical, and embodied person. (As have race-conscious philosophers, such as Charles Mills, to be discussed below.) More specifically, they have argued that the person at the heart of liberal theory, and the social contract, is gendered. Christine Di Stefano, in her 1991 book *Configurations of Masculinity*, shows that a number of historically important modern philosophers can be understood to develop their theories from within the perspective of masculinity, as conceived of in the modern period. She argues that Hobbes's conception of the liberal individual, which laid the groundwork for the dominant modern conception of the person, is particularly masculine in that it is conceived as atomistic and solitary and as not owing any of its qualities, or even its very existence, to any other person, in particular its mother. Hobbes's human, is therefore, radically individual, in a way that is specifically owing to the character of modern masculinity. Virginia Held, in her 1993 book, *Feminist Morality*, argues that social contract theory implicitly relies on a conception of the person that can be best described as "economic man." "Economic man" is concerned first and foremost to maximize his own, individually considered interests, and he enters into contracts as a means by which to achieve this end. "Economic man", however, fails to represent all persons in all times and places. In particular, it fails to adequately represent children and those who provide them with the care they require, who have historically been women. The model of "economic man" cannot, therefore, fairly claim to be a general representation of all persons. Similarly, Annette Baier argues that Gauthier's conception of the liberal individual who enters into the social contract as a means by which to maximize his own individually considered interests is gendered in that it does not take seriously the position of either children or the women who most usually are responsible for caring for those children.

ARGUING FROM CARE

Theorizing from within the emerging tradition of care ethics, feminist philosophers such as Baier and Held argue that social contract theory fails as an adequate account of our moral or political obligations. Social contract theory, in general, only goes so far as to delineate our rights and obligations. But this may not be enough to adequately reveal the full extent of what it means to be a moral person, and how fully to respond to others with whom one interacts through relations of dependence. Baier argues that Gauthier, who conceives of affective bonds between persons as non-essential and voluntary, therefore fails to represent the fullness of human psychology and motivations. She argues that this therefore leads to a crucial flaw in social contract theory. Liberal moral theory is in fact parasitic upon the very relations between persons from which it seeks to liberate us. While Gauthier argues that we are freer the more that we can see affective relations as voluntary, we must nonetheless, in the first place, be in such relationships (e.g., the mother-child relationship) in order to develop the very capacities and qualities lauded by liberal theory. Certain kinds of relationships of dependence, in other words, are necessary in the first place if we are to become the very kinds of persons who are capable of entering into contracts and agreements. In a similar vein, Held has argued that the model of "economic man" fails to capture much of what constitutes meaningful moral relations between people. Understanding human relations in purely contractual terms constitutes, according to her argument "an impoverished view of human aspiration". She therefore suggests that we consider other models of human relationships when looking for insight into morality. In particular, she offers up the paradigm of the mother-child relationship to at least supplement the model of

individual self-interested agents negotiating with one another through contracts. Such a model is more likely to match up with many of the moral experiences of most people, especially women.

Feminist critiques of the contractarian approaches to our collective moral and political lives continue to reverberate through social and political philosophy. One such critique, that of Carole Pateman, has influenced philosophers writing outside of feminist traditions.

RACE-CONSCIOUS ARGUMENT

Charles Mills' 1997 book, *The Racial Contract*, is a critique not only of the history of western political thought, institutions, and practices, but, more specifically, of the history of social contract theory. It is inspired by Carole Pateman's *The Sexual Contract*, and seeks to show that non-whites have a similar relationship to the social contract as do women. As such, it also calls into question the supposed universality of the liberal individual who is the agent of contract theory.

Mills' central argument is that there exists a 'racial contract' that is even more fundamental to western society than the social contract. This racial contract determines in the first place who counts as full moral and political persons, and therefore sets the parameters of who can 'contract in' to the freedom and equality that the social contract promises. Some persons, in particular white men, are full persons according to the racial contract. As such they are accorded the right to enter into the social contract, and into particular legal contracts. They are seen as fully human and therefore as deserving of equality and freedom. Their status as full persons accords them greater social power. In particular, it accords them the power to make contracts, to be the subjects of the contract, whereas other persons are denied such privilege and are relegated to the status of objects of contracts.

This racial contract is to some extent a meta-contract, which determines the bounds of personhood and parameters of inclusion and exclusion in all the other contracts that come after it. It manifests itself both formally and informally. It is an agreement, originally among European men in the beginning of the modern period, to identify themselves as 'white' and therefore as fully human, and to identify all others, in particular the natives with whom they were beginning to come into contact, as 'other': non-white and therefore not fully human. So, race is not just a social construct, as others have argued, it is more especially a political construct, created to serve a particular political end, and the political purposes of a specific group. The contract allows some persons to treat other persons, as well as the lands they inhabit, as resources to be exploited. The enslavement of millions of Africans and the appropriation of the Americas from those who inhabited them, are examples of this racial contract at work in history (such as Locke's claim that Native Americans did not own the land they lived on because they did not farm it and therefore did not own it). This contract is not hypothetical, as Hobbes describes the one argued for in his *Leviathan*. This is an actual contract, or series of contracts, made by real men of history. It is found in such documents as Papal Bulls and Locke's writings on Native Americans, and acted upon in such historical events as the voyages of discovery made by Europeans and the colonization of Africa, Asia, and the Americas. The racial contract makes possible and justifies some people, in virtue of their alleged superiority, exploiting the peoples, lands, and resources of other races.

From Mills' perspective then, racism is not just an unhappy accident of Western democratic and political ideals. It is not the case that we have a political system that was perfectly conceived and unfortunately imperfectly applied. One of the reasons that we continue to think that the problem of race in the West is relatively superficial, that it does not go all the way down, is the hold that the idealized social contract has on our imagination. We continue to believe, according to Mills, in the myths that social contract theory tells us - that everyone is equal, that all will be treated the same before the law, that the Founding Fathers were committed to equality and freedom for all persons, etc. One of the very purposes of social contract theory, then, is to keep hidden from view the true political reality - some persons will be accorded the rights and freedoms of full persons, and the rest will be treated as sub-persons. The racial contract informs the very structure of our political systems, and lays the basis for the continuing racial oppression of non-whites. We cannot respond to it, therefore, by simply adding more non-whites into the mix of our political institutions, representation, and so on. Rather, we must reexamine our politics in general, from the point of view of the racial contract, and start from where we are, with full knowledge of how our society has been informed by the systematic exclusion of some persons from the realm of politics and contract. This "naturalized" feature of the racial contract, meaning that it

tells a story about who we actually are and what is included in our history, is better, according to Mills, because it holds the promise of making it possible for us to someday actually live up to the norms and values that are at the heart of the Western political traditions.

Virginia Held has argued that "Contemporary Western society is in the grip of contractual thinking". Contractual models have come to inform a vast variety of relations and interaction between persons, from students and their teachers, to authors and their readers. Given this, it would be difficult to overestimate the effect that social contract theory has had, both within philosophy, and on the wider culture. Social contract theory is undoubtedly with us for the foreseeable future. But so too are the critiques of such theory, which will continue to compel us to think and rethink the nature of both ourselves and our relations with one another.

SUMMARY

In this unit we considered the several broad divisions of ethical theories. It was explained that the teleological theory considers a good action on the results it produces while the deontological theory considers a good action on its intrinsic value. The apostle of deontological ethics, Immanuel Kant maintains that it is the duty of man to do the right thing always. This is what he calls the "Categorical Imperative".

Within the teleological group, there are three main sub groups. They are the ethical utilitarians, the ethical egoists and the ethical pragmatics. All these sub groups have their different points of emphasis which make them unique.

Also within the deontological school of ethics there are different sub groups, such as the divine command adherents, Kant's duty ethics adherents and the natural law adherents. However, since the natural law position is independent of any religious orientation, it is the school of ethics adopted in the drafting all international charters. Accordingly, most of the universal freedoms enjoyed everywhere in the world today derive from the natural law ethics.

LESSON 5**THE SOURCES OF ETHICS**

Introductory Comments: The development and evolution of ethics as a discipline reflects the varying “trends” in different civilizations at different times in different places. The study of ethics also reflects change in what and how much we know about our internal and external world. As we learn more, the range of ethical analysis expands and expands. For example:

1- The French Revolution brought with it recognition of the special status of human-kind, challenging older views of ethical norms.

2-Capitalism’s ascendancy brought with it new definitions and applications of ethics

3-Psychology and psychiatry: The Freudian revolution (and others) introduced new insights into our ethical (or a-ethical) motivations

4. Socio-biology, similarly, pointed out the biological aspects of our ethical process and conclusions, e.g. influence of hormone, genetic determinants, drug induced ethics etc

5. Chemistry

6. New technologies raised new issues that ethicists could barely imagine, including a more complex view of “consequences”, a reconsideration of what is “pain” and “pleasure” of our actions; the cultural alternative to traditional held views of the good and the bad

7. Exposure to other cultures in an our world becoming ever smaller

I. HISTORIC SOURCES OF ETHICAL PRINCIPLES:

There have been many efforts to examine how human-kind can best achieve the ethical “good”, ranging from seeking to be God-like and virtuous; to applying pure reason to ethical dilemmas; to examining the consequences (not the motivations) of actions; to seeking an absolute guide in religion or nature; to relying on our ego or hedonist needs ethics can be maximized.

The Sources**A. The Great Thinkers** (From Socrates, Plato & Aristotle onward)**B. Religion**

(1) **Primary source:** Revelation

- Quran
- Old Testament
- New Testament
- Teachings of Buddha (are these divine in origin)
- Bhagadavita
- Book of Mormon (Revelations)

(2) Unwritten “oral” law tradition in traditional societies

(3) **Secondary Religious Source**

Authoritative religious commentaries and explanation

- (a) Talmud (Judiasm) are the commentaries on the laws set down in the Torah
- (b) Code of Jewish Law

(c) Sharia

(d) Hadith

C. Notions of natural law

D. Cultural history

E. The State

F. The Party

G. The Family

H. The market system

I. Our Biology

J. Our Psychology (including Freud)

K. One's Conscience, Super-ego

II. THE SOURCES OF ETHICS: IN A CONTEMPORARY, PRACTICAL SENSE

A: Law: Is the law a source of ethics: Mostly no but ethics is sometimes source of law

B: Religious guidance & direction

C: Canons of ethics exist in most every profession

Examples

Lawyers

Doctors

Hospital administrators

Real Estate Brokers

Nurses

(6) State and national officials

Teachers

Engineers

Transport engineers

Yoga

Cyber workers

Journalists

And hundreds more

(b.) Why do we need to learn ethical theories with all these ethical canons and rules?

(c) Are these canons of ethics voluntary or involuntary? By whom are they enforced?

D: Precedent; prior experiences; reasoning by analogy

Law consists of enforceable rules governing relationships among individuals and between individuals and their society. Its focus is on maintaining a balance between stability and change. In many ways, its purpose is to establish predictability in the consequences of one's acts (or business acts)

III. THE HISTORIC SOURCES OF DOMESTIC LAW (in US but may apply elsewhere). The sources of the law are, to a great extent, a product of the form of government and how government justifies its right to authority. Depending on the political structure, law has claimed its source in everything from divine guidance (in Japan; even today in Thailand; until recently in Nepal...); to quasi-religious teaching at a level less than divine guidance (e.g. Confucius); to rights claimed by lineage/descent; to the requirements of the Marxist dialectic materialism; to imperative of the consent of the governed.

- A. Great thinkers
- B. Religion
- C. Ideology
- D. Public morality
- E. Evolving political structures

IV. THE CONTEMPORARY PRACTICAL SOURCES OF THE LAW: Using the USA as an example, the contemporary sources of law are usually listed as:

A: THE CONSTITUTION OR OTHER FIRST LAW/PRIME DIRECTIVE (US: CHINA): The federal constitution is a general document that distributes power among the branches of the government. It is the supreme law of the land. Any law that conflicts with it is invalid. The states also have constitutions, but the federal constitution prevails if their provisions conflict. In other

B: COMMON LAW: The English system unified its local courts in 1066. This unified system, based on the decisions judges make in cases, is the common law system. The common law system involves the application of principles applied in earlier cases with similar facts. This use of precedent, known as the doctrine of *stare decisis*, permits a predictable, quick, and fair resolution of cases. *Stare decisis* is important because part of the function of law is to maintain stability. If the application of the law was unpredictable, there would be no consistent rules to follow and no stability.

C: ADMINISTRATIVE LAW: Administrative law consists of the rules, orders, and decisions of administrative agencies. Federal agencies are created by Congress through enabling legislation, which specifies the powers of an agency.

ANOTHER APPROACH ON MAIN SOURCES OF ETHICS:

- Professional conduct: “law of lawyering” - legislation, regulations and rules
 - Treats ethics as branch of law – institutionally regulated/enforced
 - Legal framework
 - Legal Profession Act 2004
 - Legal Profession Regulation 2005
 - Professional Conduct Rules (NSW Law Society and NSW Bar Association)
 - National Model Rules
 - Case Law
 - ISSUE: rules must be used with personal judgment etc
- Social ethics: general moral or ethical theory/philosophy
 - Deontological: right action = respect individual autonomy (means as impt as ends)
 - Teleological (consequence): right actions = good consequences (ends justify means)
 - Virtue ethics: right = individual’s motivation at personal level

- ISSUE: social ethics too abstract
- Personal and professional values:
 - Personal ideas re right/wrong
 - Influenced by peers, religious/political faith etc.

THIRD APPROACH ON SOURCES OF ETHICS

Ethics have their roots in:

a. **ANCIENT HISTORY:**

- Especially in the Greek culture which adopted rules for its citizens, such as "Do the greatest good for the greatest number."

b. **RELIGION:**

- All of the great religions of the world have the equivalent of the Ten Commandments to guide the thinking and actions of their members.

- These guidelines specifically state how people should act, especially in relationships with other human beings.

- The golden rule is universal, as are universal values of honesty, courage, justice, tolerance, and full use of talents.

c. **SYSTEMS OF LAW:**

- Laws summarize decisions of technically trained judges as well as juries of peers who decide if a wrong has been committed.

- New laws also arise as the values and attitudes of the community change.

- Ethics often begin where the law leaves off.

d. **SOCIAL CUSTOMS:**

- Define what is acceptable and unacceptable in a certain community.

- Members of any community either condone (support) or condemn (resist) specific actions.

Examples:

-- Dry (no alcohol sold) counties.

-- "X" rated bars, films allowed or not allowed.

e. **Our own personal code of conduct:**

- Based upon a very personal assessment of what's right or wrong.

- Begins with early childhood and matures through our life experience.

- Related to attitudes of people we respect, the confidence we have in our own standards, how often we've been supported or burned by past decisions, etc.

Examples:

-- Cheating on IRS.

-- Falsifying training reports.

Additional Reading

A BRIEF SUMMARY OF HISTORY OF ETHICS

(Summarized from Short History of Ethics by Rogers, R.A.P., Mac Millan Books First 1911, ed. 1937 Edinburgh) SHORT HISTORY OF ETHICS

The known history of pure ethics or ethics (moral) theories begin with ancient Greek philosophers (Sophists, Socrates, Socratic schools, Plato, Aristotle, Epicurus, Stoics) and after recovered by early English positivists has been the main topic of discussions in the Medieval times in Europe. As the scholastic doctrines are by-passed (therefore Christian Ethics is not a scientific term anymore), we come to the illuminated times after the Medieval, and continue with Hobbes, the Father of Modern Ethics. This type of ethics is known by two logical methods; criticism and comparison. After Hobbes, English and German schools of ethics have been differentiated. These led to English Intuitionists (naturalists) followed by Utilitarians against Kantian ethics. Throughout 19th Century these ideas have been discussed very fiercely throughout Europe. Then Comte, Darwin, and finally Spencer followed by Green came in, who set the evolution concept into physical sciences as well as the development of ethics. So at the beginning of 20th century Ethics was more with evolutionary concepts but still divided between Utilitarians and Kantians (Kant's Categorical Imperative).

WHAT IS ETHICS?

Ethics deals with human well-being, and discusses,

- (1) The nature of “individual” good
- (2) The nature of “social” good
- (3) The relation between these
- (4) The ethical motives that exist for the individual to pursue “social good”, or to whatever is “morally right”
- (5) The relation between “pleasure” and “good”
- (6) The nature of “virtue” (in antique ethics)
- (7) Duty and moral obligation (in modern ethics)
- (8) The freedom of the will
- (9) The ethical worth of “Positive Morality”

The following questions will serve to dig into the nature of the problems which Ethics attempts to solve:

- Is “happiness” the “ultimate end” of actions?
- Is “virtue” preferable to “pleasure”?
- How do “pleasure” and “happiness” differ?
- What is meant by saying that “I ought to perform some particular action or respect some general precept such as the keeping of promises”?
- Am I under any obligation to seek the welfare of other persons, as well as my own?
- If so, what is the right proportion between the two welfares?
- What is meant by “freedom of the will”?
- Is feeling or reason the right guide to conduct?
- What do the terms “good”, “right”, obligation”, “duty”, “conscience” signify, both practically or theoretically?

These problems and similar others associated with them form the subject matter of Ethics, which may be described as the “science which investigates the general principles for determining the true worth of the ultimate ends of human conduct”. These principles, if they could be discovered and exactly formulated, so

that the rules of this conduct could be deduced from them, would constitute Ideal Morality. Practical Morality, on the other hand, is the body of laws (the ethical code) accepted by an age or community as correct principles for determining the true worth of actions, and expressed in the form of judgments of approval or disapproval. For example, the Positive Morality of our age approves the industry, temperance, honesty, and a regard for human life, while it condemns their opposites.

It must not be granted that Positive and Ideal Moralities coincide. Positive Morality may change with the time and country as it reflects cultures, conventions and customs. Remember that slavery, polygamy, witch-burning, torture, tipping,... were once legal and acceptable.

Ultimate Ends: This is the most important definition of Pure (Theoretical) Ethics. It is defined as the end of a deliberate action for the sake of which it is performed. Some ends are pursued chiefly, as a means of realization of other ends. An ultimate end, however, is one that is desired for its own sake, quite apart from its utility in helping towards the attainment of other ends.

Ethics deal with ultimate ends of human conduct. And values them with the criteria commonly accepted as “ethical”. Therefore, we need a good list of the values, methods of evaluation and use a set of “canons” or laws for sound decisions. This separates it from all other sciences.

Pursuits and studies, and deliberate actions are performed because they tend either directly or indirectly, or in both ways, to satisfy one or more interests. They are valued either as means or as ends, or both.

This is the main problem of Ethics; “are the satisfaction of these interests and the attainment of these desired objects, good in themselves?”

- (1) It is not possible for an individual to satisfy all his interests therefore use some principle of ethical selection, according to which some interests are to be preferred to others.
 - (2) Some interests, if allowed to draw attention beyond a limit are destructive of their own satisfactions, and interfere with the satisfaction of other interests.
 - (3) The interest of one person often conflict with those of others and Ethics has to try to find a practical harmony between the interests of the different members of society.
- (1) and (2) lead to individual ethics, (3) leads to social ethics.

Ethics seeks for a principle that will determine the true worth of the ends of conduct, to see if the true worth is said to be “good”. What is “good”? What is “morally good”? These questions require a scientific definition. What is consciously approved by a person for its own sake is “good”. Satisfaction of “interest” is “good”. Pleasurable feeling is “good”.

In comparing one limited “good” with another, we may have to consider the quality, duration, and intensity of the satisfaction yielded by each, as well as the tendency which each may have to help or hinder the attainment of other goods by the agent or by other persons. In this way “immediate” and “remote” goods are defined:

Immediate good is the momentary satisfaction by a single person

Remote good is the satisfaction which is not confined to the present moment or to only one person.

A social remote good and a remote good in distant timeframe are realized in both instant time and in the individuals’ experiences.

MORAL OBLIGATION, DUTY AND FREE WILL

When we say that a person “ought” to obey a law (obligation), it is equivalent to saying his “duty” to do so. In other words it is the preference of a higher good to a lower good.

Elementary “freedom of the will” is the power by human beings of subordinating impulses and lower goods to higher goods.

VIRTUE/VICE

Virtue is a property of character, though indirectly applied to actions or motives. A morally virtuous man, is one who respects the moral codes enjoining Industry, Temperance, Honor, Justice, Charity, Mercy,... Vice is the opposite of virtue.

It is a habitual tendency to pursue always the best attainable ends. Virtue has wider meaning than moral virtue. The difference is special virtue (like skill in music, mechanics, oratory,...) which may interfere with higher virtues. Excellence in a profession by this virtue is, however, a higher virtue. All moral virtues are on the same level; the highest. Natural or special virtues are not attainable by everyone; thus community does not expect everyone has them as virtue.

WELL-BEING, HAPPINESS AND PLEASURE

Well-being signifies the permanent realization of good by an individual. Ancient Greek philosophers and schools of thought had all differing views of well-being and its definition. Aristotle, however, puts it that “an individual cannot regard his own well-being apart from others” which is still one of the best corollaries of the well-being in our day.

HISTORY OF ETHICS, MAIN PHILOSOPHERS AND THE SCHOOLS OF THOUGHT

Antiquities or the Ancient Greek Era

Started by the SOPHISTS who studied the human conduct for the first time:

Positive side: PROTOGORAS (of Abdera, 480 B.C.): Good is subjective; MAN IS THE MEASURE OF ALL THINGS (therefore all practical philosophy is personal in a positive way that the idea of good in individual's mind create moral codes for the social group)

Negative side: GORGIAS (of Leontini, 483 B.C.): (as the good and truth are subjective in the man's mind there are only particular feelings of limited subjective nature, THE GOOD OF ANOTHER CANNOT BE AN END OF ACTION TO ME (Skepticism-Egoism)

Then came the philosophers who took the individual as the main subject of ethical conduct:

SOCRATES

(Athens, 469-399 B.C.): he was against SOPHISTS LIKE Gorgias and their egoism, SOCRATES IS the founder of Science of Ethics:

VIRTUE IS KNOWLEDGE (it may be thought and learned);

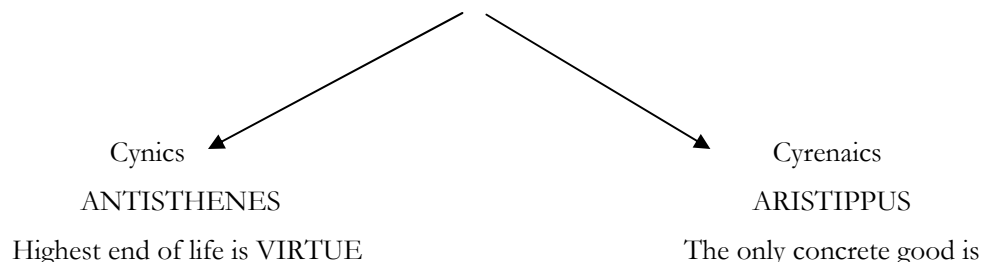
HE WHO KNOWS MUST ACT ACCORDINGLY;

NO ONE VOLUNTARILY FOLLOWS EVIL;

VICE CAN ONLY BE BECAUSE OF IGNORANCE;

ONLY BY SELF-KNOWLEDGE CAN FREEDOM BE ACQUIRED;

LEARN YOUR PASSIONS WITHIN YOUR OWN SOUL AND CONTROL THEM TO REACH WISDOM)



PAIN is good to reach VIRTUE

IMMEDIATE PLEASURE

SO A WISE MAN TRIES TO GET
MOST OUT OF LIFE

students of Socrates,
Socratic schools of thought

PLATO

(427-347 B.C.)

Defined the social good and individual good and their relationships (Famous book of Republic)

The four cardinal virtues belonging to the “state”; wisdom, fortitude OR courage, temperance, justice. Justice is the highest virtue and it includes all others. It requires individuality, too. Every member of the state should be ‘just’. Social and individual goods are defined. Ideal rulers are described for an ideal state; he should be a philosopher, a lover of wisdom, combining intellectual insight.

With practical intelligence. They should be educated for literature, art, gymnastic, mathematics (SO THAT HE WILL KNOW HOW TO GENERALIZE AND FIND THE ACCURACY IN DETAILS), and tested for fortitude. Chief rulers must be chosen from those who are best qualified in dialectics (wisdom).

Highest good: absolute good in the form of ideas, ideals and reason in the universe. He defined mortal body and immortal soul. He defines the good man in whom knowledge, emotion and desire work in perfect harmony, no part of the soul tyrannizing over the rest, each part exercising its due activity.

ARISTOTLE

(384-322, Stagira, Thrace)

(the separation of the sciences)

He defines “political science” as the highest of all sciences, as everything else aims at the “good” of the state.

Social good is above the individual good, only in so far as individuals make up a society and their actions attain the good of the society, it is the subject of political sciences (science of ethics).

Defines well being as the activity of the soul in accordance with virtue during the period of a complete life.

The definition of the truth Doctrine of mean: every kind of excellence (=virtue) is a mean between two extreme, one an excess and the other a defect.

Epicurus (Hedonism arose first by Cyrenaics and sympathized by Romans, psychological Hedonism).

Pleasure is the primary and natural end at which every sensible being aims, there is no other good. We use only our senses to decide what is good for a lifetime.

The stoics (mainly a Latin school following the Epicurian teachings, with the main difference of having reason instead of feelings, divine spirit; some theists and materialists)

(founded by Zeno, and followed by Seneca, 340-265 BC., Epictetus, A.D. First century)

1. Well-being is acting rationally, or in accordance with the nature of the man; a nature partly self-determined, partly determined by the eternal laws of the universe, and those laws are the expressions of reason, are thus in conformity with man’s self-determining nature.

2. Rational action and morally virtuous action are the same.

3. From social point of view their results an extension of the areas of duties to all beings possessing reason, that is, to the whole of humanity.

BRIEF DISCUSSION OF THE GREEK ETHICS

From the Protagoras's idea of the "good" sought by practical philosophy is personal, but it must not be understood as exclusively "egoistic" as the social good consisting mainly of individual goods in the society is always superior to the good of one individual only.

Yet, he suggested the principle of subjectivity in Ethics by expressing the ethical principle of "relativity" which means that the laws of social morality are subject to variation- not indeed arbitrarily, but as determined by the changes in social conditions and individual circumstances. An example to relativity; law should be able to distinguish between murder and accidental homicide; starving man stealing a loaf (like in *Les Misérables*, *Séfiller* by Victor Hugo) and a rich man increasing his wealth by fraud.

Some Sophists interpreted Protogoras' statement of "man is the measure of everything" quite negatively. For example Gorgias described "good and true" as being subjective thus leading to "skepticism" and as the particular feeling in the mind of a single person, therefore he is an "egoist". Thrasymachus who is one of his followers suggested that "justice is the private interest of the powerful people".

Sophists following Protogoras later interpreted the principle of relativity to conclude that man can do anything he wants with no regard to the good of the others; however, this understanding led to anarchy and anarchical doctrine by the Sophists. This is why sophists were downgraded by the community and also why Socrates, although his ideas were actually opposing them, was condemned and put to death by the community, ordinary people thinking philosophers would be all the same and he would also refuse to worship the "official" state gods. He emphasized the truth in Protogoras' dictum, as the good is in the personal "well-being (=happiness)" of individuals. It becomes objective by the generalized concepts of the society and transformed into laws. Socrates said that "Virtue" is one and it is the "knowledge". In other words, virtue is teachable, learnable, he who knows must act accordingly. This is clear intellectualism. In his teachings he used a certain discussion consisting of questions and answers. All his ideas known today were reflected by his student Plato as Sokrates has never written a book.

According to Socrates starting point of the knowledge (the virtue) is to be conscious of one's ignorance, next step is to know one's own soul, by knowing the passions within the soul that are working against the wisdom; and to control them; as only by self-control of the passions one can achieve freedom.

After Sokrates the Ethical question became "what is well-being?" and "how to attain happiness?".

Among the disciples of Sokrates, Plato (who is the author of his teacher's discussions, too), and Cynics and Cyrenaics are worth to mention. Cynic school was founded by Antisthenes, he held that the highest end was life according to Virtue, and pain might contribute to Virtue. To look for pleasure, however, meant evil. Cyrenaics, however, were on the opposite end of Cynics; they took "good" as positive and concrete; but the only concrete good they could think of was "immediate pleasure". According to them knowledge and culture were valuable so far as they lead to pleasure, the wise man cultivates self-control to get most of life; but he rules and not ruled by pleasures.

Much later during the modern Ethics era this idea was again revived: Hedonists suggesting that only pleasure is the "good".

Epicurus tried to recombine the Cynism and Cyrenaism, but they were unconcilable as in one "good" is identified with the pleasure of the moment and in the other self-control and mastery over pleasure are recommended.

Plato continued on the basic idea of Protogoras who said that determination of the good of the individual is the main problem in Ethics. This makes up the primary problem of Ethics; that every conscious rational being, acting deliberately, must seek what he believes to be his good, except in so far as his judgment is distorted by passion, or is not strong to influence his will. If he looks for the good of others, it is because he identifies "social good" to affect his own "individual good". This is Socrates' idea of social good as it is the "end" really worth pursuing for its own sake. Indeed, Plato and later Aristotle are more sincere followers of Socrates rather than Cynics and Cyrenaics. For Plato and Aristotle, social good comes in first, rather than individual good. They have added to this the knowledge to be the ultimate end "good". In this way the

mental understanding of man's true nature, as well as his relation with the universe could be included into the picture.

Plato Ethics deals partly with the individual good, and partly with social good as well as the relation in between them. Plato defines the nature and worth of justice, and the means of realizing it in a society as represented by the "State". Justice was earlier defined by Thrasymachus as "the interest of the stronger", as for the rulers justice is compelling the obedience, for the subjects it is the prudent obedience through fear of punishment. Plato wished to show that Justice in the pure sense is essentially good, both for the society and for the individual. He also described the functions of the "State" by "division of labor" that each person doing a job most suitable to his taste and capacity, and getting from others' surplus of their product, in exchange of his own surplus or service. Plato's idea of justice was accepted by Hobbes (founder of exclusive egoism and modern ethics) much later.

Plato also described the 4-Cardinal Virtues of a State; wisdom, courage, temperance and justice. Justice is the wise governing of the ruling class (intellectual aristocracy), courage by the fighting class who needs prior education (ranked next to intellectual by Plato). Temperance (or good character) by all classes, the virtue of order, harmony between all classes (obedience by subjects, wise moderation by rulers) is a must. But for Plato Justice is above all as a Virtue, and is the highest among these four virtues of a State must have. In fact it includes all of the virtues, when rulers govern wisely, when soldiers fight bravely, industry class works with energy and thrift, all obediently for Reason.

According to Plato, Justice is more than an external adjustment of social functions in the individual; its existence is spiritual. Every member of the state must be just simply because they see it the "good" and only then social justice be realized. As such, Justice-in-the-society and Justice-in-man are two different concepts interrelated only by analogy. When they fuse together well-being of all fellow-citizens of the State is realized. This is the perfect or Ideal State in which universal Justice finds its place.

Aristotle realized the "Separation of Sciences" as the main difference from Plato's work. Plato at his time written on metaphysical, theological, ethical, educational, and physical ideas as parts of a Synthetic System as he called it, that these merge together to make up all truth is parts of a great system. Plato's concept is used by Aristotle in this sense, but he saw that an increased knowledge of classified details was essential for the advancement of Sciences. He then started writing on Metaphysics, Politics, Ethics, Psychology, and many of the natural sciences. The Synthetic Philosophical System as used by Plato, was also used much later by Hegel, Comte, Spencer... The coordinated nature of pure sciences in Plato's work led to in-between sciences (such as physical chemistry) and their applications (applied mathematics) in modern times, also. This highest science is the science dealing with the good of the State, which is greater, more perfect, and more divine than the good of any single individual: Political Science.

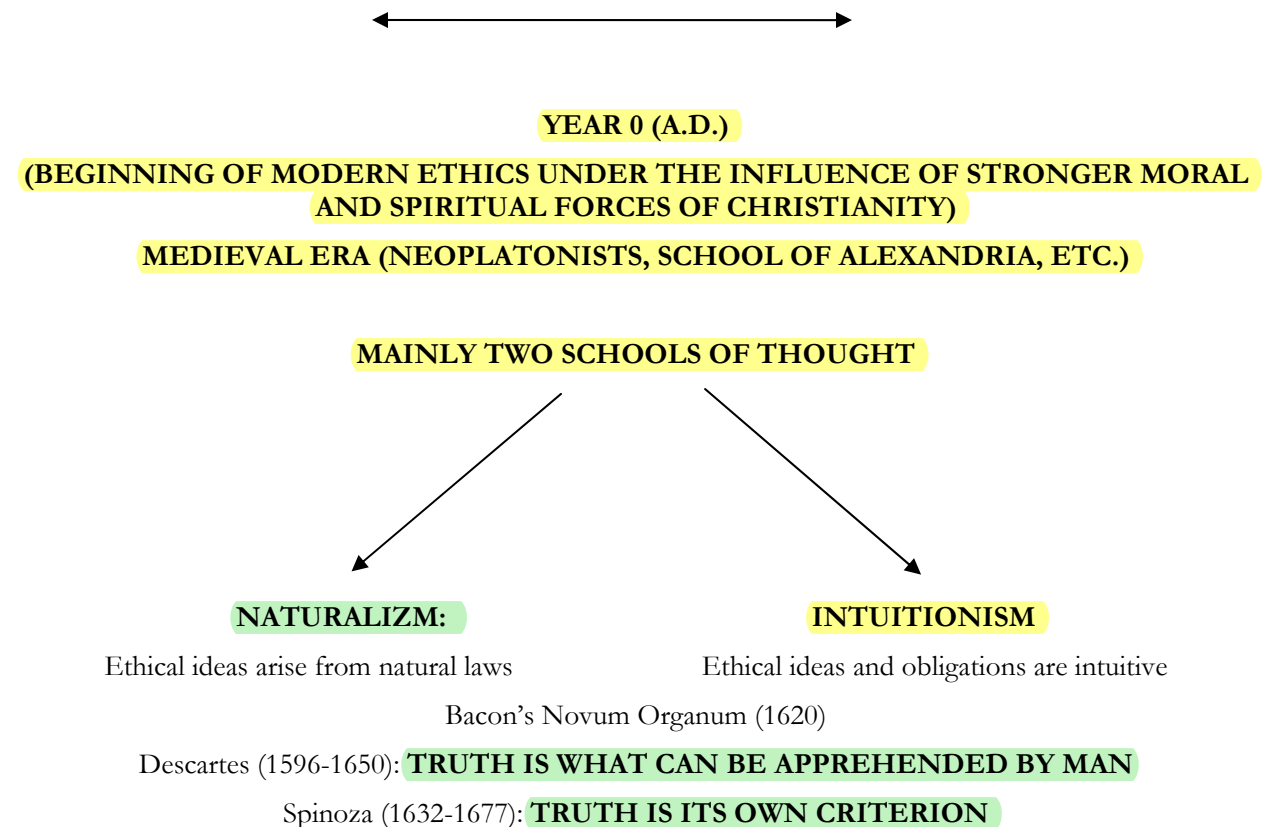
According to Aristotle, the Ethics was defined as the "good" "that at which all things aim" and the "highest good" or "the Good" which is wanted for its own sake. He argues, however, that Ethics is not an exact science like Mathematics or Logic. The proper person for the inquiry is one who has had wide experience of life, a high level of education covering several subjects and good control over emotions. The data thus collected must be reduced critically into general principles; so an inductive method must be used.

As well-being is the highest human "good", this should not be mixed commonly with pleasure, wealth or honor; as all of these are to increase our confidence in our own virtue than as an and desirable for its own sake. Well-being must be complete in itself; it must be "unconditional good" which is desirable for its own sake. Virtue is defined as a permanent mental state created by habitual actions of the same type as those it leads; a man is temperate by constantly acting temperately, therefore Virtue is a kind of habit.

After Aristotle, Epicurus who was a follower of Cynenaics and has been influential in Rame and Roman arts, Cynics, on the other hand were followed in Stoics (Zeno, Seneca, epictetus, ...) again was popular among Romans.

For about 10-15 centuries a darkness fall onto the schools of thought during the medieval times while Christian Church takes over the Ethics and makes it very Christian-like. This is the Medieval era and during that time rise and fall of the Islamic philosophy and science has been rather influential.

Western Ethics was reborn from the ashes of the earlier Greek philosophers who were remembered especially by Sir Francis Bacon. Mostly the Aristotle philosophy and methods in developing sciences were witnessed in this period.



HOBBS

(1588-1679)

(The founder of modern Ethics, an Egoistic Naturalist)

Hobbes defines Philosophy as the knowledge of effects by means of the concepts of their causes. By this he identifies it with Deductive Science based on observation and reason. For reason, Logic is important to seek the cause-to-effect pathways.

Hobbes' doctrine is Exclusive Egoism (Ego being the "soul"). All men, he says, are equal by nature; they possess equal powers of self-defense and similar tastes. Except for specially surprised condition, men are in war with men (**MAN IS THE WOLF OF MAN**). In this state of mind nothing is right or wrong. Force and fraud are in war with the two cardinal virtues. But when they become rational, then peace comes. Without social harmony happiness is impossible. Therefore seek the peace and follow it, for if we cannot get it we are to defend ourselves at all costs. To attain peace men will use that much liberty to allow a similar liberty for other men.

Hobbes: "Do not do that to another which thou wouldst not have done to thyself". He suggests self-interest as voluntary action, good is purely for the self. Reason shows that the social harmony essential to private

happiness can only be ensured by general obedience to certain precepts called Laws of Nature, which are the basic laws of social morality. Social good for an individual is merely a form of “useful”; it is a means, not an end for the person.

Modern ethics is starting with Hobbes. He insists that “good” is personal, as Protogoras did, that there is no social good apart from the good of its members. But by saying that, he contradicts his own (Hobbes) egoistic (exclusive) nature of the definition of philosophy.

Spinoza argues almost the same opposing nature of interests around men, but he holds that only men of undeveloped Reason regards this opposition by external adjustments; among rational beings, interests are inwardly equally shared. In this he is more with Plato and Aristotle.

English intuitionists fought against Hobbes’ egoistic thinking and mostly overlook the thought of Spinoza who was describing the emotional men without Reason as an unfree men and pity them. This was simply denial of the moral responsibility according to the intuitionists; therefore they thought Spinoza was immoral.

Several different types of Intuitionism (such as rational; Clarke, Cudworth) (like Platonists) (or Aesthetic Intuitionism; Shaftesbury and Hutcheson) (or Sympathetic Intuitionism Adam Smith, 1723- 1790, who wrote Wealth of Nations) has been during 18th century. But by far the most well-known English Intuitionist was Joseph Butler (1692-1752). He tried to base pure Ethics to not religions thought. Another famous Intuitionist, Hume (1711-1776) belonging to the Edinburgh School identified “good” with pleasure and “evil” with pain, thus using pleasure as the ethical standard for evaluating actions (Ethical Hedonism).

Immanuel Kant (1724-1804) is the most important name in modern ethics. He is a follower of both the Intuitionists and Naturalists. He underlines the importance of “duty” and “self-love” as two distinct motives. He says that the only absolutely good thing is the “good will”. It is the principle of action that ought to be obeyed by all rational beings, under all circumstances and for its own sake. This principle of action is adopted by the person, and not the laws which are independent of the person. Kantian “Categorical Imperative” suggests that “A person should act on that principles, and when everybody act like that principles become a universal law”.

Several formats of Categorical Imperative according to Kantian theory are known as the “Illustrations”:

“**Humanity is an End in itself**”. This is true for social and individual good, therefore “Act as to treat humanity, whether your own person or in that of any other; and in every case treat humanity as an end and never as a means only”.

Categorical Imperative third is a special form of Kantian Theory and is named “**Autonomy and the Kingdom of Ends**”. Kant describes the conception of a Kingdom of Ends consisting of a community of rational beings, each rightfully subject to the laws of his own making. This is also called the Autonomy (=self-legislation)

Kant’s definition of “**Free-will**” is based on the consciousness of moral obligations: “**we ought, therefore we can**”

Kant based his theory on three postulates of morality.

- (1) The Existence of God
- (2) The freedom of will
- (3) The Immortality of the Soul.

The particular duties as well as the general principles of morality can never be doubtful as they are known by rational intuition: he ascertains that,

- a) We can do what we ought to do, but unless we know what we ought to do we cannot do it.
- b) A conflict of duties is impossible.
- c) Motive determines the morality of the actions; not the effects.

Kant's most important teaching is “morality of an action depends only on the motive, and is independent of the effects on the person doing it or on the others”.

This brings Kantism to a serious “Formalism” which is psychologically wrong, as the individual self, as Plato and Butler recognized, includes feelings and desires as constituents. (Plato suggested the soul is made up of Reason, Spirited Emotion and Desire. Butler, a psychological hedonist suggested autonomic intuitionism, introduced the observationist insights to note that certain ideal principles such as “consciousness of moral obligation” must be fulfilled.

Hobbes doctrine was the beginning of Egoism and was followed by “English intuitionists” such as Butler. Just like that Kant was followed by

(1) German Rational Idealists (Hegel, for example) who taught that self-conscious Reason, or Mind, is the ultimate reality to determine the Will. This is called Optimism, (2) Voluntarists like Schopenhauer who suggested just the opposite, he thought that unreasoning will, as it is unconscious, is the ultimate reality. This led to “Hedonistic Pessimism”, “Life is essentially miserable”.

Utilitarianism of Bentham and Mill is a reaction against Moral Purism (of Kant), which insist that the morality of actions is determined neither by their motives nor by abstract law, but by their pleasant and painful effects. These two philosophers belong to Naturalist and Intuitionist schools of thought. Later on utilitarian Sidgwick came who was more in sympathy with Kant. Evolutional Naturalism of Spencer recognizes the existence and power of the consciousness of moral obligation, but regards this consciousness as an irrational instinct arising partly from individual's past (forgotten) experiences and partly through heredity; this instinct is favorable to the life of the race. Green on the other hand agrees with Kant on the rational universality and the binding moral law, but he thinks that this law is determined by its end; a concerted good yielding the highest and most permanent satisfaction.

GERMAN RATIONAL IDEALISM

To sum up what is written above, Kant's followers took two opposite directions;

1. first was Rational Idealism, introduces “Reason” and “Self-consciousness” as the ultimate explanation,

2. the second voluntaristic pessimism indicates “Irrational will” as the source of all reality.

Fichte (1762-1814) advocates individuality (Ego) in an infinite way through the plurality constituting the infinite “Ego”. All duties have reference to the “Whole”, each man in his own special place. State and Religion, Art and Science, Industry and Commerce are forms of moral life of the community.

Fichte was followed by Schelling and Hegel. Hegel lays much importance on the method. He, as a convenient method, divides philosophy into three sections,

- a. Logic (universal treatment of concepts like quantity, cause, judgment, will. etc.)
- b. The Philosophy of Nature. Man is the highest product of nature as he is a rational intelligence, Mind.
- c. The Philosophy of Mind, -only mind can be understood to contain the conceptions of Logic and the Nature. Nature receives its true meaning when recognized by Mind.

UTILITARIANISM

Utilitarianism is the doctrine that the ethical standard should be “great happiness” of the greatest number (of people). Its founder is Bentham (1748-1832) who was followed with Stuart Mill and Sidgwick.

Bentham says that “Nature has placed man under the governance of two masters, pain and pleasure. It is for them to tell us what we ought to do, therefore, we shall do. Then the principle of utility comes into picture; to approve or disapprove every action with a value in itself to increase or decrease the happiness of the party (community) whose interest (sum of interests of members of the community) is in question.

What is the measure of pleasure and pain? For the personal pleasure; (1) intensity, (2) duration, (3) certainty, (4) propinquity, (5) tendency to be followed by other pleasures, (6) purity (freedom from pain) are the criteria for the measure. For the community it follows; (7) the extent (the number of persons to share the pleasure). The seventh measure was brought to define the “equity” by Bentham. In his words “everyone is to count for one, and no more for more than one”.

Stuart Mill (Symphatetic Utilitarianism) adds to this the quality ranking of pleasures and not only the quantity “choose rather to be an unhappy Socrates than to be a satisfied pig”.

Sidgwick (1838-1900) introduces “intuitional utilitarianism” or “philosophic intuitionism” that leads him to be ranked as a utilitarian.

EVOLUTIONAL NATURALISM: DARWIN AND SPENCER

Modern ethical naturalism began with Hobbes who was the founder of exclusive Egoism. However, the starting point of Evolutional Naturalism is quite different from Hobbes’ ideas.

The term “Evolution” as used by Darwin and Spencer includes “growth”, but also emphasizes the idea that “growth” is not a creation of new forms, but the necessary outcome of what already exists. It also suggests that “growth is not merely of individuals but of races and institutions” and even of “material systems”.

August Comte and several biologists have given the first indications of the theory of “evolution” but it became famous by the name of “Darwinism” after Charles Darwin (1809-1882). He suggested the principle that all living things originally sprang from less developed forms of life, species have become differentiated through the survival of those endowed with organs and faculties adapted for life in the environment in which they happen to be placed. This is called the “survival of the fittest” and is the process by which the unfit are eliminated.

The fit to survive is metaphorically called “natural selection”. An additional mechanism of “heredity” through which life saving organs, armors to win the “struggle” etc. is transmitted from parents and is necessary in development and survival of races. Darwin was more interested in physical evolution of species, but also drew attention to the possibility of explaining the existence of moral instincts in the same way. Spencer (1820-1903) on the other hand, worked out fully the ethical background. In this struggle; strength, agility, fleetness, endurance, intelligence etc. are important. Thus, through Spencer’s work, Darwinist ideas could be applied to Ethics and all human institutions and customs.

MODERN ETHICS BY SPENCER

According to Spencer, the objective end imposed by nature is Life, and through individual’s life to the life of race. Life is defined as “continuous adjustment of internal relations to external relations”.

Spencer’s theory of life and his definition of ethical concepts and social institutions;

“each individual ought to receive the benefits and the evils of his own nature and consequent conduct”.

Justice “Every man is free to do that which he wills, provided he infringes not the equal freedom of any other”.

Communism can be criticized on the basis of “survival of the fittest” as there is no equality in nature. According to Darwinism, justice can only be defended on the concept of equal opportunity for individuals to receive the benefits and evils of his own action. But this in fact leads to an inequality in the sense that these benefits and evils vary in share from one individual to another, as the capacities of the individuals are different. But there is a “limit of evolution” at which preserving the individual or social pleasures, as Nature may need some instincts for securing herself and not all pleasures help the Nature. Besides experience shows that only moderate pleasures are good for the health.

In conclusion,

Pure ethical concepts cannot be used unless they are applied to real-life problems. Applied Ethics deals with more concrete subjects, like the Family, Profession, State/ Politics. Therefore applied Ethics cannot altogether be regarded a distinct science. It is rather the application of Science, Art, and the other results of human experience intelligently, in accordance with the ethical ideal that is adopted. Very few general ethical principles can be used with precision in real life as they cannot take into account the particular conditions; consequently there is often uncertainty about the answers to moral problems until we come to particular cases. Although in many cases the borderline between Applied and Pure Ethics is not always visible.

However, for securing the “social good”, how should the special interests of individuals be regulated? This is the fundamental problem of Applied Ethics. In general, the individual has to use his own judgment, to construct his own system of Applied Ethics. Conscientiousness, the permanent will to act in the spirit of the objective ideal in which he believes, is indispensable, but it may mislead, unless guided by reflecting intelligence. The knowledge of pure ethical theory and a brief history of it help arousing this reflection in practical life. Science and Research Ethics and Engineering Ethics are parts of the Applied Ethics to be studied.

LESSON 6**MASS MEDIA ETHICS: NEEDS AND SCOPE**

- Codes of ethics serve an important purpose by setting standards against which conduct can be measured and evaluated.
- Codes can also help to ensure that standards are set internally, rather than having outside bodies step in.
- Even if codes are not enforceable, codes are still important -- setting standards against which conduct can be measured and evaluated.
- Outside bodies here would refer to the government or to the judiciary, the courts. The formulation of a code of ethics is an attempt to achieve higher professional standing for journalism, to resist too much external controls. Most journalists see self-regulation as the answer to criticisms of media performance.
- For both the media industry as a whole and for individuals within it, codes can also help keep attention directed toward principles that are particularly important as guidelines for appropriate behaviour.
- Codes can also serve as a starting point -- a threshold, if you will, for considering which principles deserve to be honored by ethical practitioners in the mass media.
- Codes can help professionals develop a sense of what it means to work ethically.
- Codes can also help to protect the mass media and media practitioners from unrealistic expectations and criticisms.
- On the other side of the coin, codes can also help the public express reasonable demands and criticisms of the media when that is warranted.
- In society as a whole, codes may provide reasonable standards and guidelines that help the public discuss, debate, and measure the media's performance.
- Codes help to protect the public from unethical performance and the media from unreasonable public demands.
- Codes can help make the media more accountable to their various publics.
- Codes also provide a reference point that can be invoked to protect workers in the media from internal pressures that could force them to violate their own consciences.
- Codes can sharpen the focus on ethical issues that people in all branches of the media must face regularly.

CRITICISM

- Lack of enforcement - codes have no teeth; just high-sounding rhetoric with no real meaning since the ideals cannot be enforced.
- No agreement that codes are fully understood and embraced by practitioners.
- Critics, however, argue that ethics by its nature deals with what "should" happen rather than what can be legally enforced.
- An enforceable code could raise the specter of government control and enforcement and, moreover, would lose some of the necessary flexibility such relativity requires, because ethics often must be relative rather than absolute.
- Concern that codes are laden with ambiguities -- fuzzy, imprecise words and statements that are subject to interpretation.
- Concern that codes are more show than substance that their major role is to give the public the impression that the media have high standards of professionalism.
- There is concern that the codes are aspirations that are unattainable in a fast-changing situation in the news room. Complaints that you don't see a reporter or an editor turn to a code or set of rules for guidance when faced with a real ethical call.

- At the very most, codes inspire those who are willing to accept them to be sensitive to professional values and practices.

GENERAL CODE OF ETHICS FOR MASS MEDIA

The primary themes common to most codes of journalistic standards and ethics are the following.

1. OBJECTIVITY

- Unequivocal separation between news and opinion. In-house editorials and opinion pieces are clearly separated from news pieces. News reporters and editorial staff are distinct.
- Unequivocal separation between advertisements and news. All advertisements must be clearly identifiable as such.
- Reporter must avoid conflicts of interest — incentives to report a story with a given slant. This includes not taking bribes and not reporting on stories that affect the reporter's personal, economic or political interests. See envelope journalism.
- Competing points of view are balanced and fairly characterized.
- Persons who are the subject of adverse news stories are allowed a reasonable opportunity to respond to the adverse information before the story is published or broadcast.
- Interference with reporting by any entity, including censorship, must be disclosed.

2. SEEK THE TRUTH AND REPORT IT

- Journalists should be honest, fair and courageous in gathering, reporting and interpreting information. Journalists should:
- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.

3. NEVER PLAGIARIZE

- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.

- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

4. MINIMIZE HARM

- It is essential that all risks of being inflammatory, misleading, or inconsiderate to subjects and sources be minimized. This is especially relevant to those engaging in original reporting. To minimize possible harm, we encourage our writers to do the following:
- Ensure facts are correct by getting verification from multiple sources.
- Try to contact the subject of the article whenever possible.
- Not publish an article based solely on speculation, hunches or wild guesses.
- Before publishing, make a mental list of all parties involved in the article and think about how each will feel about the article.

5. AVOID MISREPRESENTATION

Do not publish any sort of interview story without ensuring that the interviewee is absolutely happy with the article's final text. Even if this means giving up the interview - Wikinews will only lose out if it offends interviewees - remember to respect that they have taken the time to talk to us.

6. GET ALL SIDES OF A STORY

Ensure sources and quotes from both sides of an argument are included in articles to avoid being biased towards either side. Ideally, all opinions expressed in an article should be direct quotes.

7. RESPECT ANONYMITY

Any source that requests to remain anonymous is fully entitled to this. You are not obliged to bring up the possibility of anonymity, but you are obliged to honor requests for it. It is important not to apply undue pressure to the source if they do not wish to be named. At the same time, anonymous sources can make stories less credible, so it is important to make some effort to persuade reluctant sources to volunteer to go on the record. Explaining to a source why you would prefer them to go on the record is a gentle and often effective way of persuading them to do so. In any case, the decision rests with the source.

8. INDEPENDENCE

It is important that a media person should be an independent entity with only the interest of the public at heart.

9. NEUTRALITY

It is also important to provide news that contains no bias. This includes removing and re-editing stories that have been determined to advocate a particular point of view to the exclusion of others.

10. TRUTHFUL

Another important ethical task for a media person is to be completely truthful and this entails that no stories should be presented to the public which have a doubtful origin and may later prove to be untruthful. Furthermore, in the present age of a continuous string of “breaking news” this phenomenon becomes even more important.

11. ACCOUNTABLE

The media is accountable to the public for any content that they send out thus they should be conscious at all times that will be held responsible for any inaccuracies and lies.

12. ACCURACY AND STANDARDS FOR FACTUAL REPORTING

- Reporters are expected to be as accurate as possible given the time allotted to story preparation and the space available, and to seek reliable sources.
- Events with a single eyewitness are reported with attribution. Events with two or more independent eyewitnesses may be reported as fact. Controversial facts are reported with attribution.
- Independent fact-checking by another employee of the publisher is desirable
- Corrections are published when errors are discovered
- Defendants at trial are treated only as having "allegedly" committed crimes, until conviction, when their crimes are generally reported as fact (unless, that is, there is serious controversy about wrongful conviction).
- Opinion surveys and statistical information deserve special treatment to communicate in precise terms any conclusions, to contextualize the results, and to specify accuracy, including estimated error and methodological criticism or flaws.

ETHICS AND STANDARDS IN PRACTICE

As with other ethical codes, there is perennial concern that the standards of journalism are being ignored. One of the most controversial issues in modern reporting is media bias, especially on political issues, but also with regard to cultural and other issues. Sensationalism is also a common complaint. Minor factual errors are also extremely common, as almost anyone who is familiar with the subject of a particular report will quickly realize.

There are also some wider concerns, as the media continue to change, for example that the brevity of news reports and use of sound bites has reduced fidelity to the truth, and may contribute to a lack of needed context for public understanding. From outside the profession, the rise of news management contributes to the real possibility that news media may be deliberately manipulated. Selective reporting (spiking, double standards) are very commonly alleged against newspapers, and by their nature are forms of bias not easy to establish, or guard against.

STANDARDS AND REPUTATION

Among the leading news organizations that voluntarily adopt and attempt to uphold the common standards of journalism ethics described herein, adherence and general quality varies considerably. The professionalism, reliability and public accountability of a news organization are three of its most valuable assets. An organization earns and maintains a strong reputation, in part, through a consistent implementation of ethical standards, which influence its position with the public and within the industry.

LESSON 7**ISLAMIC CODE OF ETHICS****DISCUSSION POINTS**

- In practice today there is no journalistic code of ethics based on the principles of Islam.
- Few scholars have attempted to define an Islamic framework for mass media ethics. However, their thinking did not go beyond academic discussions.
- That is why the Muslim Ummah of more than one billion has no control over sources of information and the way it wants to disseminate news despite having more than 600 daily newspapers, about 1500 weeklies, 1200 monthly news and views magazines, and about 500 miscellaneous Muslim publications.
- It is difficult to find a well-defined Islamic code of journalistic ethics. One can find press codes in Pakistan, Turkey, Indonesia, Egypt, maybe in Iran, and a few more Muslim countries, but most of these reflect the same secular bias that is part of the existing code of ethics in most other countries.
- The first Asian Islamic Conference organized by the Mecca-based World Muslim League in Karachi, Pakistan, in 1978 attempted to offset and counter the Western monopoly of the mass media and its anti Islamic propaganda.

EFFORTS FOR ISLAMIC CODE OF ETHICS

In practice today there is no journalistic code of ethics based on the principles of Islam, and few scholars have attempted to define an Islamic framework for mass media ethics. However, their thinking did not go beyond academic discussions. That is why the Muslim Ummah of more than one billion has no control over sources of information and the way it wants to disseminate news despite having more than 600 daily newspapers, about 1500 weeklies, 1200 monthly news and views magazines, and about 500 miscellaneous Muslim publications.

It is difficult for a researcher to find a well defined Islamic code of journalistic ethics. One can find press codes in Pakistan, Turkey, Indonesia, Egypt, maybe in Iran, and a few more Muslim countries, but most of these reflect, to a great extent, the same secular bias that is part of the existing code of ethics in most other countries. The first Asian Islamic Conference organized by the Mecca-based World Muslim League in Karachi, Pakistan, in 1978 decided that co-ordination should be developed between Muslim journalists to offset and counter the Western monopoly of the mass media and its anti-Islamic propaganda. The first International Islamic News Agency (IINA) was established by the Organization of Islamic Conference (OIC) in 1979 with its headquarters in Jeddah, Saudi Arabia, but as Schleifer has noted, "The most poorly served IINA objectives is its very first one - to consolidate and safeguard the rich cultural heritage of Islam... A more significant limitation to IINA coverage, from a Muslim perspective, is the relatively low amount of intrinsically Islamic news content.

The first International Conference of Muslim Journalists held in Jakarta, Indonesia, in 1981 endorsed a covenant for Muslim media professionals emphasizing that: Islamic rules of conduct should form the basis for all Muslim media practitioners in their journalistic endeavors, and Muslim media should work towards achieving integration of the Muslim individual's personality. It was stated that the consolidation of faith of the Muslim individual in Islamic values and ethical principles should be the main obligation of Muslim media. However, none of the above mentioned efforts could lead to the development, and more importantly, the practice of an Islamic code of ethics among the Muslim journalists. The reasons being: lack of support from Muslim governments; lack of interest and enthusiasm by Muslim journalists themselves; and lack of support from Muslim scholars as well Muslim society in general.

Even the many Islamic magazines and newspapers have not been able to demonstrate that what they practice is inherently different from the secular media. As Schleifer has observed, "The reverse-secularism of Western and Islamic Movement journalism insists that religion is worthy of reporting only in the political domain, and

a political domain of confrontation. The specific danger of "Islamic journalism" to date is that the journalist substitutes the life and activities of the various Islamic movements for the life and activities of the much broader Islamic society, of which the political movements are but a small part. When the "Islamic journalist" substitutes the life and drama of Islamic movements for the life and drama of Islamic society, he not only over politicizes Islam but he invariably becomes side-tracked into the same sort of surface reporting of organized political life in the Muslim world that characterizes the secular press and ends up even reporting poorly on many political and public developments of profound importance to Muslims.' The above statement is a true reflection of many Muslim magazines such as Impact International of London, The Minaret and The Message, both of the USA, Takbir of Pakistan, Radiance of Delhi, and even Al-Dawah of Egypt. It is evident that an Islamic code of journalistic ethics is inevitable if Muslims wish to have their own information system and also wish to see it play an important and effective role in the flow of news and information across the continents.

BASIS FOR ISLAMIC CODE OF ETHICS

- Contemporary ethics are grounded in secular, philosophical principles relying on human reason
- Focus on autonomy and individual rights to ensure justice
- Ethical theories satisfied with minimal obligations to others
- Asks the question – “is this *action* ethical?” (“Hal al-’aml salih wa akhlaqi?”)
- Historically, Muslim moral and ethical thought rooted in Revelation and human reason (*al-’aql wa ‘l-shari’*)
- Recognizes rights of individuals, but emphasizes human obligations to establish social justice
- Those more privileged in life have greater responsibilities towards the less fortunate
- Asks the question – “is the acting person a moral person?”
- The contemporary English term “ethics” is similar in meanings with the Arabic (Urdu) word “*Adab/Akhlaq*”.
- The historical and social construct of how Muslims comprehend *akhlaq* is much broader than the contemporary use of term “ethics”
- An understanding of *akhlaq* incorporates both the virtuous *agent* and his/her ethical *act*
- Ethical concepts in the names of Allah: *al-Rahim* (compassionate), *al-Rahman* (gracious), *al-Ghafur* (forgiving), *al-Haq* (truth, justice)
- the Qur’an and Hadith: Cultivate *al-birr* (piety, godliness), *absana* (the ideal), *hilm* (gentleness, patience, moral reasonableness), *’adl wa qist* (justice, equity), *tawazun* (balance).
- Avoid *kibr* (pride), *bakhila* (avarice), *istaghna* (unbound confidence in self), *bagha* (injustice, intoxication with worldly power)

ISLAMIC CODE OF ETHICS FOR MASS MEDIA

Since a journalist's foremost concern is the dissemination of news, we have to agree upon a definition of news that is permissible within the framework of Quran and Sunnah. Not only that, we have also to consider a process of news gathering, news making and news disseminating that is acceptable within an Islamic framework. And in order to compete with the existing information orders we have to provide theoretical foundations and arguments as well a driving force that will ensure its implementation among Muslim journalists throughout the world.

Before defining news and attempting to develop an Islamic code of ethics, let us briefly discuss the basis of the Islamic moral system because it plays a very important role in the realization of the Islamic worldview

within which a Muslim journalist has to operate and which is inherently different from the secular or Western worldview.

The central force in the Islamic moral system is the concept of **Tawhid** - the supremacy and sovereignty of one God. Tawhid also implies unity, coherence, and harmony between all parts of the universe. Not only has this, but the concept of Tawhid signified the existence of a purpose in the creation and liberation of all human kind from bondage and servitude to multiple varieties of gods. The concept of the hereafter becomes a driving force in committing to one God, and the inspiration as well definitive guidelines are provided by the traditions and the life of the Prophet (PBUH).

A journalist who uses his/her faculty of observation, reason consciousness, reflection, insight, understanding and wisdom must realize that these are the Amanah (trust) of God and must not be used to injure a human soul for the sake of self-promotion or for selling the news, rather, for arriving at truth. A journalist must not ignore God's purpose in creating this universe and various forms of life. Explaining the implications of Tawhid, it has been noted that the responsibility of a Muslim journalist and the Muslim mass media system would be:

TO DESTROY MYTHS

In our contemporary world these myths may include power, progress, science, development, modernization, democracy, achievement, and success. Personalities as they represent these must not be super humanized and super defined... Under the principle of Tawhid another fundamental consideration in communication [another important duty of Muslim journalists] becomes clear: the destruction of thought structures based on dualism, racialism, tribalism, and familial superiority. One of the dualisms according to this principle is the secular notion of the separation of religion and politics.

Another guiding principle in the development of an Islamic code of journalistic ethics is the concept of **social responsibility**. As mentioned earlier, the social responsibility theory on which secular or Western media practices are based is rooted in pluralistic individualism. Whereas the Islamic principle of social responsibility is based on the concept of amar bi al-Maruf wa nahi an al-munkar or commanding right and prohibiting wrong'. This implies that it is the responsibility of every individual and the group, especially the institutions of social or public communication such as the press, radio, television, and cinema, to prepare individuals and society as a whole to accept Islamic principles and act upon them.

Throughout Islamic history many institutions as well as channels of mass communications such as mosques, azan, and Friday khutba have used this concept of social responsibility to mobilize public opinion and persuade individuals to work for the collective good of society in general and for their own individual pursuit of good in this world and the hereafter. The Islamic revolution in this country has demonstrated well the strength of such uses of non-traditional means of public communication. However, in a highly individualistic society of ours the press seems to play the opposite role of amar bi Munkar WA nahi an al Maruf. Whether Muslim or non Muslim, the media are more interested in conflict, contention, disorder, and scandal than in peace, stability, continuity, and moral conformity. Unless Muslim media practitioners accept social responsibility as a cornerstone of their profession, no Islamic code of ethics can even be realized.

CONCLUSION

“The believers whose faith is most perfect are those who have the best character.”

(*Akmalu al-momineen imanan absanubum kbuluqan*)

Hadith of the Prophet (SAW) (from Imam Ibn Hanbal)

LESSON 8**THE ETHICAL PROBLEMS: INTERNAL AND EXTERNAL PRESSURES ON MEDIA / JOURNALISTS**

Journalists are professional people, trying to work within a code of professional ethics. As we saw in the last chapter, this includes the need to be fair to all parties involved in any news story. However, journalists cannot operate in a vacuum, doing what they think is right without pressures being put on them. Journalists face pressure from a variety of sources, all trying to make the journalist behave in a way which is not the way the journalist would choose.

It is important that you try to resist all these forms of pressure, as far as possible.

Of course, you will sometimes fail. This is an imperfect world, and journalists are also imperfect. Nevertheless, you should always try to resist the kinds of pressure which we shall discuss in this chapter.

INTERNAL PRESSURES**EMPLOYER**

Your employer pays your salary. In return, they expect to say how you will do your job. This can lead to ethical problems for journalists.

If you work for a government-owned news organization, then your government will be your employer. This could make it very difficult for you to report critically on things which the government is doing.

Ministers will often put pressure on public service journalists to report things which are favourable to the government (even when they are not newsworthy) and not to report things which are unfavourable to the government. They can enforce public service discipline, to make journalists do as the government wants. This is especially difficult to resist in small developing countries, where there may be little or no alternative employment.

It is not only government-owned media where such pressure exists, though.

Commercial media are paid for by a mixture of advertising and sales. To increase sales, newspapers, radio and television stations sometimes sponsor sporting or cultural events, and then publicize them. Your boss may demand more coverage for the event than it is worth, in order to promote the event as much as possible. You will need to persuade them of the danger of this - that other events will have to be neglected to give extra coverage to your sponsored event, and that this will risk losing readers or listeners.

Advertisers can also bring pressure to bear upon owners and editors. A big advertiser may threaten to stop advertising unless you run a news report of something good which the advertiser has just done; or, much worse, it may threaten to stop advertising unless you ignore a news event which is unfavourable to the advertiser.

Ideally, any news organization should dismiss such threats, and judge each story only on its news merits. However, this is easier in a large community with a diverse and developed economy than it is in a small country with a developing economy. When a commercial news organization is operating on a tiny profit margin, it will not be easy to turn away a big advertiser, and its owners may feel forced to give in to the pressure.

In some cases, the advertiser may even be the government. In many countries the government is the biggest advertiser - with job advertisements, calls for tenders, public announcements and so on - and this can be a way in which governments bring indirect pressure to bear upon commercial news media.

What should you do about this kind of pressure? The first thing which any junior journalist should do is to report it to their editor. It will be for the editor to decide what to do. He or she will need to resist the employer as far as possible, pointing out the dangers of failing to report the news fully and fairly. The main danger is that readers or listeners, who already know of the event which is being suppressed, realize that it is

not being reported and so lose confidence in the newspaper, radio or television station involved. This may, in the long run, result in more serious problems for ministers than some short-term embarrassment, and may do more long-term damage to your organization's finances than the loss of one advertiser.

The truth is, though, that your power to resist pressure from your employer is limited. You can only do your best, and accept that the rest is beyond your control.

ORGANIZATIONS' POLICIES / EDITORIAL DECISIONS

FAMILY

In many societies, a person's first loyalty is to members of their extended family, or clan, or tribe. This is expected to take priority over all other loyalties, including their loyalty to the ethical standards of their profession. Thus, a doctor who saved the life of a traditional clan enemy could meet with disapproval from his own relatives.

Journalists, too, face conflicts of loyalty like this. It may not only be pressure from your family, clan or tribe; it may also be from members of a club or association or church to which you belong.

For young journalists in small societies, this is often the hardest kind of pressure to resist. They understand that they should have a loyalty to their professional ethics, but deep down they are certain that they must not offend the family. To do so, and to be cut off from the family, would be unthinkable.

It is important, therefore, that you avoid such conflicts of interest whenever possible. If you are told by your editor to cover a story which involves your own extended family, or clan, or tribe, you should point out to the editor this conflict of loyalty and ask that the story be assigned to another reporter.

The hardest job is that of the editor himself. He cannot avoid the clash of responsibility in this way, and must make the decision either to please his family and sacrifice his organization's credibility; or to maintain his professional standards and cut himself off from his family. Neither decision will be easy, but it is to be hoped that senior journalists in such situations will be able to set an example of professional and ethical courage to their junior colleagues.

TRADITION

In societies which are in rapid change from traditional to modern Western ways, there is often a clash between the way in which things were done in the past and the way in which the profession says they should be done now.

For example, freedom of speech may itself be a recent imported concept. Traditionally, it may be that only men of a certain rank had the right to express their views; or that certain clans had the right to express their views on certain subjects; and it may have been the case that very few people had the right to question a chief.

All this is very different to a Western-style free Press, in which everybody is encouraged to speak on every subject, and journalists, however junior, are encouraged to cross-examine leaders, however senior.

Tradition will often be used as a weapon to pressure journalists into patterns of behaviour which go against their professional ethics. Junior journalists should always report such instances to their editor, and seek guidance.

The way forward will require careful thought. The professional ethics of journalists in your country may still be developing. They will be influenced by professional journalists' ethics in other countries, where journalism is more established; but they will also be influenced by the traditions of your society. Out of a clash of cultures, a new culture may develop, suitable for your society in the modern world. Only you, and other journalists in your society, can form these new ethical standards for your society; and you must be prepared both to listen carefully to other points of view and to act according to your judgment, while these new standards are emerging.

PERSONAL CONVICTION

Journalists may come under pressure from their own strong beliefs.

For example, a journalist who is deeply opposed to capital punishment may be writing a story about crime. In the course of gathering the information, they may interview somebody who calls for the death penalty as the answer to increasing crime. The journalist may be tempted not to report these comments, and to leave the question of capital punishment out of the story. This would clearly be unethical.

It is as bad to censor the news to suit your own views as it is to censor the news to please your family, or clan, or tribe. This is contrary to the most fundamental principle of free speech - that we may disagree with what somebody says, but that we must fight to defend their right to say it.

It is not only the things you really believe in which may cause problems. Some journalists accept contracts to advertise products, as a way of earning some extra money. You must think carefully before you do this.

If you are seen by your readers or listeners to be in favour of a particular product, they will not believe that you are impartial if you later report a story about that or any rival products.

It is important for journalists to be impartial. You may know that you have no special liking for the product which you advertised - you only did it for the money - but your readers or listeners will not know that.

EXTERNAL PRESSURES

AUTHORITY

Both government-owned and commercial news media may face pressure from authority - the government, the police, customs, or some other branch of authority.

Governments can threaten, or make, laws to force all news media to be licensed. This would give them power to grant licenses only to those news organizations which please the government. Even the threat to introduce such legislation may be enough to frighten journalists, and to make them afraid of criticizing the government too much.

The best way to resist such pressure is to stimulate public debate on the issue of media licensing. As with any proposed legislation, the news media should encourage public debate before it comes in, so that leaders have the opportunity to judge public opinion.

If society generally is opposed to licensing of all news media, then a democratically-elected government will think very seriously before introducing such a thing. On the other hand, if society wants news media to be licensed by government, then it is something which journalists will just have to accept, however much they may disagree with it.

Other forms of authority may bring pressure to bear on you in less official ways. Police may attempt to confiscate your camera when you are taking photographs which the police do not like; or they may deny you access to a court room or a public meeting; or they may order you not to report certain things. Junior journalists should always report such incidents to their editor.

The editor will best resist this kind of pressure by knowing precisely what he is allowed to do, and what he is not allowed to do. If he knows that the police are acting outside their powers, he can politely approach a very senior police officer, or even the Police Minister, and report the incident. They can then handle it. If the police act outside their powers and no action is taken, even though it has been reported, then the editor can publicize the fact in a major news story. It is wise, though, to try to sort out such problems quietly first, since in this way future relations may be more positive.

THREATS

Many people think they can avoid bad publicity by threatening journalists with violence, or with legal action. Such threats should always be resisted (unless you are advised by a lawyer that you are legally in the wrong).

Junior journalists should always report any threat which they have received to their editor. If the threat was a threat of violence, then the editor should seriously consider informing the police. It is usually a criminal

offence to threaten violence against somebody, and journalists are protected by such a law as much as anybody else.

If the threat is of legal action, then the editor's response will depend upon the facts of the case. The editor should know the law well enough to judge whether or not to take the threat seriously. If he suspects that there may be grounds for legal action, he should consult a lawyer. Then, if he finds that he or his reporter is in the wrong, of course he should immediately set things right. If, however, he finds that there is no basis for legal action, then he and his reporter can happily ignore the empty threat.

BRIBES

Journalists do not usually earn big money. You may therefore be vulnerable to bribery - somebody offering money (or goods or services) in return for a favourable story being written, or an unfavourable story being ignored.

To accept a bribe is dishonest. Your honesty is like virginity - it can only be lost once. Once you have accepted a bribe, you can never again be trusted as a professional person.

Journalists who are offered bribes will usually be offered them in private. This is so that the person attempting the bribe can later deny that it ever happened. If this happens, you should immediately invite somebody else into the room, and then ask the briber to repeat their offer. They are unlikely to do so but, if they do, you will have a witness.

In any case, report the matter to your editor.

GIFTS AND FREEBIES

Commercial companies sometimes try to buy journalists' friendship by giving them small presents or by giving them the opportunity to travel at the company's expense (sometimes called **freebies**).

Often this travel is legitimate. An airline which is introducing a new route to and from your country may well offer you a free seat on the first flight. You will then have the opportunity to write from first-hand experience about the service and about the destination. If the airline is confident that its service is good, and that the destination is interesting, they will be satisfied that whatever you write will be good publicity for them.

As long as it is understood that you are free to write whatever you like, without the company that provides the free travel having any influence, such an arrangement is acceptable. However, if you are offered a ticket in return for writing "something nice" about the company, this is not acceptable. Poor newspapers, radio and television stations may be grateful for charity to top up inadequate travel budgets, but they should never be so poor that they sell their professional honour.

In any case, such offers should never be accepted or negotiated by a junior journalist. Only the editor should do so, and any offers must be referred to the editor. The editor can judge whether or not the terms of the offer are acceptable.

Gifts are a difficult area. Small gifts, such as a tie or a bottle of whisky, may be acceptable, but the gift should not be so big as to buy your loyalty. The golden rule for each journalist is whether they would care very much if the company decided not to offer another gift like this in the future. If you do not care whether they offer you such a gift again, then you have not been bought. If you deeply desire another similar gift, you are in danger; remove the temptation by telling the company not to send any more.

In any case, all gifts, however small, should be declared to your editor. If your editor considers that any gift is too large or too generous to be accepted, you will have to return it, politely but firmly. People need to know that you and your news organization have moral and ethical standards, and are prepared to live by them.

Sometimes, executives in companies or government departments will devote a lot of time and energy to making you into their friend. They may take you out for meals, buy you drinks or invite you to their home. Beware of this. If it is genuine friendship, there may be no problem; but it may be an attempt to win your

loyalty. It is as bad to run a story which is just a free advertisement, or to suppress bad news, as a favour to a friend, as it is to do the same thing in return for a bribe.

CODES OF ETHICS

In many countries journalists try to work within a professional code of ethics. This usually lays down in simple, straightforward terms the kind of things they should and should not do. Typically such codes contain rules about issues such as honesty, fairness, independence and respect for the rights of other people such as interviewees, victims and readers or listeners.

In most free press democracies, journalist codes of ethics are usually voluntary, perhaps monitored by a professional association or journalist union. In such cases, the only real sanctions against journalists who breach the codes are criticism from colleagues and perhaps loss of membership of the association or union. In some cases media employers might use the journalist code of ethics to set standards for journalists they employ, in which case breaches of the codes might lead to discipline or even sacking.

In some countries where the media are suppressed, the government may try to control what is written or broadcast by imposing a code of ethics backed by law and policed by the authorities. These are like any other laws in such countries; breaking them may lead to punishment, so it is up to journalists themselves to decide whether to obey oppressive codes or follow the higher principles of journalistic ethics and risk the consequences.

A good example of a journalist code of ethics in free press democracies is from the Australian Media, Entertainment and Arts Alliance (MEAA). It states:

AJA CODE OF ETHICS

Respect for truth and the public's right to information are fundamental principles of journalism. Journalists describe society to itself. They convey information, ideas and opinions, a privileged role. They search, disclose, record, question, entertain, suggest and remember. They inform citizens and animate democracy. They give a practical form to freedom of expression. Many journalists work in private enterprise, but all have these public responsibilities. They scrutinize power, but also exercise it, and should be accountable. Accountability engenders trust. Without trust, journalists do not fulfill their public responsibilities. MEAA members engaged in journalism commit themselves to

- **Honesty**
- **Fairness**
- **Independence**
- **Respect for the rights of others**

1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.

2. Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability.

3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

4. Do not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine your accuracy, fairness or independence.

5. Disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain.

6. Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.
7. Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.
8. Use fair, responsible and honest means to obtain material. Identify yourself and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.
9. Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.
10. Do not plagiarize.
11. Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.
12. Do your utmost to achieve fair correction of errors.

GUIDANCE CLAUSE

Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.

TO SUMMARISE:

Live by the ethical standards of your profession; resist all forms of pressure to lower your standards

Report any threats, bribes or other secret pressure to your editor

Do not sell yourself for a gift or freebie

Avoid reporting stories in which you have family interests or other loyalties

LESSON 9**ETHICAL PROBLEMS – VIOLATION OF ETHICS IN PAKISTAN**

Our media are faced with multiplicity of ethical problems ranging from their legal obligations to agree with what governments want them to follow to cultural invasions. Here's a prolog to media's problems in terms of their legal and constitutional obligations.

The contemporary state of mass media is a mix of controls and allures. The most prominent feature of present day mass media scene is the emergence of state of the art communication technologies ushering new horizons for the familiar mass media from across the frontiers. Broadcast media, which was solely state owned in the past, introduced new avenues of expressions in the present time. Technological developments have altogether altered the shape of media, both print and broadcast, and opened up new means of expression, consequently loosening the government controls on the mass media. However, the government also followed off-the-beaten tracks of control and suppression to avoid media criticism which is increasing in size, reach and serration. Following lines sketch those regulations and laws which are either enshrined in the Constitution of the country, Pakistan Penal Codes or the present government adopted to eschew the media criticism and perpetuate its rule.

The Constitution of the Islamic Republic of Pakistan protects the fundamental rights of an individual and the media in its Article 19 in the following words:

"Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offense."

The Article 19 guarantees the freedom of expression and freedom of the media, subject to "reasonable restrictions". Nevertheless, it is the judiciary to determine the scope and parameters of the permissible freedoms and the extent of the restrictions placed by the constitution. Of course, the judiciary has to be free and independent to decide about these freedoms and controls. Usually, the controls on judiciary are placed in the form of executive's authority of appointment, transfer, and tenure of judges. This fact can be observed when President General Musharraf required all judges to take an oath of loyalty to his regime. The Supreme Court Justice and five colleagues refused and were dismissed.

Nevertheless, this constitutional guarantee ceased to be functional after the proclamation of Provisional Constitutional Order No.1 of 1999, introduced on October 14, 1999, immediately after the military de coup headed by General Musharraf. This state of emergency continued till the restoration of so-called democracy in 1992. Even the democracy is restored and constitution has been made functional, this constitutional guarantee fails to protect the right to freedom of expression as it is subjected to "any reasonable restrictions imposed by law". It stands contrary to the international guarantee which requires any restriction to be 'necessary' rather than merely 'reasonable'. Furthermore, some of the grounds for restricting freedom of expression under the Constitution, such as friendly relations with other States, are not permitted under international law (www.article19.org/pdfs/analysis/pakistan.prs.02.pdf).

Long bureaucratic practices and militarization in the country has produced about 56 constitutional provisions, ordinances and laws which restrict the media freedom (<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN011668.pdf>). Some special laws like PEMRA, Pakistan Television Act, Pakistan Broadcasting Corporation Act, Electronic Crime Ordinance etc., of which magnitude is more than a dozen, particularly deal with the broadcast media in Pakistan. Sections 499 and 500 of Pakistan Penal Codes 1860, amended in the General Zia ul Haq regime, also dent the freedom of mass media and have been excessively used in various points in time in the history of Pakistan.

FREE SPEECH AND MEDIA

“Freedom of the press is not an end in itself but a means to the end of achieving a free society.” Former U.S. Supreme Court Justice Felix Frankfurter, “Comment is free but facts are sacred” (C.P. Scott, editor and proprietor, Manchester Guardian, 1922).

This section discusses the legal protection of free speech in countries including England, the United States, Canada, Germany, and under the European Human Rights Convention (ECHR). Eric Barendt examines the varied approaches of different legal systems and constitutional traditions to balancing free speech and freedom of the press against rights to reputation and privacy and to copyright and explores the case in law in light of the philosophical and political arguments for free speech guarantees.

Speech as used in the context of freedom of speech is not only limited to verbal or oral communications. It also includes conduct which produces comparable offense or harmful effects. Pornography, commercial advertising and public meetings on the streets are covered by the freedom of speech. Freedom of speech in media has two forms, one is through broadcast and the other is print media. The author has compared the different approaches taken by the abovementioned countries in protecting the freedom of speech.

The use of non-linguistic symbols should be regarded as speech, particularly when their meaning is as clearly established as comparable verbal or written message. The author compared several types of free speech in different countries and these are political speech, libel and invasion of privacy, privacy and free speech, copyright, meetings, protest and public order, pornography, commercial speech, freedom of speech in media, and freedom of speech and the internet.

It is interesting to see how each country values freedom of speech. For example, in the United States, it has adopted the free speech principle where speech is entitled to special protection from regulation or suppression. It is entitled to a degree of immunity from government regulation because of some special quality or value to be attributed to communication expression.

It means that expression should often be tolerated, even when conduct which produces comparable offense or harmful effects might properly be proscribed. The United States Supreme Court has adopted several principles in protecting the freedom of speech. One of them is the ‘clear and present danger test. It has been applied to safeguard insulting and inflammatory speech, unless the state can show that as a result, imminent disorder is likely to occur. Another strong principle is that courts must not grant a prior restraint, unless the state can show that, without such an order, it would suffer direct, immediate and irreparable damage. The Court also formulated a rule under which a public official or figure cannot succeed in a libel action, unless he proves that the defamatory allegations were published with the knowledge that they were false. The most important of these principles states that content-based restrictions on speech should be subject to strict or heightened scrutiny. Under this test the state must show a compelling interest to justify the restriction. Further, it must show that it could not have achieved this aim by ‘less restrictive means’, in other words that a less draconian measure would not have been adequate to safeguard, say, a national security or another compelling state interest. In contrast, a content-neutral restriction is subject to intermediate scrutiny, a test much less severe than strict scrutiny, but harder to satisfy than a ‘reasonable basis’ test under which virtually all restrictions on speech may pass constitutional muster. Intermediate scrutiny all requires the state to show that there is a substantial interest to support the restriction and only that the measure was narrowly tailored to achieve that interest, without disproportionately suppressing speech.

In England, prior to the enforcement of the Human Rights Act 1998 (HRA 1998) on 2 October 2000, freedom of speech used to mean that liberty was largely residual. There is liberty where statute or common law rules did not restrict its exercise. But in the 1980s and early 1990s, English judges have already begun to invoke common law principles of freedom of speech or of the press to limit the scope of other common law rules which inhibit the exercise of these freedoms. When HRA 1998 took effect, English common law no longer treats freedom of speech as a merely residual liberty. It is a legal principle, to which the courts must pay attention when interpreting public order or obscenity legislation, or when considering the defenses to an action 17 for libel or breach of confidence or contempt of court proceedings. It means that the presumption is that other rights should be protected, unless there is a more powerful free speech argument to support the opposite conclusion.

In contrast, where free speech is constitutionally guaranteed, the argument should normally be whether there is a sufficiently justification for its exercise; either there is a presumption in favor of free speech or at least it is assumed that it is entitled to as much weight as the competing interest.

Canadian free speech law had largely followed the common law approach of England, before the enactment of the Charter Rights and Freedom in 1982.

The Charter provides that “Everyone has the following fundamental freedoms: xxx (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” However such freedoms are not absolute unlike the First Amendment. The Canadian Charter further provides that the rights and freedoms set out in it are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The Canadian Supreme Court fully considers the context of the particular case and the value of the expression at issue when determining whether the state has made its case for restricting the exercise of freedom. Both Canadian and US free speech law guarantee free speech or expression rights only against invasion by government or other public authorities and not against private individuals.

Freedom of expression, press freedom, and other related freedoms are guaranteed in Germany by Article 5 of the Basic Law for the Federal Republic of Germany. It provides: “1. Every person shall have the right freely to express and disseminate their opinions in speech, writing, and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship. 2. These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honor. 3. Art and scholarship, research, and teaching shall be free. The freedom of teaching shall not absolve any person from allegiance to the constitution.”

In contrast to the US Amendment and the Canadian Charter, the detailed character of these provisions is striking. The rights of the speaker and recipient are separately recognized, as they are in ECHR. The relationship between freedom to express opinions and the right to receive information has been much discussed by the Federal Constitutional Court. It is clear that they are separate rights, the latter protecting the interests of recipients in unimpeded access to information supplied by sources willing to provide it. Freedom of the press and broadcasting freedom are treated by the Constitutional Court as distinct from the freedom to express opinions. They protect the institutional independence of newspaper and broadcasting companies from the state, rather than the content of particular articles or programs from legal restriction. But the Court has made it clear that broadcasting freedom is subordinate to the values of freedom of expression. The interests of viewer's access to a wide variety of programs and information are more important than the unfettered freedom of a broadcaster. Censorship is prohibited under Article 5(1). It is an absolute prohibition. But its scope is limited to administrative control exercised before publication or communication. There are separate guarantees for freedom of assembly and for the free establishment of political parties. These freedoms strengthen the protection of free speech within particular contexts, for example, the conduct of demonstrations and peaceful protest.

Other provisions of the Basic Law may limit the exercise of freedom of expression. Among them are the right to free development of personality and right to property. Article 5(2) of the Basic Law is not absolute. It may be limited by provisions of general laws. The German Constitutional Court does not prescribe exact steps which must be taken to satisfy freedom of expression values, but it does issue guidelines. This degree of intervention would be regarded as dangerous in the United States, where freedom of speech is protected only against the state. The freedom of art and science, and research are apparently unlimited. Article 5(3) does not authorize the imposition of any restrictions or conditions on the freedom it guarantees save for teaching freedom which does not grant exemption from loyalty to the constitution. Nevertheless, freedoms under Article 5(3) must be balanced against other constitutional rights and must give way to them when the latter are entitled to greater weight in the circumstances of the case. The Courts weigh freedom of expression against competing rights and interests, whether these are constitutional or reflect legislative objectives.

Article 10 of European Convention on Human Rights provides: “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises; 2. The exercise of these freedoms, 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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Article 10(2) does not remove the right granted by the first paragraph.

Freedom of expression is presumably favored, the exceptions must be however, narrowly construed. The European Court has ruled that an interference with speech should only be treated as ‘necessary’ if there was a ‘pressing social need’ for it in the particular circumstances, if the restriction was proportionate to the aim pursued, and the reasons given for it were relevant and sufficient.

The state has the burden of proving that there is a pressing need for the restriction of such right. The Article also covers commercial speech and professional advertising. Prior restraints or censorship are not forbidden, but are subject to particularly careful scrutiny, because they prevent or delay the exercise of freedom of expression rights. Journalistic freedom allows room for some exaggeration and provocation. But journalists must provide reliable information and act in good faith in accordance with the ethical standards; the exercise of free expression under Article 10(2) carries with it duties and responsibilities. The European Court allows member states a ‘margin of appreciation’ in determining whether it is necessary to impose a restriction on the exercise of freedom of expression. At the same time, the Court supervises both the formulation of the restriction and its application by national courts to ensure it is proportionate to the legitimate aim in respect of which it was imposed. While the Strasbourg Court is not an appellate court, it reviews the reasons for the national courts’ decisions with great care, often examining the facts of the case in detail. This approach allows it to intervene more readily to protect freedom of expression in some circumstances than in others.

One of the most prominent issues in the freedom of speech is libel. It is because libelous materials tend to give a person, business or group a negative image to the public, thus libel should be balanced with free speech. The author made an important discussion on how libel is treated in countries like the United States, Germany and England as well as the European Court on Human Rights. In the United States, a public official must be able to prove that there is an actual malice. The difference between the US rule and the common law is that the common law assumes that the defendant will be able to show the truth of defamatory allegations in court and should accept liability if he does not do this. The states are free under the First Amendment to decide their own standards of defamation liability, provided they did not maintain common law strict liability. Recovery in libel could only be permitted where the claimant proved actual loss or injury. In the absence of any showing of actual malice, there should be no recovery for presumed or punitive damages. Under the United States law, there is a need to draw lines between public officials and private individuals. A further distinction must be drawn between allegations made in speech of public concern and those made in the course of speech of only private concern.

In Germany, under Article 5(2) of the Basic Law, the right to free expression is limited by the right to inviolability of personal honor, as well as the provisions in general laws. Limits are imposed by the criminal law of insult and defamation and by provisions of the German Civil Code. The lower courts must weigh the competing interests in freedom of expression and in personal reputation appropriately in the light of all relevant facts in the case.

The Court will uphold a constitutional complaint if the balancing has not been conducted properly. The laws protecting individuals against defamation must be interpreted and applied so they do not unduly restrict freedom of expression. In balancing the freedom of expression and reputation rights, the Constitutional Court has emphasized that more freedom should be allowed the expression of an opinion than assertion of

facts. Unlike the American approaches, the German case-law makes little attempt to formulate precise rules on the basis of which free speech and reputation rights are to be balanced.

The Constitutional Court lays down guidelines on the basis of which the ordinary civil and criminal courts are required in some circumstances to give priority to reputation or freedom of speech. It removes the need to draw lines between a public figure and a private individual. Until recently, English courts refused to recognize defense of qualified privilege to defamation actions brought in respect of communications to the general public of inaccurate information. There is libel when the defendant could not prove the truth of any factual allegations. English libel law may cause the media to refrain from publishing allegations which they believe on good grounds to be accurate, when, for instance, there is not enough time to verify them or the claimant is unavailable for comment, thus libel continues to chill freedom of speech. But the chill should only be regarded as undesirable if it is accepted that there is a right to publish material damaging to an individual's reputation whenever the allegations are of public interest and there is some basis for believing them to be true.

The European Court on Human Rights is concerned with the character and subject matter of the defamatory material rather than the status of the libel claimant. The Court would carefully scrutinize constraints imposed by libel law on the discussion of any matter of public concern. The Court gives greater protection to value judgments than to factual allegations. In that respect, it adopts the same approach as courts in the United States, Germany, England and other jurisdictions. The Court attaches weight to the general purpose of the publication and the relative importance within that context of the defamatory allegations. The European Court ensures that national courts have balanced freedom of expression and the right to reputation correctly.

Another aspect of free speech that is relevant is the free speech in media. The freedom of speech and freedom of the press are equivalent. The right of media to provide information and to know is neither more nor less than that of the general public. Since the media provide information to the public, their right must be protected so that the public will be benefitted from the information they provide.

The United States Supreme Court has not given the 'freedom of the press' limb of the First Amendment any specific content which is clearly distinct from the coverage afforded by freedom of speech. It treats ordinary individual speakers and writers in the same way as the press and other media, so avoiding any charge of discrimination in favor of the latter. It is clear that non-media defendants enjoy the same degree of protection as the press and broadcasters from libel actions. In the United States, broadcasters enjoy editorial freedom to determine program schedules, including a right to reject political advertisements. Even public broadcasting channels are free to take a distinctive view on controversial public issues.

The German Court, however, has made distinctions between the press freedom and broadcasting freedom. Both branches of media are constitutionally protected as institutions. Their independence from state control is an essential element of liberal democracy. It considers freedom of the press and broadcasting as an instrumental freedom guaranteed only inasmuch as it promotes the values of freedom of speech. German decisions show press freedom clearly entitles an editor to select the letters for publication in his paper and to allow a writer to contribute anonymously. He is also free to determine its general outlook and its views on particular political and social issue.

The Canadian Charter provides that everyone has the fundamental freedom of expression including freedom of the press and other media of communication. Media freedom is not a right to be enjoyed solely by the media themselves, although the press or broadcasting institution is entitled to assert it. But when they do so, they are in effect claiming to exercise a freedom on behalf of everyone.

The European Convention on Human Rights and Fundamental Freedoms (ECHR) does not provide any separate guarantee for the press or broadcasting media, it emphasized the vital function of the press as a 'public watchdog' in imparting information and ideas of public interest.

Broadcasters have been more tightly regulated than newspapers publishers and editors. This is particularly true in Canada and Europe, where channels are usually required to be impartial in their presentation of news

and treatment of political issues. They are also subject to stricter controls than the press with regard to the use of bad language and portrayal of sex and violence.

They are usually required to show current affairs and other serious programs, so they are not completely free to determine their own schedules. In an era where different forms of communication and expressions are rapidly sprouting numerous in view of the advancement of technology and where more and more countries are shifting to democracy, a form of government in which freedom of speech plays an important role, it thus becomes significant to draw the line between speech or conduct that can be legally protected and that which may be validly restrained by the government.

In striking such difficult balancing of the values involved, this book can well serve as a guideline. It is also a helpful aid for both students of the law and legal practitioners in their continuous study of the law on free speech.

DEFINITION OF THE CONCEPT 'PRESS FREEDOM'

A typical definition of 'press freedom' in text books has a functional approach, for instance such as: "the mass media's unquestionable right to discuss whatever is not explicitly forbidden by law, including the wisdom of any restrictive statute".¹

The emphasized aspect is the press' independence of interference from any external interests. The attention is most of all given to how political authorities give the press space and freedom to play its autonomous role. An alternative approach is to emphasize press freedom as a regime, for instance as: "[...] This regime presupposes that information resources are significantly independent of political or economic powers..."²

The English philosopher of the Enlightenment, John Locke, is among the most influential contributors to freedom thinking in Western democracies. In his contract theory, government needs support from the governed. In addition, people have the right of revolution, even a duty to rise up against tyrants. These two assumptions have been the basis for civil rights such as freedom to say, print and publish opinions and beliefs.³

Search for truth was at the core in early philosophy about the press. The German printer John Peter Zenger, an immigrant to the United States, was in 1735 found not guilty in a case on seditious libel. The defense was that what he had written was the truth. This was the start of the ideology where truth is given as reason for press freedom. The event is also celebrated as the origin of the watchdog principle.⁴

Despite honourable phrases, definitions and practices of press freedom have been flexible. The legal origin and the best conditions for a free press is often credited to be in the First Amendment of the Constitution of the United States in 1791 which states: "Congress shall make no law ... abridging the freedom of speech, or of the press".⁵

This doctrine which 'no law is the best law' is in accordance with American liberalism where the ideal is a minimized state beyond serving individual freedom, order and security. The historical contrast was the Constitution of the Soviet Union which also guaranteed freedom of the press. However, what the Soviets meant was freedom from capital, careerism, and bourgeois archaic individualism.⁶

¹ Among many examples, this one is quoted from: Ahuja, B. N., *Theory and Practice of Journalism* (Delhi: Surjeet Publications, 2004), p. 4.

² Linard, André, *Law and Ethics of the Media : Media Training in Africa* (Nairobi: Paulines Publications, 2002), p. 132.

³ Altschull, *From Milton to McLuhan*, pp. 49-52.

⁴ *Ibid.*, pp. 109-110.

⁵ Patterson, Thomas E., "The United States: News in a Free-Market Society" in Gunther, Richard and Mughan, Anthony (eds.), *Democracy and the Media : A Comparative Perspective* (Cambridge: Cambridge University Press, 2000), p. 242.

⁶ Siebert, Peterson and Schramm, *Four Theories of the Press*, pp. 125-126.

Another early influential thinker on press freedom is John Stuart Mill. His “Essay on Liberty” in 1859 has been credited as one of the founding documents of the liberalism. Mill was concerned with plurality, including the right to be wrong and make mistakes. The many sides of truth was among his reasons for need of free expression. He described that right as one of the most sacred.⁷

Mill is much referred in Western as well as in African writings which indicate his global impact on the notion of press freedom.⁸ A twin concept of press freedom is ‘freedom of expression’ which is a cornerstone in democracy. The concepts press freedom and freedom of expression seems to overlap almost completely. Many text books mix these without clear distinctions but press freedom is among the means or conditions for a satisfactory working freedom of expression. Hence, these concepts are two sides of the same issue.⁹

In terms of democracy, a major point is that press freedom belongs to the public, not to the media corporates. If information is a public good, a necessity for democratic processes, the purpose for press freedom is that the press should get conditions to serve the public.¹⁰

A legal description of press freedom gives attention to four aspects of press freedom. The case studies from Scandinavia and East Africa will be organized in accordance to this classification. One aspect is content-neutral regulations arrangements. These influence the media indirectly, for instance, subsidies, customs, taxation, as well as anticompetition laws. Those instruments may incite or obstruct a country’s mass media due to political preferences, and decide the scope of media’s role in that society. Another aspect is news gathering. That is about the media’s right to access information, and exceptions, the media’s criminal and administrative liability, relations with and protection of confidential sources as well as selection systems in licensing of journalists. The next aspect is about content-based regulations which cover the media’s right to publish and to decide over its own content. That right is not absolute. Different kinds of protections are established to protect other interests such as the state’s collective concerns as well as other private and individual interests. Many competing freedoms in this area have to be regulated even in a liberal society. Finally, an aspect is about protection of journalistic activity. It may include ‘internal press freedom’ which means arrangements that control the relations between media owners and their editorial staff. Towards authorities it is whether journalistic activities are offered privileges which function as protection, or opposite; harassment of journalists.¹¹

More than 100 international non-governmental (NGO) or inter-governmental organisations (IGO) are involved in evaluating or promoting press freedom. Considered as agents, those organisations constitute a press freedom movement. Altogether, those provide numerous definitions and angles to understand, consider or evaluate press freedom. Among those with great impact is International Press Institute where members are among the senior executives in the world’s leading news media. IPI, based in Vienna, constitute an influential network well involved with the United Nations and UNESCO.

IPI’s annually report World Press Freedom Review monitors press freedom worldwide by qualitative methods. Another important press freedom NGO is Freedom House, based in Washington, which through detailed legal, political and economic criteria measures press freedom in each country on a scale from 0 (best) to 100 (worst). A similar ranking is made from Reporters Sans Frontieres, based in Paris, through 53

⁷ Altschull, From Milton to McLuhan, pp. 161-172.

⁸ Ogbondah, Chris W., “Media Laws in Political Transition” in Hydén, Göran, Leslie, Michael and Ogundimu, Folu F., Media and Democracy in Africa (New Jersey: Transaction Publishers, 2002), p. 58; and Makali, David (ed.), Media Law and Practice : The Kenyan Jurisprudence (Nairobi: Phoenix Publishers, 2003), p. 25.

⁹ Krug, Peter and Price, Monroe E., “The Legal Environment for News Media” in World Bank, The Right To Tell : The Role of Mass Media in Economic Development (Washington: The World Bank/WBI Development Studies, 2002), p. 195.

¹⁰ Ibid., p. 194.

¹¹ Ibid., pp. 187-205.

questions. Further, World Press Freedom Committee coordinates the majority international organizations concerned with press freedom.¹²

WPFC's criteria for press freedom are formulated in twenty questions, for instance such as: "Are there restrictive press laws, are journalists in jail, is libel a civil or criminal offense?" and "Is government advertising allocated fairly?"¹³

Debates on press freedom and hence, the press' responsibility, are often a hot issue.¹⁴ The question is, how can responsibility be developed when the press claims independence? In many countries the media have introduced their own system of codes of ethics. The purpose has been to create a sense of professional responsibility, as well as to provide the industry with a system of conflict resolution. The idea is that in such a system, the government will not interfere with the details of the media's behaviour and would not be a part of the conflict resolutions – except in the most serious cases which appear in the court. Such a system, made and introduced by the press itself, would be considered as the practice of press freedom. A similar system, made and introduced by the government, may be considered as an attack on press freedom. As a part of the global spread of press freedom, a corresponding system of self-governing codes of ethics for the mass media emerge in more and more countries.¹⁵ These are typically administered by media councils initiated by the press itself.

OBSCENITY AND DECENCY (IN ADS AND SOAP OPERAS)

Women are main targets of commercials related to them and household use like cosmetics, apparels, jewellerys, food, cleansers i.e. detergents and soaps, utensils, kitchen gadgets etc. Advertising specialists feel that the easiest way to gain customer confidence is by referring to stereotype and hierarchical order that are reflected in social life. Ads created an illusion of happiness, depicts an ideal world, where everything is clear, simple and requires no great effort. They glamorize everyday life and domestic chores while portraying a vision of happy and perfect family complete with a model couple, one or two kids and pets all ensconced in a beautiful house. They target women's feeling of responsibility and appeal to women's traditional mission to guard their homes in this case against disease germs etc. as if sterile both rooms and kitchens prone to be the way towards fulfillment of the socially accepted roles of mothers and housewives. Women are depicted as sexual or aesthetical object in advertisements where they are made to look beautiful with help of various products or services and are made capable of demonstrating desire openly especially to attract attention of men with the help of the acquired beauty and charm. In this respect it can be said that the emotions like envy and jealousy amongst women is a recurring feature in women's products though not that apparent in advertisements for men's products. This goes a long way in demeaning the image of women though jealousy is a human trait not exclusively a woman's attribute. Also advertisers use women's emancipation to soft peddle consumerism. They highlight how the urban working woman becomes a super mom, great wife and efficient worker by using all kinds of labour saving appliance at home. Women are utilized in advertising to sell products to both male and female consumers through their two-dimensional role: as caretakers of the household and the family and as a decorative sex object that women have sex appeal and that female form is attractive is cashed in by the advertiser.

Advertisements where women are end uses like detergents powders and cakes, spices and masalas, dresses, cooking oil, personal care products and cosmetics etc, show women as unhappy before use of product and happy after use as if satisfaction and contentment is derived from use of products and services only. In most ads women are shown as taking care of family which is a noble occupation and there is nothing

¹² Becker, Lee B., Vlad, Tudor and Nusser, Nancy, *Measuring Press Freedom: A Technical Report* (Athens, USA: Grady College of Journalism & Mass Communication, University of Georgia, 2004), pp. 1-8, 14-15 and 34-39.

¹³ World Press Freedom Committee: "Criteria for Press Freedom", <http://www.wpfc.org/index.jsp?page=Criteria%20For%20Press%20Freedom>, downloaded 28th March, 2005. WPFC's homepage: <http://www.wpfc.org/>

¹⁴ Oloo, J. B., "Why media freedom is so vital" in *Daily Nation* (Nairobi: Nation Media Group), reader's letter, 21st December, 2003; and Ngari, Johnson L., "Freedom of the Press and its responsibility" in *East African Standard* (Nairobi: The Standard Ltd.), commentary, 27th April, 2004.

¹⁵ Herbert, *Practising Global Journalism*, pp. 69-75.

wrong in projecting it however, it is the glorification of the ever smiling immaculately dressed, submissive housewife which is not correct. Even though working women have been accepted in society but still the advertisements are yet to portray such women correctly. Independent and young working women are shown as having a chief concern, how to look and stay beautiful not just to the onlooker but also to herself. As the female form is attractive is cashed in and commoditized by the advertisers. In case of advertisements where women are end users of the product or service, it is highly justified to use women. However it is seen that in case of many advertisements women may or may not be the target consumers yet they are still used. In reality they are used in selling diverse products from male shaving systems to automobiles just because the media persons think that beautiful bodies are good for brand recall. The growing power of media –both electronic and print –and their increasingly commercial nature, which obviates all pretence at a higher purpose, suggests that the commoditization of women so evident in the west in the 1960's is likely to become more virulent in the near future. In society today, self esteem is an important issue that affects everyone including women. These days projection of a careful body image especially for women have been generated. Female models are shown to look perfect and in effect inspire the women to try hard to attain the all important standard of beauty and perfection as set by the visuals of the advertisements.

Advertisements have many stereotyped views about women, one of which is to have an ideal body image, be it her face or body, she has to look perfect. Women models in advertisements act as role models for women and teenagers, who see them often, which in turn have an impact on the mind of the female viewers and therefore they wish to obtain perfect bodies. Women try hard to gain such ultimate body image because they want to have attractive figures which resemble the perfect bodies shown repeatedly and think that this is the set standard. Many diets therapies are advertised with assurance of fast and easy weight loss leading to a happier and successful life for the user. Many women opt for these crash weight loss centers courses or medicines and believe that this will be a quick solution to their ideal body image problems. Without realizing it, some of these women especially teenage girls, become anorexic and bulimic because of the unrealistic desire to look perfect as projected in the different advertisements by perfect models.

In the contemporary urban context, the media driven consumer culture mirrors western ideals of the perfect body-perfectly shaped, toned and exercised. Advertisements take advantage of the Indian mentality of craze for fair skin especially for girls.

Young girls are made the target of various fairness creams and encouraged to become fair to either attract a husband or get a job. In various advertisements, it is shown that after use of product, the girls become fair skinned and get good marriage proposal or the desired job. It seems that fair skin is the only ticket to success and all other qualifications and qualities becoming irrelevant.

As a developing nation with many objectives and goals pertaining to development, the society needs celebrity endorsements. Using film actresses to model for such positive messages is quite common now ranging from diverse ideas like national integration, family planning, wildlife preservation, energy conservation, AIDS awareness to eye donation. These are indeed socially responsible activities of advertisements and these actions need to be lauded. Unfortunately such messages are few and far between in comparison to other commercial messages which are in huge numbers and are related to beauty creams, lotions, colas etc produced for easy and quick money even though some of the contents of such messages are derogatory often encouraging voyeurism, modeled by film actresses and female artists of well known television serials. Beauty contests are held often all over the country which is no more than ploys to use the winners of the contest to endorse the multifarious products and services, which have sponsored these events.

The patriarchal mindset is reflected in advertisements which are again an extension of societal values. In the last few years due to positive effects of globalization it has been notice that female workers are getting hired in the service sector and this sector is considered friendly to women employees. Women are earning more and spending more, hence corporate and marketing strategies are being fashioned to target women and use women in advertisements in neutral manner. However it has been noticed that in such advertisements women are projected as inferior especially intellectually. In most cases advertising agencies and the sponsoring company are represented by men who sometimes even unknowingly make such representations.

Women are allowed to take decisions for detergents, spices etc, but when more important decisions are taken like cars; loans; shares then men are shown as the decision makers. Also working women are mostly depicted mostly as holding subordinate position to males, where the males are shown as self assured and females shown as looking for male acceptability. Gender relations affect the unequal power relations in society and these are reinforced in advertisements. Our society does not like changes it prefers keeping people in their place be it have-nots, scheduled castes or women. And it finds its strongest ally in advertising. There is an urgent need to initiate changes in the existing portrayal of women in advertisements to make this medium more effective and positive as far as women's portrayal is concerned.

PRIVACY AND COPY RIGHTS

"Piracy" includes the reproduction and distribution of copies of copyright-protected material, or the communication to the public and making available of such material on on-line communication networks, without the authorization of the right owner(s) where such authorization is required by law. Piracy concerns different types of works, including music, literature, films, software, videogames, broadcasting programs and signals.

"Piracy" is the popular term used to describe the phenomenon. However, national copyright legislations generally do not include a legal definition. Today, the only international legal instrument in the copyright arena which provides a definition of "piracy" is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement):

"Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation".(Art.51, n.14)

Traditionally, piracy concerned the unauthorized reproduction and distribution of physical copies of protected works, on a commercial scale or with a commercial purpose. However, the rapid development of the Internet and the massive unauthorized on-line use of protected content, where the "commercial" element is often missing, have given rise to a lively debate. The question whether such use constitutes "piracy" and should be treated in the same way as traditional piracy is at the heart of the current copyright debate. Different, and often diverging, points of view are being put forward and the answer to the question differs from one country to another¹⁶.

COPYRIGHTS

Copyrights protect the expressive arts. They give owners exclusive rights to reproduce their work, publicly display or perform their work, and create derivative works. Additionally, owners are given economic rights to financially benefit from their work and prohibit others from doing so without their permission. It is important to realize that copyrights do not protect ideas, only how they're expressed.

INTELLECTUAL PROPERTY RIGHTS

Intellectual property is the area of law that deals with protecting the rights of those who create original works. It covers everything from original plays and novels to inventions and company identification marks. The purpose of intellectual property laws is to encourage new technologies, artistic expressions and inventions while promoting economic growth. When individuals know that their creative work will be protected and that they can benefit from their labor, they are more likely to continue to produce things that create jobs, develop new technology, make processes more efficient, and create beauty in the world around us.

There are three main mechanisms for protecting intellectual property in the United States: copyrights, patents and trademarks.

¹⁶ http://portal.unesco.org/culture/en/ev.php-URL_ID=39397&URL_DO=DO_TOPIC&URL_SECTION=201.html

PATENTS

Patents protect an invention from being made, sold or used by others for a certain period of time. There are three different types of patents in the United States:

Utility Patents - these patents protect inventions that have a specific function, including things like chemicals, machines, and technology.

Design Patents - these patents protect the unique way a manufactured object appears.

Plant Patents - these patents protect plant varieties that are asexually reproduced, including hybrids.

Inventors may not assume that their creation is patented unless they apply and are approved for a patent by the US Patent and Trademark Office. This process can be complex and time consuming. It is a good idea to hire an intellectual property attorney to make sure you file the appropriate paperwork and get the patent you need to protect your invention and make it profitable.

TRADEMARKS

Trademarks protect the names and identifying marks of products and companies. The purpose of trademarks is to make it easy for consumers to distinguish competitors from each other. Trademarks are automatically assumed once a business begins using a certain mark to identify its company, and may use the symbol TM without filing their symbol or name with the government.

There are strict laws in place to protect intellectual property rights. When intellectual property rights are violated, it is important to hire an intellectual property lawyer. An experienced attorney can help you sue for damages that include lost royalties. If your case is successful, the person who violated your intellectual property rights may be required to pay for all of your legal fees in addition to compensating you for using your work without your permission.

MEDIA OWNERSHIP AND ITS DIFFERENT FORMS

MEDIA OWNERSHIP AS GLOBAL

Media ownership (also known as media consolidation) is a commonly used term that refers to the majority of the media outlets being owned by a small number of corporations and especially by those who view such consolidation as detrimental, dangerous, or otherwise problematic to characterize ownership structure of mass media industries.

Media ownership may refer to states of oligopoly or monopoly in a given media industry, or to the importance of a low number of media corporations. Large media conglomerates include, National Amusements, Viacom, CBS Corporation, Time Warner, News Corp, Bertelsmann AG, Sony, General Electric, Vivendi SA, Hearst Corporation, Organizações Globo and Lagardère Group.

For example, movie production is known to be dominated by major studios since the early 20th Century; before that, there was a period in which Edison's Trust monopolized the industry. The music and television industries recently witnessed cases of media consolidation, with Sony Music Entertainment's parent company merging their music division with Bertelsmann AG's BMG to form Sony BMG and Time Warner's The WB and CBS Corp.'s UPN merging to form The CW. In the case of Sony BMG, there existed a "Big Five" (now "Big Four") of major record companies, while The CW's creation was an attempt to consolidate ratings and stand up to the "Big Four" of American network (terrestrial) television.

The print media display the greatest diversity of all, in both ownership and content. They range from daily to weekly newspapers, from news magazines to a range of special interest publications. The print media are usually in private hands. The main exceptions are likely to be authoritarian or dictatorial systems under which free elections are unlikely to be on the agenda. But there are also countries, such as some in northern Europe,

where a public subsidy is paid to newspapers to ensure the political diversity of the press. In countries emerging from dictatorship, aid donors sometimes subsidize private newspapers with a similar aim. By and large, however, newspapers derive their income from advertising and sales revenue (with the former usually much more significant than the latter). The ideal of the "Fourth Estate" - the media keeping a check over government - is perhaps more effective in the print media than broadcasting. At least some newspapers in any country are likely to conduct serious news investigations and to comment in a reasonably sophisticated manner on political developments. The same is not always true of broadcasters.

MEDIA OF PAKISTAN

In the early twenty-first century, the amount of print media in Pakistan declined precipitously while total circulation increased. From 1994 to 1997, the total number of daily, monthly, and other publications increased from 3,242 to 4,455 but had dropped to just 945 by 2003 with most of the decline occurring in the Punjab Province. However, from 1994 to 2003 total print circulation increased substantially, particularly for dailies (3 million to 6.2 million). Print media are published in 11 languages, but most are published in Urdu and Sindhi, and English-language publications are numerous. The press generally publishes free from censorship and has played an active role in national elections, but journalists often exercise self-censorship as a result of arrests and intimidation by government and societal actors. Most print media are privately owned, but the government controls the National Press Trust, a major newspaper publisher, and the Associated Press of Pakistan, one of the two major news agencies. The constitution guarantees the rights of free speech and press but also allows for government restrictions in cases of offenses against Islam, public morality, national security, and other circumstances. In fact, the government can fine and imprison those who broadcast material that is deemed inconsistent with "national and social values."

MEDIA OWNERSHIP IN PAKISTAN

After partition due to financial constraints, print media was not so developed in Pakistan. After that many Urdu, English and other languages newspapers began to be published from different parts of the country. Regarding ownership, the person who is not a citizen of Pakistan shall not own or hold any interest in any newspaper printed or published in a province except with the previous approval of the government, and no such person shall, in any case, own or hold more than twenty-five percent of the entire proprietary interest of any such newspaper, whether in the form of shares or by way of sole ownership or otherwise.

MAJOR PLAYERS ON PRINT MEDIA IN PAKISTAN

There are three major players on the print media market and in the media market in general.

1. **The Jang Group of Newspapers** is Pakistan's largest media group and publishes the Urdu language Daily Jang, The News International, Mag Weekly, and Awam. The group tends to have a moderate conservative perspective.
2. **The Dawn Group of newspapers** is Pakistan's second largest media group and produces an array of publications that include the Star, Herald and the newspaper Dawn, which is its flagship. Dawn is considered a liberal, secular paper with moderate views. The Star is Pakistan's most popular evening newspaper, and the Herald, is a current affairs monthly.
3. **Nawa-i-Waqt** is an Urdu language daily newspaper and has one of the largest readerships in the country. It belongs to the Nawa-Waqt group, which also publishes the English newspaper, The Nation. Like The Nation, the Nawa-i-Waqt is a right wing, conservative paper. According to Javid Siddiq, resident editor, the paper stands for democracy and for an Islamic welfare state.

The organization All Pakistan Newspapers Society (APNS) represents major newspaper publishers and owners and is dominated by the media moguls. It was founded in 1953 by the major pioneering editors and

publishers of the day to facilitate the exchange of views between editors and to protect the rights of newspapers. Today, APNS's primary objective is to safeguard the commercial interests of its membership. If an advertiser defaults on payment, the newspaper company complains to the APNS. With 243 members, APNS will then pressure the company or the ad agency to either pay or be blacklisted.

LESSON 10

ETHICAL PROBLEMS; PRIVACY, CORRUPTION, PERSONAL INTERESTS, ETC.

PRIVACY

Privacy is the ability of an individual or group to seclude themselves or information about themselves and thereby reveal themselves selectively. The boundaries and content of what is considered private differ among cultures and individuals, but share basic common themes. The degree to which private information is exposed therefore depends on how the public will receive this information, which differs between places and over time. Privacy can be seen as an aspect of security as well.

The right against unsanctioned invasion of privacy by the government, corporations or individuals is part of many countries' privacy laws, and in some cases, constitutions. Almost all countries have laws which in some way limit privacy; an example of this would be law concerning taxation, which normally requires the sharing of information about personal income or earnings. In some countries individual privacy may conflict with freedom of speech laws and some laws may require public disclosure of information which would be considered private in other countries and cultures. Privacy may be voluntarily sacrificed, normally in exchange for perceived benefits and very often with specific dangers and losses, although this is a very strategic view of human relationships.

The term "privacy" means many things in different contexts. Different people, cultures, and nations have a wide variety of expectations about how much privacy a person is entitled to or what constitutes an invasion of privacy.

Physical privacy could be defined as preventing "intrusions into one's physical space or solitude. Physical privacy may be a matter of cultural sensitivity, personal dignity, or shyness. There may also be concerns about safety.

Informational or Data privacy refers to the evolving relationship between technology and the legal right to, or public expectation of privacy in the collection and sharing of data about one's self. Privacy concerns exist wherever uniquely identifiable data relating to a person or persons are collected and stored, in digital form or otherwise. Such types of privacy include financial privacy, Internet privacy, Medical privacy, Sexual privacy, Political privacy and **organizational privacy**.

There have been attempts to reframe privacy as a fundamental human right, whose social value is an essential component in the functioning of democratic societies.

PRIVACY PROTECTION: FREE MARKET VERSUS CONSUMER PROTECTION APPROACHES:

Approaches to privacy can, broadly, be divided into two categories: free market, and consumer protection. In a free market approach, commercial entities are largely allowed to do what they wish, with the expectation that consumers will choose to do business with corporations that respect their privacy to a desired degree. If some companies are not sufficiently respectful of privacy, they will lose market share. Such an approach may be limited by lack of competition in a market, by enterprises not offering privacy options favorable to the user, or by lack of information about actual privacy practices. In a consumer protection approach, in contrast, it is acknowledged that individuals may not have the time or knowledge to make informed choices, or may not have reasonable alternatives available.

The Universal Declaration of Human Rights, article 12, states:

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

Source: Belsey, A. & Chadwick, R. (1992). *Ethical Issues in Journalism and the Media*. London: Routledge.

Ethics and politics of the media: the quest for quality

Andrew Belsey and Ruth Chadwick

Journalism is an honourable profession, though many of those who should care for it, often including its own professionals, have dishonoured it. Governments of most ideological leanings, when not actively persecuting it, have sought to censor and control it, usually with success. Owners have used it as a means of satisfying their quest for power and wealth, not to mention megalomania. As for journalists, they, as the humorous rhyme reminds us, do not even need to be bribed to behave unethically. Even 'consumers' have done journalism no service by putting up with trivia and trash, accepting execrable standards as the norm.

Yet journalism remains an honourable profession, because it has an honourable aim, the circulation of information, including news, comment and opinion. This is an honourable aim because the health of a community—especially a community that has any pretensions to democracy—depends on it. There is no reason why journalism should not have further aims as well, such as entertainment, so long as these are subordinated to the overall aim of the circulation of information.

Many of the issues raised so far are taken up in the essays in this book, and some of them will be commented on later in this introduction. But we are also concerned with the question of whether the honour of journalism can be restored, and with the global context which matters to do with community, democracy and the media cannot ignore as the world approaches the millennium. In both cases the issue of quality will be at the forefront.

THE GLOBAL CONTEXT

Unprecedented changes as the world enters the final decade of the twentieth century present the media with great opportunities and great problems. The opportunities arise from the global need for information as human beings assess the chances of their own survival as a species, or, at a less fateful level, just worry about what sort of world and what sort of life for its inhabitants there will be in the future. Global politics presents daunting challenges, but authoritarian structures are no longer regarded as an acceptable means to political ends. The sort of alternative democratic participation and involvement that is required is impossible without information. Here then, as the people of the world struggle for a worthwhile way of life within a sustainable future, is a role for the media, especially those media that can still be called the press, whether they are part of print or broadcast journalism, so long as they follow the traditional role of the press as providers of information.

It is something of a cliché that the world has shrunk to a village in which the major problems are problems for everyone, for they are unavoidable and cannot be escaped from by futile attempts to keep your own back yard clean. Further, it is said that the world has become an electronic village, for almost everyone has instant access through radio and television and newer electronic media to the latest circulated information. But it is precisely the quality of this information which is at issue.

The major problems facing humanity seem to arise from an unstable mixture of politics and science, using both these terms in a broad sense. First of all there is the global problem of environment, resources and population, a single whole which is a compound of numerous elements. These include the problem of feeding the world's hungry, which could be done now if existing food resources were distributed properly and fairly (though the effect on world food supply of the collapse of the Soviet Union remains to be assessed). But even so, there is an upward pressure on all resources as the world population continues to grow exponentially, and at the same time the environment faces increasing degradation from pollution of all kinds, including that which contributes to the alleged greenhouse effect.

In addition, national rivalries, often over resources, but fuelled by chauvinistic, ideological and religious differences, threaten to bring permanent instability to international relations, together with the constant threat of war based on the mass availability of sophisticated weaponry, including perhaps nuclear weapons released by the break-up of the Soviet Union. The falling-apart of this once fairly stable structure is itself a major world problem, promising a very uncertain future for the inhabitants of the former political conglomerate, together with highly unpredictable consequences for the rest of the world, as a large part of the largest continent faces the prospect of involuntary transfer from the Second World to the Third, unless some sort of stable and reasonably prosperous future can be invented for it.

Underlying the other problems is something which itself is a problem, science. It

promises so much and yet threatens even more. Instead of being the disinterested pursuit of knowledge allied to the application of theoretical advances to worthwhile practical projects of global significance, science has become a commodity, dedicated to the production of further commodities for the market, from nuclear power stations to microscopic eavesdropping devices to artificially engineered viruses. Taken over by capitalism, science has become the slave of a consumerism which demands the instant gratification of the latest want, whether it be for a piece of electronic wizardry or a genetically perfect baby.

The dissemination and discussion of information concerning the major problems the world and its people face is necessary to both the democratic understanding and the democratic action without which the problems cannot be solved—without which, in fact, they will escalate. So here is a great opportunity for the media to contribute to the advancement of peace, prosperity and progress. But can the media respond effectively? For they themselves are not free from many of the problems that contribute to the world's difficulties.

It is another cliché that the question of the relations of production has been replaced by the question of the relations of information and communication; but as is the case with many political clichés there is a good deal of ideological fog about this one. With one fifth of the world's population—one billion people—in a state of dire physical need, questions about the production, distribution and consumption, the ownership and control, of the world's material resources will continue to be of central relevance and importance to the political agenda.

No doubt questions about information and communication have increased in significance and will continue to do so, but they are the same questions, about production, distribution and consumption, ownership and control. Furthermore, it would be a mistake to regard the world's informational and communicational resources as any less material than its food and mineral resources.

All the different questions about information can be brought into focus on the issue of quality. In the light of the problems the world faces, the typical daily content of an American television channel or a British tabloid newspaper is not just a shame but a crime. This is at a time when many parts of the world with no tradition of a free press are trying to develop media that better serve and reflect the rising tide of democracy, and are looking to the West for models to emulate. But disappointment and disillusionment could quickly follow. For in addition to stunning triviality, these searchers after new exemplars will find enormous concentration of ownership in the hands of transnational corporations, together with governments who think little of selling television channels to the highest bidder.

However, governments with a purely 'market' approach to communications are not the only ones with no interest in the free flow of information. This, however, raises the interesting question of whether it is now possible for individual governments to have much control over the information available to their populations. The Islamic Salvation Front, which won the first round of the Algerian election late in 1991, proposed (in addition to the suppression of the civil and political rights of women) to 'challenge the vibrant independent press'. But could they have done it? No doubt newspapers can be closed down and journalists persecuted, but even the former Soviet bloc, with its strict controls on printing presses, photocopiers, duplicators and even typewriters, was unable to suppress the underground press. But this was old technology, and new authoritarian rulers cannot achieve their aims without a major and unprecedented act of techno-censorship which would ban faxes, computer networks and satellite dishes.

For many years the apartheid regime in South Africa held out against a television network on the grounds that it would corrupt the moral fibre of the people—meaning, of course, challenge the survival of the potentially unstable minority regime. When the government finally gave in over television, many people predicted the end of apartheid. They were correct, although whether there has been any causal connection is much harder to establish.

But any investigation of this would have to make some sort of stab at distinguishing between form and content, a distinction often attacked these days, but one which is unavoidable when considering global informational flow. For some forms of media can be more convivial than others, to use Illich's term.³ Desktop publishing and local electronic networks, for instance, can be organized in co-operative and participatory structures which encourage communitarian and democratic outlooks and behaviour. Global, monopolistic media networks controlled by transnational corporations are more likely to pander to a passive consumerism with negative psychological and political consequences. There is nothing inevitable about these outcomes, of course. Local networks might encourage parochialism and hostile nationalisms, while global networks might promote cosmopolitanism and internationalism, as telephones and fax machines already have. But whatever form the informational structures take, there is still the matter of their content, and more especially, its quality.

Still, on the global level the need for information to enable people to play their parts as citizens of the world is indisputable, and the opportunities for the media are therefore legion. But beyond this, because both the politics and the technology of the media are rapidly changing in unpredictable ways, it is questions rather than answers that suggest themselves as conclusions. Who will provide, produce, edit, control and distribute the information? If it is local networks, how can they provide the necessary international outlook? If it is global monopolies, how can they be encouraged to have aims more responsible than the mere pursuit of profit? Can the media play down national, ideological and other rivalries and emphasize common humanity facing common problems? As old totalitarianisms collapse, how can the threat from new ones be overcome without plunging the world into further risks of war?

These questions raise the issue of whether the pursuit of profit or power is compatible with quality in the media, and this in turn raises the question of freedom. What is meant by a 'free press'? Is it the freedom of democratically elected governments (no matter how imperfect the democracy) to propose and dispose? Is it the freedom of corporations or individual owners to buy up large chunks of the world's media and to mould them in their image? Is it the freedom of editors to decide what gets broadcast or published? Is it the freedom of journalists to offer fact and opinion without fear of sanction or persecution? Or is it the freedom of ordinary people to receive full and fair information on all issues that are likely to affect their lives and their interests?

QUALITY CONTROL: LAW OR ETHICS?

Turning now from the global to the national level, we find that the issue of quality is still inescapable. A free and vigorous press and other organs of mass media and mass communications are agreed to be among the essential ingredients of a healthy democracy. (We include the word 'vigorous' because it is clear that freedom is not sufficient: a press could be free yet timid or torpid.) This need for media freedom is recognized in various charters and conventions of human rights, as well as in, famously, the First Amendment to the Constitution of the United States of America. In Britain, however, the media are already more restricted by the law, both criminal and civil, than in most other countries of the democratic world. So can the law act as a mechanism for quality control, or should this be rather a matter of morality—of ethics? But is it really wise to suggest yet further restrictions of any sort, however inspiring the idea of moral principles and ethical codes of conduct might initially sound?

In Britain the media are restricted by the criminal laws of official secrets, obscenity, blasphemy, sedition, and reporting restrictions on Irish terrorist groups and their alleged supporters; by the civil laws of libel and breach of confidence; and by the judge-made law of contempt of court. In addition to the laws themselves there is the problem of a judiciary generally unsympathetic to the ideas of a free press and freedom of information and firmly wedded to prior restraint through the use of interlocutory injunctions, a legal move virtually impossible in the United States.

But there is nothing obscure about the difference between the British and American situations. It is a matter of the different constitutions, but beyond this, a fundamental cleavage in political ideology. Britain is not a republic of citizens but a monarchy of subjects, living in a system in which parliament is both supreme in legislation, largely independent of judicial review, and yet still hemmed in by crown prerogative exercised by the government of the day. Subjects do not, or indeed cannot, have rights in the way citizens can, which is why the British constitution finds it so hard to accommodate itself to the European Convention on Human Rights, or to incorporate it into domestic legislation. Nor can the constitution recognize freedom of information: British public life depends on a strictly interpreted need-to-know principle, and those who are on the receiving end of government—the electorate—are not regarded as needing to know. The fact that this fetters the exercise of the supposedly democratic franchise is a problem hardly yet tackled except by pressure groups like Liberty, Charter 88 and the Campaign for Freedom of Information, and the depth of the problem is shown by the further fact that individual members of parliament are little better off than their constituents when it comes to access to information.

The general laws of the land and the peculiarities of the constitution do not exhaust the legal controls over the British media. Broadcasting is subject to a number of statutory licensing and regulating bodies, including the Independent Television Commission, the Radio Authority, the Broadcasting Complaints Commission and the Broadcasting Standards Council. This system of controls has been criticized for several reasons, including the charge that the bodies have unclear and overlapping jurisdictions. The Broadcasting Complaints Commission, for instance, is supposed to deal with complaints concerning matters such as lack of factual accuracy, unfairness in presentation and intrusions into privacy, whereas the Broadcasting Standards

Council deals with alleged offences against taste and decency in the areas of sex, violence, bad language and the treatment of disasters. But broadcasters have found the bodies to have expansionist ambitions, while at the same time being narrow-minded and generally unsympathetic to the claims of media freedom.

In the case of print journalism there is no statutory regulatory body, but the peculiar history and status of the Press Complaints Commission (PCC) might suggest that there is no real difference. In 1990 the Report of the Calcutta Committee on Privacy and Related Matters proposed that the previous voluntary body, the Press Council, which had become widely regarded on all sides as ineffective, should be replaced by the new PCC, the function of which would be to supervise a code of practice drawn up by the newspaper industry itself. The Calcutta Committee further proposed that this double-act would have 18 months, starting 1 January 1991, to clean up the industry, and more especially to eliminate intrusions into private lives, otherwise parliament should feel free to introduce statutory protection for privacy. (The Calcutta Committee had proposed that physical intrusion, including 'doorstepping' and electronic eavesdropping, should become illegal.) The press, rightly alarmed that neither the draconian nature of this intimidation nor the disastrous consequences of trying to enforce it would inhibit parliamentary action, has attempted what was probably intended all along: to behave better. At the time of writing the press is still undergoing its period of probation.

So what have the actual and potential legislative and statutory barriers done for the quality of the British media? Very little, but this is hardly surprising, since the emphasis has been on restriction, on negativity, on what the media must not publish, rather than on the quality of what does appear on screens and pages. Only in one area—a reduction of the more vile or grotesque invasions of privacy by the tabloid press—has this negative approach had a beneficial effect. But if there has been at least this consequence, might it not be taken further, by giving privacy some statutory protection? The problem with this is that it would almost certainly have a severely deleterious effect on serious journalism, while leaving untouched the trivia and gossip that form the staple of the tabloids. And in general any legal restriction on the press, in the absence of a constitutional guarantee of press freedom and some sort of freedom of information legislation, is a one-sided detraction, preventing the press from fulfilling a proper democratic role.

So is it to ethics, and self-regulation along the lines of the PCC, that one should look for the protection and enhancement of quality? Clearly, even if (most) legal restrictions were lifted, ethics in journalism would still be required, and it is notable that in the USA, where the law is less restrictive, ethical debate among both theoreticians and practitioners of journalism is lively, widespread and accepted as normal. Ethical discussion is essential because there are many ways in which the media can offend without straying beyond the law: inaccuracy, lies, distortions, bias, propaganda, favouritism, sensationalism, trivialization, lapses of taste, vulgarity, sleaze, sexism, racism, homophobia, personal attacks, smears, character assassination, cheque-book journalism, deception, betrayal of confidences and invasions of privacy. And this is by no means a complete list.

CODES AND ETHICS

Surveys show that the press (especially the tabloid press) is held in low esteem by the public for offending in many of the ways just listed, and although this fact in itself tells us nothing about the ethical quality of the press, it does suggest that a start could be made on quality control by contemplating the introduction of a code of conduct which would prohibit these journalistic malpractices and provide that journalists be accountable for their actions.

The further possibility has been suggested, on the model of the medical and nursing professions, that journalists who violate the requirements of the professional code should be removed from a 'professional register', and thus prevented from practicing. Against this it might be argued that the nature of the harm (for example, injury to health) which can arise out of a health-care professional's malpractice is much more serious than the harm (for example, invasion of privacy) that can be caused by that of a journalist. This could be questioned, however, for in some parts of the world, a journalist's indiscretion could put in danger the life of the subject of a news story. Also, if harms can be measured on a scale of distress, some cases of invasion of privacy may cause more distress than certain kinds of injury to health. Nevertheless, the idea that a journalist should be licensed to practice—with the licence being removed for serious violations of a code of conduct—is surely too draconian and anti-democratic a solution to the problem of media

malpractice.

Whatever the disciplinary mechanism associated with a code, it is likely that a code of conduct will play an essential part in quality assurance. A number of supplementary issues arise, however, the first of which is what the content of the code should be, and whether it should be specified in broad-sweep principles or closely defined points of detail. But whichever approach is chosen, there will be the further issue which eternally crops up whenever applied moral issues are discussed: where do you draw the line? Several contributors to this book are concerned in different ways with this issue.

Take honesty. Yes, journalists should certainly be honest in their activities, in both investigating and reporting. But suppose some public corruption can be investigated only under cover, with the journalist pretending to be someone ready to make a corrupt deal? Or suppose there is a war on, and the journalist discovers something that might harm the war effort? Take privacy. A journalist might have the highest regard for the right to privacy, but claim that some information about a politician doesn't qualify for this protection. Or take the broadcasting ban on terrorism. Even if some aspects of the ban can be defended, is it fair or in the interests of democracy to extend it to archive material of genuine historical and political interest? Or is it reasonable to prevent the broadcasting of the actual speaking voice of an alleged terrorist supporter while allowing him or her to be shown on film with an actor reading synchronized words? It is not difficult to think that wherever the line should be drawn it should not be drawn here. But the general problem remains, both in this and many other cases. Moreover, however much effort is put into drawing clear lines in a code of conduct, it is the individual journalist who will come face to face with very difficult ethical dilemmas, and have to make moral choices. No code can anticipate every situation.

Another issue arising from the idea of a code of conduct is whether it should be negative or positive, emphasizing the avoidance of unethical conduct or the promotion of ethical conduct. Of course, these are almost the two sides of the same coin, but not quite, for 'Do not lie' is not equivalent to 'Tell the truth'. Lying, as everyone knows from daily-life situations, can be avoided by silence, vagueness or changing the subject, which suggests that not lying is an insufficient ethical principle, in both daily life and journalism. A newspaper might just keep quiet about facts which could produce embarrassment for a cause it supports. But then again as almost everyone realizes, telling the truth is not without its problems too, for the truth is endless and seamless, whereas the exigencies of time and resources require some selection to be made from the potentially infinite. Of course, selection should be done in ways that are fair and balanced—but where do you draw the line?

The final issue to be raised here is that of the basis of an ethical code of conduct. Ethics is not (just) a matter of codes of conduct (plus or minus sanctions), not just a matter of rules to be followed. It is more to do with principles concerning the rights and wrongs of human conduct, principles which have some reasoned theoretical basis and which therefore apply objectively and impartially. Of course, this is not the same as saying that we know what these principles are: the search for them and their refinement will continue as long as human beings survive to debate and argue; but it is precisely the reasoned and democratic nature of this discussion that differentiates ethical principles from dogmatic pronouncements. To some extent ethical principles are, as Jonathan Glover has suggested, analogous to scientific theories: they are not, and cannot be, handed down by an authority, but have to be discovered through the ingenious interplay of human reason and human experience, a process which while producing results of great value in both science and ethics is both fallible and endless.

In the interim, however, a code of conduct does require a reasoned basis in ethical theory, but the bonus of offering such a basis is that it can throw light on some of the other issues raised above, such as where to draw the line. Consider a code which is formulated in terms of rights. The mere assertion of rights might appear to have great

political significance, but it lacks credibility and force unless a theoretical justification of rights claims can be offered. However, if such a justification is forthcoming, it might suggest a solution to the line-drawing problem. For example, if people have a right not to be deceived, then deception in investigative journalism, even for results which would be for the general benefit of the public, would not be permitted at all. But it is doubtful whether this solution is satisfactory, for presumably people also have a right not to be defrauded, so if the fraud can be exposed only through deception by journalists, which right should prevail? But if it is the fraudsters who are being deceived, do they have legitimate grounds for complaint? Perhaps these queries about rights-based theories cannot be answered by rights-based theories themselves.

So an alternative approach to seeking a reasoned basis for a code of conduct would be to look to some variation on a utilitarian theme, such as the theory that conduct should maximize the satisfaction of the interests of those to whom the conduct is directed, which in the case of journalism is presumably the general public or those members of it who are affected by the acquiring or publishing of a particular story. This would link the values of journalism to wider pre-existing community and political values like democracy, justice and the public good. But the idea of making the ethics of journalism subservient to these wider values, though plausible, brings out a difficulty in the notion of journalism as a profession. Traditionally a profession has been defined in terms of a relationship of trust between the individual practitioner and the individual client, law and medicine being the obvious examples. Here any public benefit would accrue as a by-product of the primary one-to-one relationship. Journalism clearly is not a profession in this sense, even though some parts of a code of conduct for journalists will inevitably be concerned with a journalist's duty to particular individuals, such as protecting the confidentiality of sources or respecting the privacy of people in the news. But the promotion of democracy, if that is to be regarded as part of the ethics of journalism, is not a duty owed to particular individuals. Nevertheless, a code ought to be not just compatible with, but in accordance with, wider moral and social values.

Yet a third approach to finding a reasoned basis for a code of conduct would be to anchor the conduct in a virtuous character, one that for journalists would exhibit specific virtues such as fairness, truthfulness, trustworthiness and non-malevolence. Whereas this again has considerable plausibility, two comments are called for. First, if there are professional virtues they are not independent of whatever virtues there ought to be in general. But this is no criticism of this approach, as the whole object of providing a reasoned basis for a code of conduct is to link it with a general moral framework. Second, however, it can be asked whether the general notion of virtue is actually foundational, because the virtuous character might well be explained further as precisely the one who respects the rights of others or who attempts to promote the general good.

Clearly, the matter of providing a reasoned basis in ethical theory for a code of conduct is neither simple nor something on which consensus is likely, and so this question, together with the other issues raised in this section, will continue to be debated. The important thing is to keep the discussion going.

QUALITY AND THE RESTORATION OF THE HONOUR OF JOURNALISM

We have already briefly commented on the question of whether journalism is a profession if it lacks the basic one-to-one practitioner-client relationship. The fact is, though, that this question is not particularly important. Even the traditional professions like law and medicine are no longer as rigid about this relationship as they used to be; and other professions like teaching or social work exhibit a variety of models of the practitioner-client relationship. What is important is not a precise definition of a profession, which is bound to be too restricted to apply to the variety of groups that have some fair claim to be professional these days, but rather the quality of the conduct of members of these groups, whether it be in medicine or journalism, so long as it has a potential for good or harm. What is important is that the activity that wishes to call itself

professional be conducted on an ethical basis and that its practitioners be accountable for their actions.

So there is no reason why the concern of the original professions for an ethical basis—traditionally justified by the need to protect the interests of potentially vulnerable clients—should not be generalized to apply to the looser conception of a profession appropriate today. So professions should continue to be essentially concerned with standards of service, and to be value-guided, and typically to incorporate these concerns in an ethical code of conduct.

In journalism such a code can be regarded as involving two broad aspects, the input and the output. The latter is what is finally produced by the practice of journalism, the reports, articles and programmes, the information that actually reaches the public. Here it is plausible to suggest that the fundamental value is truth-telling, but as we have already suggested, this simple idea is complicated in practice, for the truth cannot be the whole truth. So principles of selection are required, which are themselves further values: fairness, justice, democratic significance and avoidance of bias and harm.

For the input of journalism, the day-to-day practice of journalists as they go about their profession, it is plausible to suggest that the fundamental value is honesty, but again the realization of this value in practice is not simple, and other values will also have to be called upon.

Even if the fundamental values behind ethical conduct are regarded as somehow beyond dispute, this neither produces a code nor settles all questions about conduct. Partly because of the interplay of values within a code and partly because there is always scope for improvement as general ethical discussion continues, no code of conduct can be regarded as fixed and final. For if a code for journalists should be partially dedicated to the ends of democracy, the code itself is also subject to democratic means, to the sway of reasoned argument and discussion of the fundamentals of ethical and political life. Thus the question arises (as in the case of other professional groups) whether it is adequate for professionals to devise their own code without allowing for lay input into the drafting procedures.

The ultimate reason for having a code of conduct is to ensure quality, and so we return to the issue with which we opened, the restoration of the honour of journalism. We suggest that in both input and output it is the relentless pursuit of quality which can restore journalism's lost honour. But success in this pursuit faces enormous obstacles, especially in the area of output which, because of the essential democratic function of information, is probably the most serious barrier to the restoration of honour. In Britain at the present time the major obstacle is the lack of a legal or constitutional guarantee of freedom of information, as this lack directly contradicts values such as truth, justice, balance and democratic significance. But unfortunately the problem is not just governmental or legal barriers, but something deeper: a generally attenuated attachment to the importance of media freedom as a means to, and as part of, the attainment of a genuinely democratic and fair society. Information is power, and an extremely inequalitarian distribution of power is incompatible with professed democratic ideals. So what is required is a thorough commitment by government, political parties, the judiciary, business, the owners and controllers of the media, editors, journalists and the general public to freedom of information. Without it the idea of a charter for citizens is nonsensical.

What is true on a national level is also true internationally. A commitment to quality of information and information flow to meet the urgent and demanding need for action in a troubled world is required on a global scale. To ensure freedom of information on this scale both global networks and democratic access are essential. Here the enemies of freedom are perhaps even more formidable, though intolerant or totalitarian governments and transnational capitalist corporations are not natural allies, and to some extent their interests conflict. But whether censorship—ideological, religious or commercial—can

prevail against the need for quality in the global media is not something that can today be predicted.

JOURNALISM IN THE MARKET PLACE

JOHN O'NEILL

A central argument of defenders of the free market is that freedom in the economic market is a necessary condition for democracy to flourish. The role of journalism and the press is central to this argument: they supply the link between the market and democracy.¹ A free market brings with it a free press that supplies the diversity of opinion and access to information that a citizenry requires in order to act in a democratic, responsible manner. The free market, journalism and democracy form an interdependent trinity of institutions in an open society. This liberal economic position has been prominent in recent debates concerning the First Amendment in the United States and the recent deregulation of the media in Europe.² In this paper I will attempt to prize these institutions apart. I will argue that, while journalism as a practice does have a necessary role in democratic societies, the market undermines the relation between journalism and democracy. There is a tension between the internal goals of journalism and the market contexts in which it operates; and the market inhibits the dissemination of information and diverse opinions required of a democratic society. In defending this position I will, for the most part, limit my discussion to journalism in a free market per se. Issues of monopoly in the press, while they are relevant to the points I raise, will not be discussed here.³

MARKETS, OWNERSHIP AND FREE SPEECH

Central to the argument for the free market in the field of journalism is that it ensures free speech. A free market is necessary for a free press and a free press is a central component of free speech. The view that a free press is simply a central application of a more general freedom of speech is a common one. On this view, for example, in the First Amendment to the Constitution of the United States—'Congress shall make no laws...abridging the freedom of speech, or of the press'—'freedom of the press' should be understood merely as a central instance of 'freedom of speech'. The amendment refers to one freedom, not two. However, the claim that a free press is simply one of the most important instances of free speech is mistaken, if by a 'free press' one means the freedom of a proprietor or editor to publish what they wish. This view of press freedom is presupposed by the Supreme Court's ruling on the *Miami Herald Publishing Co. v. Tornillo* case of 1974. In rejecting Tornillo's claim for space to reply to the *Miami Herald's* attack on his character and candidature for state legislature, the court ruled that



The choice of material to go into a newspaper, and the decisions made as to limitations of the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment.

A point to note about this ruling is that the powers it refers to are not powers of free speech. They are, rather, powers to decide who has access to an organ of speech. To exercise such powers is not an exercise of a right of free speech as such, but of a power to decide who should use an organ for the exercise of a right to speech. In the *Tornillo* case, the paper had decided that a union leader should be denied such access. The freedom of the press is not in fact an instance of free speech, but refers, rather, to powers to control the speech of others. The question we must ask in considering the arguments for a free press, when it is thus defined in terms of editorial powers, is what legitimates such powers.

It is worth considering for a moment a parallel case of academic freedom and the powers of academic journals. Such journals have power over the access of academics to their pages. What legitimates such power is the process of peer review: papers submitted are selected for publication by placing them under the critical scrutiny of other members of the academic community who are competent to appraise the work. Such a system is not perfect—for example, there may be systematic biases against certain kinds of paper—but the process has a general legitimacy in that it appeals to a community of shared values and the acceptance, in general, of the competence of peers to judge the worth of a piece of work given such values.⁵

What legitimates editorial powers in the press? One possible answer is to appeal directly to property rights. Presses within the market place are private estates in print, and the editor has rights akin to those of any manager of a private estate in land—to include and exclude access to the estate. However, property rights provide a weak basis for the legitimation of the power to determine access to organs of speech, since they involve a restriction on the freedom of the propertyless. While it is true that any editorial power entails restrictions, such exclusion of the propertyless, unlike the exclusion from academic journals of those whose work fails to meet certain internal standards, rests on no ethically significant boundaries which distinguish those with access from those without. Correspondingly, just as there are good grounds for changing property rights in land to ensure the freedoms of the propertyless—either through use-rights within an area of private property, for example, rights of access by footpath; or forms of socialization, for example, the creation of national trusts and parks—in so far as the power of editors is akin to those of private estate managers, there are good grounds for similar allowances for either use-rights within private estates in print, including rights of reply, for example, or the socialization of such estates into public property. In so far as freedom of speech is concerned, socialized press estates may allow for greater possibilities for rights to use public organs for speech than do the private press estates that exist within a market system. Direct appeal to property rights fails to provide a satisfactory defence of editorial powers.

However, there are other, more persuasive arguments for editorial rights of exclusion. It might be argued that the analogy between the editor and the manager of a private estate is an imperfect one, and that there are aspects in which his or her position can be closer to that of the peer-reviewer of an academic journal. Journalism is a practice with its own values and, relatedly, its own community structure. Systems of editorial control can reflect the judgments of peers within that community and in accordance with its values. Thus, while it may be the case that newspapers can turn into private fiefdoms of their owners, this need not be the case. And where it is the case, the goods of journalism are recognized to be in jeopardy. 'Editorial independence' has not been recognized. Hence the special arrangements and guarantees often involved in the ownership of newspapers in order to ensure such independence and the special declarations owners sometimes make (although often with some cynicism) to respect editorial independence. Such arrangements are, to be sure, precarious, but where they do exist the legitimacy of

editorial powers rests on something more than mere property rights. Rather, it reflects the judgments of an editor who accepts the internal goals and values of journalism. Thus, in defining a free press as one in which editorial independence is maintained, one is not appealing to property rights but to the internal goods of journalism.

This argument is not sufficient to support private property and a free market in the media. As we have just noted, editorial independence can often conflict with proprietorial rights. Moreover, it is not the case that private property is a necessary condition for such independence. However, having distinguished the legitimacy of editorial powers from those of property rights, the above argument might be conjoined to traditional liberal argument for a free market in the press, that the interests of democracy are best served by a press that is not socialized, but operates within a decentralized market system. Two points are commonly made in this regard. First, that market arrangements encourage a diversity of opinion and best serve the democratic need for an informed citizenry capable of passing judgments on the central issues that face them. Second, and relatedly, the market is the best institutional arrangement for ensuring that the press can act as a check on government, as a 'fourth estate' that checks the powers of the other three. In the rest of this chapter I address these arguments. In the next section I give a brief account of the goods of journalism, and argue that such goods are well suited to the democratic goals which the press is often taken to serve. However, in the following section, I argue that the goods of journalism are in tension with the requirements of the market place, and that the market place, far from providing an institutional arrangement in which the needs of democracy are served, is in conflict with them. While the practice of journalism and the needs of democracy are well suited to each other, the market is a friend of neither. I finish by examining the special pressures this tension places on the journalist.

THE PRACTICE OF JOURNALISM

Certain human practices—medicine and education for example—have internal ends which are partially constitutive of the kind of activity they are.¹² Journalism is among such practices. Just as health is an internal and constitutive end of medicine, so truth-telling about significant contemporary events is an internal and constitutive end of journalism.¹³ As an end it distinguishes journalism from other practices akin to it, but distinct from it—for example those of pure entertainment. This is not to say that journalism always delivers the truth any more than it is true to say that medicine always delivers health. Rather, it is to say that where these practices do fail to deliver such goods, they fail in a special way. To criticise a doctor or medical institution for failing to provide adequate health care for patients is to make an internal criticism. It is to criticise them for failing to realise the very ends which the practice of medicine aims to serve. Likewise, to criticise a journalist, newspaper or radio or TV station for failing to report significant events truthfully is to accuse them of failing to perform that function constitutive of the practice. Thus while it is true that some doctors are bad doctors or that medical institutions may systematically fail to solve health problems—and perhaps even create them—it remains true that health as an end is constitutive of medicine.¹⁴ Likewise, although some journalists may cease to report truthfully, and some newspapers may systematically distort the truth—or even become mere vehicles for entertainment produced by entertainers employing traditional journalistic skills¹⁵—it remains true that truth-telling is constitutive of journalism.

The same point can be made in another way. Consider what it is to be a cynical member of an occupation. To be a cynical journalist is to believe that truth-telling in journalism is a sham and that the practice is universally pursued for narrow self-interested aims. However, while the cynic does not believe that the goods of journalism are anywhere realised, either in his or her own work or that of others, the attitude presupposes a view of what the constitutive goods of journalism are supposed to be. The cynicism is parasitic on the acceptance of a shared view that the end of journalism is truth-telling. (I discuss the image of the cynical journalist further in the final section of this chapter.)

These constitutive ends of journalism also define the qualities characteristic of a good practitioner of the profession—the particular virtues and excellence of a journalist as journalist. Among these are those technical skills which are part of a journalist's craft—the ability to construct a story, to tell it well. However they also include broader ethical virtues which are associated with truth-telling—with the recognition and discovery of important truths and a willingness to report them. Thus typical virtues used by journalists to describe their peers are 'honest', 'perceptive', 'truthful'. Closely associated with these virtues of honesty and truthfulness is that of integrity—for example the sub-editor who insists on rewriting a front-page story to eliminate systematic bias in it. I return to this point in the final section.

Another, more contested, virtue that is often raised here is that of 'objectivity'. The virtue of 'objectivity' is often rejected by some of the best journalists of our day. Thus James Cameron writes that:

I do not see how a reporter attempting to define a situation involving some kind of ethical conflict can do it with sufficiently demonstrable neutrality to fulfil some arbitrary concept of 'objectivity'. It never occurred to me, in such a situation, to be other than subjective, and as obviously so as I could manage to be. I may not always have been satisfactorily balanced; I always tended to argue that objectivity was of less importance than the truth, and that the reporter whose technique was informed by no opinion lacked a very serious dimension.

I will not attempt to discuss the question of objectivity in detail here. However, two comments are in order. First, Cameron's rejection of objectivity stays within the circle of values of journalism. Objectivity is rejected in terms of a contrast with 'truth' and later with the need to present an account that can be 'examined and criticized' such that it will:

encourage an attitude of mind that will challenge and criticise automatically, thus to destroy the built-in advantages of all propaganda and special pleading—even the journalist's own.

The criticism of objectivity stays within the particular set of virtues associated with truth-telling. Second, and relatedly, the rejection of objectivity in journalism appeals to an argument that is accepted by traditional defenders of objectivity in the social sciences—notably by Weber—that if values are to enter into the reportage of empirical matters of fact, it is better that they do so explicitly rather than implicitly.¹⁸ This has particular importance in journalism: given the degree to which the selection and presentation of news is value-laden, the critical faculties of the audience are better served by making those values explicit. 'Objectivity' in the sense of reportage which best allows the audience to appreciate the complexities of a situation may be better served by nonobjective presentation of events.

Journalism, then, is a practice constituted by its own goods and a set of virtues among its practitioners that are necessary for the realization of such goods. It follows from this that it makes sense to talk about a set of shared values to which journalists can appeal and—to return to the topic of the preceding section—such an appeal might be made to defend editorial independence. I say might here since it is not clear to me that editorial authority is the optimum way of enforcing those values—there are more democratic forms akin to peer-review that look more likely candidates—and the case for a more democratic internal structure to the press is a strong one. However, editorial control, where the editor recognizably enforces the internal values of journalism, does have a legitimacy which mere property rights do not.

However, the argument for a free press in the sense of the freedom of journalists to control the contents of their newspaper provides no argument for a free market in the media or for the private estates in print that such a market presupposes. In what follows I will argue that the market is systematically at odds with the values of journalism.

JOURNALISM IN THE MARKET AND THE FORUM

Journalism has traditionally been held to have a special role within democracies. The

third Press Commission defined press freedom in terms of democratic responsibilities:

We define the freedom of the press as that freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.

There are two components to the view that free journalism is a necessary condition for democracy. The first is that the media act as a watch-dog on government. Even where the press gains immense independent powers, it acts as a 'fourth estate' which provides a check on the other estates of government. The second is that the press is a necessary condition for an informed and critical citizenship. It provides information on major issues without which the public would not be able to make intelligent judgments. And it functions as a forum for public debate about such issues, serving to ensure that a diversity of opinions is heard.

It is clear that there is a necessary relation between the goods of journalism outlined in the last section and the functions that journalism is assumed to perform. Since truth-telling about significant contemporary events is constitutive of journalistic practice, where excellence in journalism exists, journalism will serve the creation of an informed and critical political citizenry. For the liberal, this happy alliance of journalism and democracy is best served by a free market. It is the market, unrestrained by political power, that provides the best institutional framework to ensure that the press satisfies those needs. However, I shall argue in what follows that, on the contrary, the market undermines journalism's capacity to provide for an informed and critical citizenry.

The disruption that the market causes to the relationship between journalism and democracy can be stated in general terms thus: to survive within the market place, the press has to satisfy the preferences of its consumers. As de Tocqueville puts it: 'A newspaper can survive only on the condition of publishing sentiments or principles common to a large number of men.'²⁰ However, this market imperative is incompatible with both the internal goods of journalism and the democratic function it is meant to serve. In the first place it is incompatible with the diversity which the market is claimed to engender: far from encouraging a diversity of opinion, the market place encourages the producer to present news in a way which is congruent with the pre-existing values and beliefs of its audience. It does not pay to present news which is outside the dominant cultural framework of the audiences addressed. Hence, mass journalism will tend to work within the confines of the dominant culture in which it operates. Relatedly, the value of truth-telling becomes at best subsidiary in the presentation of news. For it is not always the case that the truth about significant events is what the consumer prefers to hear or read. Indeed, the critical argument on which democratic debate depends often relies on the citizen's being informed of events and presented with views which he or she would prefer not to hear. What is portrayed in the press, how it is portrayed and how much it is portrayed is, within a free market, shaped by consumer preference. What ought to be portrayed, how it ought to be portrayed and how much it ought to be portrayed for the purposes of democratic discussion might be quite at odds with such preferences. Hence, while truth-telling might be constitutive of journalism as a practice, the free market entails that in practice it plays a quite subsidiary role. The 'news value' of a story is rarely a function of its truth value. It is, rather, a function of the perceived market at which the story is aimed.

The market systematically shapes what is reported in a news story. The consequence of this is not so much the reporting of falsehoods in the media—although this occurs—but the failure to report what is of significance and a simplified presentation of events. The democratic citizenry is rarely fully informed by the media that are supposed to serve it. Moreover, failure to report often results in the presentation of partial truths which, while not false in themselves, may set up implicatures among readers that are false. Something like the Gricean principle of quantity²⁴ assumed in standard conversation—that one supplies all relevant information—will convert partial truths into falsehoods. For example, to report a

war solely in terms of conflict with a particular tyrant—which it may in part be—sets up implicatures that it is nothing but such a war—which is normally false. A free market in the press will tend to work against the ideal of an informed and critical citizenry. It rarely confronts its consumers with information, beliefs and knowledge which do not conform to their pre-existing preference—because it cannot afford to do so.

This market failure is compounded by similar economic pressures on the supply of information. Gathering information is costly, and there are pressures on newspapers to accept ready-made news stories from potential suppliers. Those with a particular viewpoint to present will effectively subsidise the media in the costs of gathering news—hence the growth of press agents and public relations officers. In doing so they are forced to present the press with versions of events that will sell within a particular market niche. This in turn infects democratic debate. Consider, for example, the differences within the Green movement concerning the activities of Greenpeace. Greenpeace is highly effective in terms of media coverage. Its effectiveness is a consequence of its engaging in dramatic forms of action that make classically good news stories. It literally makes good ‘news’. It carries with it the necessary camera equipment to ensure that it has good footage to pass on to the media—dramatic shots of small craft dwarfed by environmentally destructive giants, or of bloodstained white, large-eyed cuddly seals—and courts the journalists who cover their events. However, this approach poses problems for those who want a full democratic debate on the issues. The drama value of an issue may bear little relevance to its environmental significance. There is a danger that the environmental debate gets driven by an agenda which is set not in terms of the environmental importance of the issue but in terms of what makes for good publicity. As Yearly notes, the market encourages environmentalists to attend to what are perceived to be the most popular campaign themes; consequently the market reinforces the tendency for relatively unpopular issues to be marginalized. Such issues are nobody’s favourite campaign topics even if the organizations privately regard them as important.

The case of Canadian seals is a good example: in terms of either cruelty or endangered status there are more pressing cases which go unnoticed.

The problem of the economic constraints on news gathering also has a second consequence for the democratic functions of the press. The major subsidisers of news information are the governments over which the press is supposed to act as watch-dog. Through the lobby system in the United Kingdom and the system of press briefing in the United States, governments provide information on the cheap which is presented in a way that will yield maximal political benefits. The media become heavily dependent on just those institutions on which they are taken to be a check. Moreover, like environmental groups, politicians will attempt to present information in a way that maximises its news value. The market in news shapes their presentation. The consequence is a deterioration of both democratic accountability and debate.

It might be objected that these arguments for the claim that the market distorts the relation of journalism and democracy depend on a number of assumptions about the preferences of consumers that are open to challenge. I have assumed that preferences are homogeneous, and hence that diversity of opinion is not served by the market. Moreover, I have assumed a particular content to such preferences—that there exists a widespread preference for simplified news, that there are few second-order preferences for one’s existing preferences to be challenged, and so on. These objections have some power. Journalism and the market for news take place within a wider cultural, political and social context. Within particular periods of history and within particular social groups there can exist wide-spread preferences for news that is truthful and critical of accepted assumptions. Even given the absence of such self-critical preferences, the homogeneity assumption is weak. While it might be true, as de Tocqueville asserts, that ‘a newspaper can survive only on the condition of publishing sentiments or principles common to a

large number of men', it is not the case that such sentiments must be shared by all people. While each paper may not present its readers with unpalatable truths, what is palatable will differ across different groups in society. Hence, while there may be a conflict between the free market and a press that will function to create a critical and informed citizenry, there is no conflict between the market and diversity. Indeed, part of de Tocqueville's point was that in a pluralistic culture a diversity of association will encourage a diversity of opinion, whereas in a culture that has become homogeneous such diversity decreases. This claim is part of the central pessimistic message of *Democracy in America* concerning the growth of homogeneity and mediocrity. However, there is no reason to believe that de Tocqueville's picture of a mass homogeneous society has been realised. And given that it has not, the free market in the media is not incompatible with diversity.

A full response to these points would entail a detailed discussion of the relationship between markets, preferences and culture which is beyond the scope of this chapter. I confine myself here to two points of particular significance.

First, with respect to the assumptions about the content of preferences, while it is true that critical preferences can exist—and I do not want to suggest with theorists of mass society that it is impossible for the ordinary person to have such preferences—the problems of journalism and democracy need to start from where we are, that is, a context in which market-driven media do not appear to respond to such preferences. Moreover, the media cannot be treated as entirely passive agents in this regard. The media reproduce the preferences to which they respond. The difficulty in establishing critical media that accord with the ends of journalism is part of the problem of developing a critical political citizenry with preferences for the products of such media.

Second, with respect to the assumptions concerning homogeneity, there are limits to diversity. While modern societies may not be homogeneous, there are cultural and political boundaries within which most of the media operate. Diversity is circumscribed. Furthermore, diversity is limited by the nature of the markets in which the media operate. The commercial media exist in two markets: they sell their products to an audience and an audience to advertisers. Not all audiences are the same from the advertisers' perspective—only some form a potential market which it pays to address. A section of the population which has little purchasing power is in general less attractive to advertisers, and hence a newspaper that articulates its views will fail in its second market. Hence, the diversity of the press does not always reflect the diversity of a population. Thus, for example, the decline of the radical press in the UK has been a consequence not of a decline in readers—readership has sometimes increased during periods of decline—but rather of the lack of advertising revenue.²⁸ Likewise those minority groups which lack significant purchasing power lack a representative press. Advertising as a source of income limits diversity.

This said, within the constraints noted it is true that a limited diversity can be expected to arise from a free market. Furthermore, it is possible that such diversity sometimes serves some democratic ends. Where a government is seen to be opposed to some particular interest represented by a press, then one will expect criticism of that government via the media. Even given the state's power as a source of cheap news, the critical functions of the press undoubtedly do exist. What is badly served by the press is not the articulation of views opposed to that of an incumbent government, but the existence of an informed and critically engaged citizenry knowledgeable about the major issues that collectively face them.

A free market in the media serves a democracy, but a democracy of a particular kind. Democracy is served where it acts as a political market place. That is, in so far as democracy serves principally as a means of interest aggregation, acting in the manner of a surrogate market satisfying preferences in which votes serve as a surrogate currency, free-market media can serve as one means by which the perceived self-interests and opinions of particular groups are articulated, albeit those with greater purchasing power having a larger degree of influence. However, in so far as democracy is not a market but a forum in which informed citizens rationally debate those issues which face them, then

the free market in the media serves democracy ill. While, properly constituted, journalism as a practice would serve that function, the market as an institutional framework for the media will tend to subvert the exercise of that function. Democracy as a forum is undermined by market-driven media.

The arguments of this section are open to a final general response: while it may be true that market-driven media may not serve democracy as well as might be hoped, the alternative of media run from a centralized state will serve none of the functions demanded by democracy. The market, by decentralizing power across different owners, is the only feasible framework in which a press capable of preserving democracy can exist. This argument must be questioned, however. It reflects an assumption that is common in discussion of the market—that there exist just two feasible systems of information distribution: a centralized state-dominated system, or a decentralized market-led system. I have argued elsewhere that this dichotomy is a false one. Even within existing societies, non-market but state-independent and decentralized sources of information exist. The scientific community, for example, although it is now under market pressure, has traditionally relied on a decentralized but non-market institutional framework.³¹ Within existing market societies such institutions exist with respect to the media, and I refer here not principally to public broadcasting institutions, but to other islands in which journalists have collectively attempted to realize journalistic practice, such as the Panos Institute.³² Non-market, socialized and decentralized media serving the goals of both journalism and democracy as a forum are not a political impossibility.

JOURNALISTS IN THE MARKET PLACE

The specialized ‘virtuoso’, the vendor of his objectified and reified faculties, does not just become the [passive] observer in society: he also lapses into a contemplative attitude vis-à-vis the working of his own objectified and reified faculties... This phenomenon can be seen at its most grotesque in journalism. Here it is subjectivity itself, knowledge, temperament and powers of expression that are reduced to an abstract mechanism, functioning autonomously and divorced from both the personality of the ‘owner’ and from the material and concrete nature of the subject matter in hand. The journalist’s ‘lack of convictions’, the prostitution of his experiences and beliefs is comprehensible only as the apogee of capitalist reification.

A popular picture of the journalist is that of the hardened and cynical individual for whom nothing, not even the truth, counts against ‘a good story’. (This is popular in fiction—see for example Mr Flack in Henry James’s *The Reverberator* and Lousteau and the corrupted Lucien in Balzac’s *Lost Illusions*.) I do not want to claim that this picture is a wholly accurate one—any more than is that of the prostituted journalist that Lukács draws. Lukács, like Balzac, tends to view journalists as corrupted poets, and fails to appreciate the internal ends of journalism. However, these pictures of the journalist highlight a real problem that the journalist faces. The journalist exists in two worlds: he or she enters a practice that is characterised by a commitment to truth-telling, and at the same time is an employee who works for a wage and is expected to produce a story of the kind demanded by his or her newspaper, magazine or TV station. The nature of such stories is determined by a market with which the journalist might have no sympathy.

These two demands on the journalist can clearly conflict. Where this occurs, the journalist exhibits vices and virtues characteristic of the trade. On the one hand, the conflict engenders a cynicism concerning the values constitutive of journalism and the divorce Lukács describes between the journalist’s written word and his or her own beliefs and temperament. The journalist’s personality and ethos are subverted by the dictates of his or her employer. On the other hand, in biographies of particular journalists, mention of the virtue of integrity is common. Such virtue is required not only in the performance of a practice, but in resisting those external pressures which undermine its goods. The history of journalism is full of examples of principled resignation by editors and journalists.

The tension, then, between the practice of journalism and the market framework in

which it operates produces characteristic virtues and vices. This is not to say that journalists fall into two classes—villains and heroes. Many, I suspect, find themselves forced to compromise the constitutive values of journalism, while at the same time insisting that some of the standards be enforced. The copy-editor may still have reservations about the final form of a story he or she has rewritten, yet be able in the process of rewriting to remove some of the bias, simplification and falsehood. While Lukács might be right in drawing attention to the special tension that exists for journalists between their beliefs and activities, that tension need not always be expressed in a ‘lack of convictions’ and the ‘prostitution of his experiences and beliefs’. Journalists, like other workers, are not totally passive in their attitude to their own faculties. They also have the capacity to resist the pressures of the market place. The constitutive values of journalism have some power through such resistance, despite the countervailing tendencies of the market place.³⁷

OWNERS, EDITORS AND JOURNALISTS

Bruce Hanlin

THE ROBERT MAXWELL STORY

On Wednesday 6 November 1991, the Daily Mirror published one of the most extraordinary editions in its 88-year history. Early the previous day Robert Maxwell, ‘Cap’n Bob’, the newspaper’s proprietor, had disappeared from the deck of his luxury motor yacht as it cruised around Tenerife in the Canary Islands. At teatime his 22-stone corpse was retrieved from the Atlantic and the Mirror’s obituary team swung into overdrive. Their efforts filled 15 complete pages in the 36-page tabloid that appeared on Wednesday morning. Maxwell was ‘The man who saved the Mirror’ according to a frontpage headline that set the tone for an embarrassingly effusive tribute to a ‘turbulent colossus’, a ‘publishing giant and world statesman’ who was ‘commander of every event in which he took part’.

Nothing really to match this had appeared in a national newspaper in Britain since the death of Winston Churchill in 1965. Indeed, Maxwell even outdid Churchill: he owned two League football clubs and the Mirror’s tribute rolled on into the sports pages. But there was something strangely missing from this eulogy. Every other commentary on Maxwell’s death referred to the mounting financial difficulties facing his sprawling business empire. Only Maxwell’s own papers stayed silent, and they could not remain so for long.

In addition to a 51 per cent stake in Mirror Group Newspapers in Britain, the Maxwell family held the controlling interest in Maxwell Communications Corporation (MCC), a publicly listed company whose world-wide operations included the American publishing house Macmillan. Alongside the public companies, and often interlinked with them in complex deals, there was a huge and complicated network of private Maxwell companies. These included two other newspapers: the European, launched in London in May 1990, and the New York Daily News, rescued from threatened closure in May 1991 with typical Maxwell razzamatazz.

The Daily News venture perfectly suited Cap’n Bob’s talent for self-publicity, but it put an additional strain on a business empire that was already fatally overstretched with a growing mountain of unsupported debt owed to dozens of banks around the world. It is doubtful if the grand illusion could have been long maintained even with the chief conjuror still in control. With Maxwell’s death a tangled web of illegal and semi-legal cash transfers, long-term ‘stock lending’, intergroup loans and share support schemes rapidly began to unravel.

To their horror Mirror journalists in London discovered within a month that their own company pension fund had been raided of at least £350 million, siphoned off through Maxwell private companies to cover their huge debts and to support the MCC share price. The aim was to maintain the asset value of Maxwell family stockholdings which

had been pledged against yet further loans, sometimes apparently pledged to more than one lender at the same time. In all, MCC owed £1.4 billion to the banks; the Maxwell empire as a whole was more than £3 billion in debt; some £700 million of pension-fund money had simply vanished.

On Friday 6 December, a strap line across the bottom of the Mirror's front page announced the inevitable: the Maxwell family's controlling stake was up for sale. The main headline, in 3½-inch type, said simply 'The Lie'. It referred specifically to assurances Robert Maxwell had given to the newspaper's finance director, a man whose office he had cynically bugged with hidden microphones. But symbolically that headline seemed to sum up the late proprietor's whole relationship with his staff and the corrosive influence he had had on the Daily Mirror's journalism since his 'rescue' of the newspaper in July 1984. The grand obituary of a month earlier now looked like nothing so much as the sycophantic biographies another Maxwell subsidiary had published of various Eastern Bloc tyrants—Ceașescu, Zhivkov, Honecker—before the revolutions of 1988-9 swept them away.

As the news focus began to shift to 'Maxwell's Missing Millions', to the folly of the international bankers who lent him vast sums on trust, and to the lax regulations that had enabled him to defraud his own work-force, editors and journalists who had worked for him were able to speak about the experience without fear of writs and injunctions. Robert Maxwell was not just another newspaper owner who enjoyed seeing his name in print. He was a supreme interventionist in almost every detail almost all the time, a bullying wheeler-dealer with the ethics of a black-market trader, whose monstrous ego steam-rolled over the protests and professional judgments of editors and executives alike.

As the liquidators moved in on the European, Simon Freeman, the paper's departing news-editor, recalled the experience of working for Cap'n Bob. The European was Maxwell's personal project, launched as 'Europe's First National Newspaper' and supported by an open cheque-book, as well as desperately massaged circulation figures. From the start, the paper had suffered from a lack of identity and the all-too-palpable imprint of the proprietor's whims and innovations.

In the very first issue a page-one scoop about Soviet forces withdrawing from East Germany had been jettisoned at the last minute in favour of a boring, un-newsworthy and statistically worthless opinion poll conducted by yet another of Maxwell's companies. On another occasion the editor discovered to his astonishment that the European had a staff correspondent in the United States, hired personally by Maxwell during a visit to Israel some months earlier. 'The fact that the European survived as long as it did is testimony to the heroic efforts of its staff,' says Freeman: It was constantly and confusingly 'relaunched': one day it was targetted at the club-class Euro-businessman who spoke English fluently; the next at a typical housewife in Toulouse, who could barely speak the language; the next at the Daily Mail reader in Britain. But the staff plodded on... The Cap'n was ever-present: on press day he would squeeze up the tiny, spiral staircase onto the editorial floor, commandeer a computer terminal and try to redesign the front page.

The situation was not much different at the Daily Mirror. 'Could you produce the front page, if you had to?' Hugo Young asked Maxwell in a 1990 Guardian interview. 'Not only could. I do', came the booming reply. 'Go and talk to the new editor. I'm rather good at designing front pages.' 'But you wouldn't want to interfere', persisted Young. 'I'm not shy of interfering if I have to. I'm not looking for it. But I could do the editor's job.' The boast would not have been so empty if Maxwell's journalistic instincts had been even a quarter as good as he imagined. Or if he had not specifically and repeatedly denied any intention of intervening editorially when he bought the Mirror and its stablemates in a controversial deal in 1984.

'Under my management, editors in the group will be free to produce their newspapers without interference with their journalistic skills and judgment', Maxwell had told a press conference on 13 July, the day after his bid was accepted. There would be only two conditions: the papers would retain a broadly sympathetic

approach to the labour movement, and would maintain a 'Britain first' policy.

If there was an echo of Beaverbrook in the latter point it was in keeping with the image of the influential press baron that Maxwell had nurtured for himself for sixteen years and had finally attained. If, at the same time, there was any real commitment to 'sympathy for the labour movement' or to the ideal of editorial independence it was abandoned before the month was out.

On 26 July 1984 Maxwell substantially changed a by-lined column on the miners' strike then in progress that had been written by Geoffrey Goodman, the Mirror's industrial editor. Confronted by the angry journalist the following morning, the new proprietor turned on the charm, issued further promises of strict non-intervention in the future, and somehow persuaded Goodman not to resign. Part of the bargain was that he would in future send his articles in advance for Maxwell to read. He was not the only Mirror journalist to succumb, for a time at least.

Maxwell clearly saw himself as the peacemaker in the coal dispute, but when his suggestions were rejected by Arthur Scargill, the miners' leader, he very quickly lost patience and enlisted the newspaper in support of his own version of events. David Seymour, a leader-writer with thirteen years standing at the Mirror, later described how Maxwell inserted himself into the editorial process so that writing the 'Mirror Comment' column became a matter of negotiation with the proprietor, conducted in competition with an unending stream of phone calls in any of Maxwell's eight languages with stockbrokers, currency dealers, property consultants, and football-club managers. In the midst of all this, the attempt to adhere to established journalistic values such as accuracy, fairness and factual truthfulness soon went the way of Maxwell's promises of non-interference.⁵

Maxwell inserted himself, quite literally, into other areas of the paper, too. For the first year of his involvement, the Mirror that had once campaigned fiercely on political and social issues came instead to resemble a Maxwell family album, studded with photographs of Cap'n Bob and filled with references to other companies within the group, in which five of his children were, in due course, employed. Journalists began to drift away from the paper, readers abandoned it in droves. It was all a long way from the halcyon days of the 1960s, to which critics increasingly referred, when the newspaper was riding high with a mammoth circulation and no effective rival.

If there was any counterbalancing factor, it lay in Maxwell's impact on the production side. At the British Printing Corporation he had faced down the powerful printing unions and forcefully imposed new processes and new manning agreements. He made it clear he was quite prepared to do the same at the Daily Mirror, which like the rest of Fleet Street in the early 1980s was a redoubt of hot-metal technology, overmanning and extravagant 'old Spanish practices'. At his first meeting with the Mirror printers Maxwell told them bluntly: 'I have invested £90 million in this business and I don't belong to the Salvation Army. I am the proprietor. I am the boss.'⁶ This was not a challenge to endear him to the labour movement, particularly with the newspaper's traditional sympathies, but it was arguably a necessary step in restoring the fortunes of an increasingly moribund company. And, in fact, Maxwell accomplished the change to new technology in the Mirror Group with far less open bloodshed than his arch rival Rupert Murdoch at News International.

OWNERSHIP AND ETHICS

Many critics might agree with the suggestion that any man rich enough to buy a newspaper should not be allowed to own one, but within the current limits of the law few could disagree that owner-ship of the Mirror Group gave Maxwell every right to tell his printers how he intended to manage the company. From an ethical standpoint, however, the issue becomes more problematic when rights of ownership are extended to the editorial sphere.

Whatever his public promises, did Maxwell's role as 'publisher' convey the right to act as de facto editor-in-

chief? What conventions separating the role of owners from those of their editors and journalists did he transgress? What course of protest was open to the journalists? Should, or could, a distinction between management and editorial functions be enforceable by law or in some other way? Can the question, in any case, be separated from the wider issues of monopoly ownership, of political influence, and of the role of the press and other media in a democratic society?

If the long saga of Robert Maxwell's involvement with the Daily Mirror was an isolated incident such questions could safely be left in a footnote. However, in Britain the concept of 'press freedom' has a chequered past and an ambiguous present, and remains fundamentally a right to publish: a property right attached to ownership, not a charter for editorial independence. The individual owner who adopts a strictly non-interventionist approach is a rare figure indeed. Robert Maxwell may have been 'larger than life' both physically and figuratively, and in view of the subsequent financial scandals he might be said to have been larger than death too, but as a 'hands-on' newspaper proprietor he was no great exception to the rule.

The model of the Fleet Street press baron was established no later than the years immediately after the First World War. Northcliffe, with The Times and the Daily Mail, and Beaverbrook with the Daily Express, engaged in a relentless pursuit of political influence which saw their detailed personal control over their newspapers extend to cover the general content, news values, layout and day-to-day administration as well as the political opinion columns. Their staff became used to working through a constant barrage of telephone calls, urgent instructions and cantankerous memos.

After Northcliffe's death in 1922, his brother, Lord Rothermere, joined with Beaverbrook in an attempt to set a policy agenda for the Conservative government that led ultimately to Baldwin's famous 1931 denunciation of them for seeking 'power without responsibility'.⁷ Such action by newspaper owners was clearly an infringement of the democratic process. But when, sixteen years later, an unrepentant Beaverbrook cheerfully told the first Royal Commission on the Press that he ran his newspapers 'purely for the purpose of making propaganda, and with no other object', was he guilty of an equivalent ethical breach or merely exercising his rights as a proprietor?

In May 1968, Cecil Harmsworth King, Northcliffe's nephew and the chairman of Daily Mirror Newspapers, took a fateful step along the path followed by Beaverbrook and Rothermere in 1931: he wrote and published a signed editorial under the title 'Enough is Enough' calling for the resignation of the Labour prime minister, Harold Wilson, and his replacement by a 'neutral' figure.⁹ The editors of the various group papers were only asked for their opinion on the article after it had appeared: they dutifully offered their support, but this was hardly enough. King's statement was completely ineffective politically, and disastrous personally, as he was not a traditional proprietor but merely the chairman of a company responsible to its board of directors. He was duly fired, though for endangering the company's relationship with the government rather than for a blatant infringement of the convention covering the publisher-editor relationship.

In 1969, Rupert Murdoch, then an unknown Australian newspaper owner, made his first appearance on the British media stage when the Carr family ownership invited his investment in a declining News of the World, not least to hold off the predatory advances of Robert Maxwell. Murdoch immediately began to reorganise the paper, and when the startled editor protested told him bluntly: 'I did not come all this way not to interfere.'

Within six months Murdoch had gained full ownership control of the Sunday News of the World. Within nine months he had bought the struggling daily Sun for a bargain price and relaunched it as a brash, down-market tabloid that was soon overtaking the Daily Mirror as Britain's most popular newspaper. This was the start of Murdoch's international media empire. As it has grown, more and more control has been delegated to local executives and trusted individual editors, but it is a notable feature of Murdoch's

management approach that he has never stopped ‘interfering’ with the style, content and politics of his various newspapers, magazines and television companies around the world.

In 1977, thirteen years after the death of Beaverbrook, the ailing Daily Express group was bought by the property and construction company Trafalgar House. Victor (later Lord) Matthews, who had spent his working life in the building trade, became chairman and rapidly assumed the posture of a press baron, though previously he had cheerfully confessed to rarely reading more than the racing pages of any paper and to never reading the quality press at all.¹¹ In what he clearly thought were reassuring words on the subject of journalistic independence he famously told one questioner: ‘By and large the editors will have complete freedom as long as they agree with the policy I have laid down.’¹²

Other owners may have been more circumspect, but Matthews was only reasserting the traditional right of the proprietor as he saw it. In his case, though, the ‘approved policy’ took some alarming shifts as his lack of interest in editorialising gave way to active and eccentric involvement. On one occasion the editor of the Evening Standard had to dissuade Matthews from using the paper to call for a nuclear strike on Moscow to rid the world of communism. Meanwhile at the Express five editors in seven years struggled without success to halt a decline in circulation, while coping with the proprietor’s lengthy political discourses and suggestions for editorials in support of patriotism, the royal family and Conservative party policies.

One of those many editors was Derek Jameson, a lifelong Labour voter and a deputy editor of the Daily Mirror when Matthews offered him the job in 1977. Jameson told him that while it was flattering to be approached his personal politics hardly agreed with the Express’s uncritical support for the Conservatives. ‘That doesn’t matter’, Matthews told him. ‘You wouldn’t be stupid enough to try to turn a Tory paper into a Labour newspaper.’ This compliment to Jameson’s professionalism was also an invitation to him to censor his own political opinions.

After reflection Jameson accepted the job, arguing that after a long career in popular newspapers he could hardly refuse an editorship, even on a Tory paper, particularly since no vacancy was in sight on the Labour-supporting Mirror. Such problems, of course, did not apply the other way around. Matthews saw no difficulty in trying to turn the Express’s down-market stablemate the Daily Star into a Tory paper, even though the sympathies of its editor, its staff and most of its potential readers lay with Labour.

The quality press were not immune from disputes between editors and proprietors, either, and the two most public rows of the early 1980s occurred for different reasons at The Times and the Sunday Observer. At the centre of these were Rupert Murdoch, the most powerful of modern press barons, and ‘Tiny’ Rowland, the chief executive of Lorrho and another businessman turned proprietor.

In 1981, Murdoch acquired The Times and The Sunday Times in a controversial deal that united the country’s most prestigious daily and its best-selling quality Sunday with the Sun and the News of the World, the circulation leaders in the popular press. This broke the established monopolies and mergers rules on newspaper ownership, and appeared to have been sanctioned by the new Conservative government as a ‘reward’ to Murdoch for the support he had given to the party in the 1979 general election.

The two quality titles had been brought under the same ownership by Roy (later Lord) Thomson in 1966, and for a decade had enjoyed the benign control of a man who enjoyed the prestige of ownership without seeking to exercise the power of proprietorship. Lord Thomson, however, had died in 1976, and his son and successor was determined to move the papers into the electronic age with a plan partially to computerise production. This, of course, was a direct challenge to the entrenched position of the company’s printers.

In the ensuing dispute the newspapers were, remarkably, closed down for almost a year between December 1978 and the following November, during which time various ideas for alternative structures were floated, including possible schemes for a journalist-led co-operative buy-out. In the event, Times Newspapers settled on terms virtually dictated by the print unions, and as costs and losses continued to mount, the Thomson Organisation put the company up for sale.

Murdoch was not the only potential purchaser, though as history has confirmed he was the one most likely to succeed where Thomson had failed in challenging traditional Fleet Street production practices. Initially, however, Murdoch had to overcome the political row that greeted his deal. The powers of watch-dog 'independent directors' were reaffirmed, and guarantees of complete editorial freedom were given. To substantiate his good intent Murdoch invited Harold Evans, the long-serving, award-winning and highly esteemed editor of The Sunday Times to take over and invigorate its daily counterpart.

Within a year the cynical nature of the new proprietor's promises became clear. Instructions on the selection and balance of news and opinion flowed in to the editor, often transmitted from New York or other locations, as Murdoch attempted to shift the political line of The Times by reducing or removing criticism of the Thatcher government. When Evans resisted, the pressure intensified. Executive control was tightened over all editorial expenditure, breaking another of Murdoch's promises, and the proprietor began to intrigue against his editor. Eventually Evans resigned. The independent directors' 'watch-dog' powers proved inadequate to deal with a 'voluntary' departure.

By 1985 both The Times and The Sunday Times, under editors who shared Murdoch's political attitudes, had been enrolled alongside his strident tabloids in a campaign for the 'deregulation' of British broadcasting. Editorial opinion columns and sensationalised news stories carried attacks against the BBC in particular and the idea of public service broadcasting in general. These served a dual purpose. Murdoch was about to launch his four-channel Sky-TV satellite service; his friend the Prime Minister, Margaret Thatcher, was at the height of her 'free-market' zeal.

It was all a long way from the days of Roy Thomson, when each newspaper was free to establish and hold its own opinion without reference to the proprietor, who always insisted: 'I do not believe that a newspaper can be run properly unless its editorial columns are run freely and independently by a highly skilled and dedicated professional journalist. This is and will continue to be my policy.'

The clash with Murdoch at Times Newspapers might have been fought earlier and on different ground; instead the Observer found crises of a different sort. In 1976, the year Thomson died, Murdoch was actually invited to take control of the liberal and independent, but financially weak, Sunday paper. In the event, amid strong opposition from the staff, the offer was withdrawn in favour of the unlikely philanthropy of Atlantic Richfield, an American oil company based in Los Angeles. Four years and some \$20 million later, the paper was passed on to another wealthy conglomerate seeking a prestige outlet: Tiny Rowland's Lonrho International, which owned a group of newspapers in Scotland and had extensive interests in Africa.

The clash between Rowland and Donald Treford, the Observer's editor, when it came in April 1984, centred on these trading connections rather than British domestic politics. Treford published a full-page report alleging atrocities by the army in Zimbabwe, where Lonrho companies earned some £15 million profit annually. Rowland cabled an immediate apology to Robert Mugabe, the Zimbabwe president, and sternly rebuked Treford. When the editor rejected the complaint of inaccuracy Rowland threatened to withdraw all Lonrho's advertising from the Observer, and held an ostentatious meeting with Robert Maxwell to discuss a possible sale of the paper.

On this occasion brinkmanship failed. The editor was backed unanimously by the journalistic staff, while the paper's five independent 'watch-dog' directors denounced Rowland for 'improper proprietorial interference' and gave Treford their full support for 'vigorously maintaining his editorial freedom and defending his professional integrity'. A face-saving formula was devised to resolve the dispute and Treford remained as editor. However, subsequent events suggest his autonomy and freedom of action did not survive intact.

Throughout the 1980s Tiny Rowland was deeply embroiled in an obsessive dispute of byzantine complexity over the ownership of Harrods, the famous Knightsbridge store. Lonrho's attempt to buy the House of Fraser stores group had, he claimed, been thwarted with the collusion of the Department of Trade and various ministers in the Thatcher government, who had favoured a bid by the Fayed brothers, three Egyptians of somewhat

dubious wealth and background. It was inevitable that the Observer would get entangled in this dispute.

On Thursday 30 March 1989, in a blatant publicity stunt, this Sunday paper published a 'special edition' devoted entirely to Lonrho's legal case which was being considered that afternoon by the House of Lords. Needless to say, this expensive gesture owed little to journalistic news values or editorial initiative. Only a few hundred copies were sold before the issue was declared to be in contempt of court, and the episode can hardly be seen as anything other than proprietorial abuse of the newspaper's name and reputation.

At the same time an equally damaging argument was rumbling through the Observer's news-room. Lonrho's world-wide connections have often given the paper privileged access to business and diplomatic circles, and though Trelford has always insisted that Rowland's tip-offs and initiatives are assessed purely on their journalistic merits his staff reporters have often felt uneasy. Matters came to a head in 1989 over a story alleging that British Aerospace had been paying huge bribes to clinch the sale of Tornado fighter aircraft to Saudi Arabia. The information came from a German business contact of Rowland's, whom Trelford met when he accompanied a high-level Lonrho delegation to Iran in January.

Back in London, David Leigh, the Observer's associate editor and key investigative reporter, refused to touch yet another 'Lonrho implant'. In his account of the episode, the dossier was hawked around the newspaper's offices for several weeks as journalist after journalist refused to handle it or found the unsourced information would simply not stand up. Meanwhile pressure was building on the editor to give it his highest priority, and two stories written by a senior executive did eventually appear in the paper in March. Leigh took his complaints of direct proprietorial influence to the Observer's National Union of Journalists branch, and from there to the independent directors.

This 'court of appeal' decided there was nothing to support the charges. Trelford, in a statement to the directors, insisted that the story was in the public interest, that Lonrho's connection had never been concealed, that Observer reporters had been free to decline the assignment and had not suffered professionally for doing so. He denied there had been pressure from Rowland, or any commercial gain for Lonrho.¹⁸

Leigh felt that the independent directors' decision was only a whitewash. He resigned from the newspaper and later went to work for Thames Television's This Week programme. 'I felt ashamed' he wrote in the Guardian:

This was not journalism as I knew it, and it was not the Observer I had originally gone to work for. I felt it had become a sick newspaper. How could I write stories exposing conflicts of interest in MPs and businessmen, when no-one seemed sufficiently concerned about potential conflicts of interest in my own newspaper?¹⁹ On Fleet Street, history not infrequently repeats itself, first as tragedy, then as farce. On 16 June 1991 the Observer carried a short 'Letter from Malawi' by Julie Flint, a well-regarded journalist. In a jocular style the piece referred to the somewhat bizarre attempts to impose a 'moral code' on the country by the ageing and increasingly eccentric Life President, Dr Hastings Banda, who was also quick to lock up any potential dissidents. The following week the newspaper carried an apology regretting 'any errors contained in our report', plus a long rebuttal by one of Banda's political associates, plus a hurt letter from the Malawi ambassador in London. On 30 June yet another, even more fulsome, apology appeared, addressed personally to the Life President. Lonrho, of course, still has an important agricultural and commercial involvement in Malawi. For the Observer it all seems a long way from the days of 1984.

Or is there a more Machiavellian explanation, as offered by Robin Morgan, a former Sunday Express editor, in a comment on this latest Observer story? Was it a calculated risk by Trelford to show Rowland that nothing was 'off limits', even if the price was a grovelling apology later? Other critics might not be so generous, and would offer only qualified support for Morgan's other contention that 'most proprietors concede a considerable amount of independence to editors and invest millions in their instincts and views with only one condition—circulation success'.

PRESS FREEDOM: WHOSE FREEDOM?

Proprietors invariably seek to safeguard their position through the appointment of an editor who shares, or at least accepts, their opinions on general policy, even if differing on detail. Ideally, the task of the editor is to ensure that this general policy is followed, but without calling upon journalists to write in conflict with their own principles or knowledge of the facts. In practice 'editorial independence' may be largely limited to day-to-day matters of style, content and the editorial budget, rather than 'strategic' decisions on political alignment or major issues, which are usually settled by the proprietor.

At the same time, the fiercer the battle for circulation the greater the commercial pressures on editors to erode journalistic standards on matters of truth, accuracy and ethical acceptability. Commercial decisions on marketing, the publisher's responsibility, easily overlap with editorial requirements. The greater the prestige or circulation of the paper, the greater the attraction for a proprietor with strong opinions seeking a 'megaphone', as Maxwell bluntly called his *Daily Mirror*.

While editors certainly bear the brunt when relations with proprietors are rough, ordinary staff journalists usually have little scope to challenge the policy of the paper on political or ethical grounds even in normal circumstances. In the normal news-room procedure, particularly in the popular press, stories from reporters are collated and rewritten for publication by sub-editors and the 'back bench' of senior editorial executives. Political edges can be smoothed, new 'facts' inserted, the angle of the story subtly changed. Even before this, the selection of stories to be covered and their assignment to particular journalists can ensure that the political line decided by the proprietor or the presentational angle determined by the editor can be imparted without direct instruction.

If difficulties do arise and cannot be resolved in discussion with the editor, reporters have only two choices: to resign or to remove their by-line from the published story. Resignation is, not surprisingly, very much a last resort; pragmatic acceptance of the status quo is the way to self-preservation and the safeguarding of employment prospects, at least unless provocation reaches a peak. Producing a newspaper is a team operation played out under immense pressure, conditions in which 'professionalism' may easily substitute for more abstract issues of 'principle'.

Even a proprietor like Maxwell, well known for seeing himself as team captain, coach and referee rolled into one, was able to assemble a team prepared to play by his rules. Some journalists undoubtedly found his unpredictability exciting and his appeals to their self-esteem gratifying, as the *Mirror*'s obituary issue subsequently demonstrated. For others it was very different. Roy Greenslade was an 'outsider' brought in as editor in January 1990, knowing the score but attracted by the prestige of the job and 'a mixture of innocence and arrogance: I considered that none of the stories could have been as bad as the tellers made out, and if they were I thought I was the man to prove the others wrong'.²²

Greenslade lasted 14 months in the job, during which he gained solid support from the *Mirror*'s journalists for tightening up the news and political coverage and restoring some of the old campaigning spirit.²³ He describes this time as a period of constant skirmishing with Maxwell: 'making accommodations, hedging, dissembling, retreating...a continual battle of tactics to circumvent the beast on the 10th floor'.²⁴ Eventually he was fired, without apparent reason or explanation, but since his formal contract of employment had still not been signed, Maxwell was able to extract an 'oath of silence' from Greenslade as the price of his pay-off, and to threaten him with writs if he ever mentioned their disagreements.

For those journalists on the *Mirror* committed to addressing social and political issues from a left-wing perspective the choices were always stark: to leave the paper, as did Geoffrey Goodman, David Seymour and John Pilger; or to remain, like the columnist Paul Foot, in the hope of achieving something in spite of the need for careful self-

censorship. Despite the editorial distortions of recent years, Mirror Group Newspapers remain the only section of the mass circulation popular press to support the Labour Party.

Throughout most of the 1980s their competitors, reflecting the right claimed by proprietors to 'make propaganda' as they chose, provided a celebration rather than any critical examination of the Conservative government's actions. At the same time, under the impetus of those same proprietors, intense competition for market share relentlessly devalued journalistic values in pursuit of formulaic sensationalism and frivolous entertainment.

Sections of the quality press—the Guardian, The Independent, the Financial Times—have nobly maintained a public interest role, but in a changing and increasingly complex democratic society there is a need for diversity of values and perspectives that is ill-served by the current range of national newspapers. The press has a dual function to perform, as both public institution and private industry. Editorial independence is essential to underpin its role as watch-dog on government and business affairs, as provider of the information on which democratic decisions can be fairly made, and as the representative of public opinion and community values. At the same time, history has shown that profitability provides the best underpinning for editorial independence: the survival of the press as a democratic institution depends upon its survival as an industry.

The ideal, perhaps, as The Independent somewhat piously suggested in a comment on the impending change of ownership at the Daily Mirror, is for newspapers to be owned by people solely interested in seeing an economic return on their investment. Those who acquired titles for reasons other than profit, the paper's leader column argued, inevitably used their purchases to peddle political and commercial influence.²⁵ If the political will should ever be forthcoming there is no shortage of proposals for a radical restructuring of the press by breaking up the present heavy concentration of ownership and providing funding for new initiatives through a central funding agency.²⁶ Such proposals challenge the conventional idea of 'press freedom' as a property right. This is the first stage in reassessing the ethical obligations of proprietors.

PRIVACY, PUBLICITY AND POLITICS

Andrew Belsey

Privacy and alleged invasions of privacy by the media are central issues in the ethics of journalism. Clearly, we live in a society that values personal privacy, and is concerned about intrusions into privacy from whatever source, including the media. Yet, perhaps paradoxically, we also live in a society that thrives on publicity, or at least one in which many individuals depend on publicity for their lives and activities.

This seeming paradox is usually defused by drawing a distinction between the private and the public aspects of people's lives, and by further claiming that there is indeed a right to privacy, but that in certain circumstances the right can be overridden in the name of 'the public interest'. This account of the matter accepts that in such circumstances an invasion of privacy has actually occurred but that the invasion can be justified by an appeal to a greater good.

I shall dispute this account and argue instead that the right to privacy is no more than a presumption (though an important one), and that where some information about an individual that he or she would prefer to keep private should be in the public domain, then putting it there is not overriding that individual's right to privacy because no such right ever existed concerning this aspect of the person's life. There is, on this account, no such thing as a justifiable invasion of privacy because justification is in fact a demonstration that no privacy could properly be claimed in the first place. On this account, all invasions of privacy are unjustifiable.

This is particularly important in the case of politicians and others who occupy similar positions in society. Thus a politician who has his or her 'secret love nest' exposed in the press is not the victim of an invasion of privacy, because scandalous behaviour of this nature cannot legitimately claim the protection of privacy. This is not simply because

politicians are in the public eye, but because they, and others in business and the media as well, wield power in society, and all aspects of the exercise of power must be open to public scrutiny. This is the only way to avoid corruption in public life, and by corruption I mean more than financial chicanery. I do not say that politicians are not entitled to privacy, but that they are not entitled to abuse the right to privacy. In a democracy those who wield power cannot decide for themselves where to draw the boundary between the public and the private aspects of their lives.

I shall argue this case from the position in moral theory that what should be done is what is best, overall, for everyone whose interests are involved. Having arrived at what is best, it is then perfectly proper, to talk about rights as a way of indicating the protection due to individuals and their interests. There is a right to privacy because it is better to live in a society in which privacy is respected and protected. Perhaps it would be possible to go further and claim that it would be intolerable to live in a society in which privacy was constantly abused or non-existent. However, precisely because we live in a society, there are limits to privacy. When that society is based on a democratic but non-egalitarian distribution of power and privilege, then there are further limits to privacy, in the sense that the lives of those who exercise power should be above suspicion, which means that they must be open to scrutiny.

PRIVACY AND PUBLICITY IN MODERN SOCIETY

Privacy is regarded as valuable, and I shall accept that it is valuable. Its value is recognized by its being entrenched in international codes and conventions. Thus Article 12 of the Universal Declaration of Human Rights stated as long ago as 1948 that “No one shall be subjected to arbitrary interference with his [sic] privacy, family, home or correspondence, nor to attacks upon his [sic] honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.

The protection offered to privacy by this Article has in recent years been called upon in three (overlapping) areas where individual rights have come under threat:

- 1 Surveillance by private or (more likely) state security organisations, including the compiling of secret dossiers on people through the use of illegal or illegitimate methods such as phone-tapping, bugging, etc.
- 2 Unauthorised access to private or confidential data, often held in computer files, such as financial and tax affairs, social-security status, medical records, criminal records, etc.
- 3 Invasions of privacy by the press, first, by the physical intrusion of reporters into someone’s personal life and private space, and second, by the splashing of that person’s name, picture and story across screens or the pages of the tabloids, often with the utmost insensitivity or vulgarity.

In spite of the recent introduction in the UK of some legislative safeguards in the first two areas, there is little that members of the public can do to assure themselves that their privacy is not being abused here. They simply do not know what is going on and cannot find out, for such abuse is normally hidden at source, even though it might have actual consequences for people’s lives. With invasions of privacy by the press it is wholly different, for here the victim obviously knows. This might explain why there is a considerable outcry against invasions of privacy by the press—even though this is less harmful to individuals and the democratic political process than abuses in the other two areas—for here is an open target, easily identifiable, to soak up the public’s concern and wrath.

Hence the demand for the press to ‘clean up its act’, either voluntarily or, if this fails, through controls imposed by legislation. This threat of statutory restraints prompted the editors of the national newspapers in Britain to issue their own Code of Practice in 1989 to add to codes promulgated by bodies such as the Press Council (now defunct) and the National Union of Journalists. The editors’ code and the Press Council code were later absorbed into a newspaper-industry code, monitored by the Press Complaints Commission, in which the voluntary protection of privacy, without legislative intervention, was a primary aim.

And yet strangely, the same public that can get so heated about invasions of privacy by the press is willing to lap up the results by buying the offending papers in large quantities (though in 1991 circulations were falling). The justification offered by the press for its activities—that it is only giving the public what it wants—is not without foundation. But there is more to it than this. The actual role of the press is not just to entertain its readers but to focus willingly accepted publicity on people who require it and desire it, people in the public eye who want to stay there, and people not yet in the public eye who want to get there.

So many aspects of life in a busy, modern society depend on and are thoroughly bound up with publicity. People in politics, sport, business, entertainment and the media themselves need publicity, and flourish on it. And this is not just publicity for issues and causes with which people are associated or which they are pushing; it is publicity for people, individuals, personalities.² A clear and non-trivial example of this is the fact that nowadays the personal image of the leader of a political party is as important an electoral issue as that party's policies. These days top politicians, like top footballers and top film stars, have to be personalities. And where would the personalities be without the cult of personality generated by the media?

Yet personalities can turn against the media that feed them and complain that the press has gone too far. In many cases these complaints are justified. But often in such cases the offence is not invasion of privacy but something much more basically disturbing, like simple lies or straightforward distortions of the truth. Such behaviour by the press is contemptible, but it does not follow that there are no legitimate targets for probing by the media. Far from it. The press should critically scrutinise those who exercise power, for well beyond entertainment and providing free publicity for personalities as the actual role of the press is the central democratic function of casting a sceptical eye on the processes and personnel of politics and power and, most importantly, keeping the public informed of the results. Ordinary members of the public do not have access to this information, which is why a free and fearless press is essential to a democratic society. Unfortunately there are few examples in the world today of the press matching up to this ideal image, part of which is to scrutinise the exercise of power and also, of course, at the same time to respect privacy—where it is due.

THE NATURE OF PRIVACY

But what is privacy? One influential theory is that put forward by Sissela Bok in the context of an investigation of secrecy. Bok claims that privacy and secrecy are closely linked, yet are essentially different. Secrecy can involve a range of related concepts, including sacredness, intimacy, privacy, silence, prohibition, furtiveness and deception. The core of secrecy is, however, intentional concealment.³

That which is private is not always secret: the ordinary events and experiences of everyday life are not intentionally concealed but are simply maintained within the personal domain, not offered to the gaze and scrutiny of the public. Secrecy can be a means to or a form of privacy, if privacy is 'the condition of being protected from unwanted access by others'.⁴ Secrecy, however, although its use by an individual could be widespread, requires a specific object—that which is concealed. Privacy is more general: it is more like a way of life, a condition (as Bok suggests), and, on this way of looking at it, a necessary (but not a sufficient) condition, for the suggestion is that it is a psychological requirement for a satisfactory life. Privacy meets a need: it offers the self protection against vulnerabilities by providing comfort and control and by strengthening the sense of identity.

According to this theory, then, privacy does not imply that there is something to hide, and certainly not that it hides a shameful secret. Privacy simply recognizes the importance of not handing over the power to control one's own life to someone else. It thus relates itself to such concepts as self-fulfilment and self-respect, personal dignity and

security, autonomy and identity, and in general the integrity and immunity of the person, and it differentiates itself from the consequences of its negation: feelings of defencelessness and nakedness, fear and embarrassment, bewilderment, distress and emotional upset.

But although I do not wish to deny that there is much truthful insight in the psychological-need theory of privacy and in the claim that privacy is to do with the protection of the self,⁶ I do believe that it is wrong to link privacy too closely with an individualistic notion of the self. For privacy as the individual's protection against others can veer off in an obsessive direction to the point where the self becomes isolated. Sandra Marshall draws our attention to the fact that in recognising the importance of privacy we are not accepting the self of the solipsist: the self in the sense relevant here is a social creation... Our sense of self is given only through our community with others... The thoughts and feelings which are mine must be recognized as mine by others if I am to have any sense of them as mine, and thus any sense of my self.⁷

But for this theory to work, what must be recognized as mine by others must be so recognized without these others knowing what it is, or even, to some extent, whether it exists. That is to say, other people have to accept that I can have (for example) beliefs that are mine, without their knowing what my beliefs on a particular subject are or even whether I have any on this topic. For clearly, if people could recognize my beliefs as mine only if they knew that I had them and what their content was, then the whole project of privacy that Marshall is supporting would collapse.

Furthermore, isn't this theory still too individualistic, in spite of the mention of 'community with others', for it seems to be a community not of association but of antagonism between self and others: the self depends on separation and distance. Recognition of the self by others is a negative conception of sociability which does not do justice to the active involvement of the self with others. Each human life is indeed the life of an individual, yet such a life is essentially public and social. We are as individuals positively and purposely bound up with other people in all areas of life.

The result is that life is a synchronic balance between the outwardness of living in society and that inner retreat we call privacy. Ideally there should certainly be a non-antagonistic equilibrium between the two, though perhaps this is one of those elusive goals the search for which makes human life such an interesting tragedy. The point of equilibrium is clearly different for different people. Lack of balance in both directions, to produce either the exhibitionist or the recluse, can be pathological, but between the two extremes is a lengthy continuum of more or less satisfactory resting points.

Another reason for rejecting an over-individualistic idea of the self in the context of privacy is that privacy itself need not be individualistic: it is not always attached to the life-condition of a lone individual. Like a secret, privacy can be shared between individuals, and in some of its manifestations must be shared, as in the case of the privacy of lovers, or just two people having a conversation.⁸ In fact, a great part of life is private only in this shared sense.

Nevertheless, although privacy can be shared, it remains personal in the sense that it is a condition only of the lives of persons, that is, individual social beings. Institutions and corporations can make claims on confidentiality and secrecy, but not privacy. Of course, as Bok points out, the affairs of corporations are automatically private in so far as they are not made public, but this does not bring them within the domain or language of privacy.⁹ This allows one important conclusion to be drawn at this stage. It is not legitimate for corporations to try to divert investigation of their affairs with accusations of invasion of privacy. This is an abuse of the notion of privacy.¹⁰

There are three (again overlapping) areas of personal life where the protection of privacy might be sought, and hence three types of privacy. The first two could be called direct, and the third indirect.

1 Bodily or physical privacy: this provides a space in which the body can exist, function and move, free from physical intrusions like the too close proximity of other people or bodily contact and touching, and free from observational intrusions of eyes and cameras (and other senses and sensors).

2 Mental or communicational privacy: this allows a person to be alone with their thoughts and feelings, wishes and desires, to keep written or electronic records of them and to communicate them to selected other people, free from eavesdropping, intrusion and other forms of psychological invasion.

3 Informational privacy: this provides protection for personal information which is legitimately held in the files of public and private organisations, and prevents the disclosure of such information to third parties. 'Legitimately' means not only in accordance with the law but also with the subject's knowledge and consent. Such information includes details of bank accounts, tax returns, credit status, social-security records, education records, employment records and medical records.

The distinctions I have drawn so far are not of course so clear-cut in real life. For example, someone with access to the relevant computers could obtain information about the geographical movements and spending patterns of a person who used a lot of plastic money (credit cards, switch cards, cash cards). Through this breach of informational privacy, both bodily and mental privacy would also have been invaded, though indirectly.

Privacy differs from secrecy in its moral status. Bok has pointed out that whereas lying is (prima facie) bad, secrecy in general is neither good nor bad but morally neutral: it is only particular cases or practices of secrecy that can be morally evaluated. But if secrecy is morally in the middle and lying is on one side of it, privacy is surely on the other side: not just prima facie good but good without qualification or exception. This follows from the fact that I have defined privacy in such a way that invasions of it are never justified. There are well-known dangers of building a moral evaluation into a definition: it begs too many questions. But in this case the procedure seems acceptable (as well as unavoidable). It does not follow, of course, that every claim to the protection of privacy can be established, but it does follow that where a claim is not upheld, the behaviour or other aspect of life under consideration was never within the domain of privacy at all.

What follows from the brief examination of the nature of privacy in this section is that privacy is not a simple concept, and that its realization is by no means simple either. It is a good, yet one whose domain has boundaries that are neither clear nor fixed. Conceptually, privacy comes up against the social nature of human life. But beyond this it comes up against the publicity-based nature of modern society, and against the requirements of a supposedly democratic political system. It is at these social and political frontiers that the role of the media becomes significant.

PRIVACY AND THE MEDIA

In considering where the media should draw the ethical boundaries of privacy, I shall look at three groups. First are personalities, those who are created and sustained by publicity. Second are people who find themselves thrust into the public eye involuntarily. Third, and most important, are politicians and similar figures who occupy positions of power in society. The distinctions are neither exhaustive nor exclusive, but a consideration of these three groups will enable most of the ground to be covered.

Once personalities were in what was called 'show business', but show business has now expanded beyond entertainment to incorporate elements of the arts, sport, politics, royalty and the media themselves. Here we find people created by publicity, who would not be who or what they are without this exposure. They range from people who are only famous for being famous to those who have genuine talents to offer to the world. All such people live on the press and off the press; they require publicity and would shrivel without it. Such people, who tend to live according to the maxim that all publicity is good publicity, cannot consistently claim the protection of privacy when they discover the negative side of the Faustian contract. When the publicity suddenly becomes painful, as it might when it concerns death, disease, a drugs bust or a brush with the income-tax authorities, claims to a right to a private life shade quickly into hypocrisy. And this, as I shall argue shortly, is outside the protection of privacy. Nevertheless, although the press does not offend against privacy in reporting such matters, it does not follow that it ought to report them. Lapses of taste are no more justifiable than invasions of privacy. Furthermore, resources are limited, and the press has more important tasks than to

concern itself with senseless trivialities—among which, incidentally, I should include most of the activities of royalty.

In contrast to personalities, many people find themselves in the glare of publicity not because they have chosen it but because they are thrust into the public eye unexpectedly or even against their will. One sub-group of such people is formed by those whose interesting eminence or achievement is relatively long term or permanent: writers, artists, people at the calmer end of sport or entertainment, though perhaps the scientist who makes a breakthrough or wins a Nobel prize could stand as an example. Such people could be considered somewhat more public than the genuine ‘ordinary citizens’ who form the second sub-group: the disaster survivors, the relatives of someone involved in a tragic situation, the parents of a child who is a transplant patient, or, on a happier note, the pools winner. To the extent that the events that members of both sub-groups are involved in are public matters, there is no reason why the press should not seek to report them. Indeed, the circulation of general-interest information is a reasonable and legitimate activity of the media.

The United States, with its constitutional guarantee of the freedom of the press, goes further than this. ‘People who are catapulted into the public eye by events are generally classified with elected officials under the privacy laws’—that is, they have no right to privacy—and furthermore, ‘the courts have ruled material news-worthy because a newspaper or station carries the story’.¹¹ But such a principle makes the press the sole judge of what is private, and goes beyond a reasonable ethical practice for the media. When people are involved in public events there can be no objection on privacy grounds to the press reporting what is already known, together with non-intrusive background or follow-up stories. But to the extent that the people involved are not public people, they can justifiably choose to reject press advances and requests for further interviews or information and claim the protection of privacy.

I turn now to public figures like politicians and others who exercise power in society, and about them there is a good deal more to say, starting with the central question. To what extent do public people have a right to a private life? Is it true, as has been claimed in the House of Commons, that ‘when one decides to become a public figure one gives up in some way a little of one’s right to privacy’?¹²

This suggestion could be criticized from both sides, (a) No, one does not give up even a little of one’s right to privacy, (b) No, one gives up more than a little; one gives up a lot, or even the lot.

Sissela Bok has supported the first side, even though on another occasion she has written: ‘There is no clear line surrounding private life that can demarcate regions journalists ought not to explore.’¹³ But in an earlier work she had offered public figures clear and considerable protection: ‘Information about their marriages, their children, their opinions about others—information about their personal plans and about their motives for personal decisions—all are theirs to keep private if they wish to do so.’¹⁴ There is some justification in this. After all, if privacy is necessary for the protection of the self and the flourishing of the individual, should not even politicians have a right to privacy? And more than this, would it not be to the benefit of society for its politicians to have selves that were flourishing rather than stressed by lack of privacy? All this is true enough, and indicates that the genuinely personal aspects of the life of a politician should indeed be granted the protection of privacy. So in this respect the politician is no different from anyone else. But the peculiar ethical demands of political life mean that this protected area is smaller for politicians, and, furthermore, not very secure. Paradoxically, the privacy of a politician is always liable to be under scrutiny. For Bok’s suggestion that what is to be regarded as private depends on the politician’s own wishes is not acceptable. It would make politicians judges and juries in their own cases, whereas empirical studies of corruption show that politicians are very poor at drawing an ethically acceptable line between public life and what is properly private.¹⁵

An imaginary but typical case would go like this: the local politician who has received entertainment or gifts from a businessman will say (and let us allow that it is sincerely believed), ‘All I was doing

was accepting the generosity of a personal friend', whereas the law will say, 'No, you were taking bribes from someone in whose direction you could push contracts.' Furthermore, to demonstrate just how confused they are on the public/private distinction, corrupt officials have been known to involve their spouses and children in their activities.

At least there are statutory limits to what is permissible in local government in Britain. One of the extraordinarily unsatisfactory features of British political life is that the members of parliament who legislate for severe anti-corruption controls on local politics and politicians would not dream of imposing such standards on themselves. Indeed, with very few constraints they are free to sell their services to the highest bidder.¹⁶ Thus the world of parliamentary politics easily leads into what some would consider the real location of power, the financial world. Here there has been a plethora of recent scandals for the press to investigate, and it must not allow itself to be distracted by ritual incantations of the public/private distinction. For again this distinction is difficult to draw, as is shown by the case of Robert Maxwell, whose public and 'family' businesses were enmeshed in a single web of disaster.

It follows that Bok's account of what is personal and private will not do, and the conclusion seems to be that politicians and other public figures of power cannot expect much privacy. But is this going too far? For many commentators on this subject have suggested that there is a reasonable middle way, along the lines of the criterion put forward in the following:

In 1976, the Press Council published its declaration on individual privacy, which stated that the publication of information about someone's private life, without that person's consent, was only acceptable where there is a 'legitimate public interest overriding the right to privacy'. Even a public figure was entitled to respect for his or her privacy, except where circumstances relating to his [sic] private life could affect the performance of his [sic] duties or public confidence in him or his [sic] position.¹⁷

In other words, it is a matter of relevance. Only where performance in private life is relevant to performance in public life is private life a proper object of concern or investigation. Where it is irrelevant, there is the outer limit of privacy.

But does such a criterion offer any genuine assistance? Leaving aside the obvious difficulty that the relevance of a person's private life cannot be known unless it is investigated, there is the question of the psychological and moral dualism implied in the public/private distinction. Is the public person a different person from the private person?

Politicians and other public persons should have their personal lives protected only on the assumption that the way they behave in their public lives—the character, principles, attitudes, beliefs and virtues they display—are not only quite distinct from but are also greatly superior to their behaviour and character in their private lives. No one could claim that this assumption is true a priori. And if it is taken as making an empirical claim, it must be tested empirically, case by case. Either way, the assumption is implausible. I acknowledge, indeed I insist upon, the fact that the unity of the person sought by philosophers and psychologists as the sibling of personal identity is a chimera.

Nevertheless, a person does not neatly divide into two characters, the public and the private. And (to return to the difficulty just raised) if a person did divide in this way, this could be found out only by investigating both sides of the division. But is this too high a standard, especially if applied to that area of perennial interest, sex? Would not such a standard have destroyed the career of John F. Kennedy, not to mention David Lloyd George or even Harold Macmillan (because of his wife's activities) and a host of others whose still-living status means they definitely may not be mentioned? The standard is high, but it is not unreasonable to impose it on those who seek positions of such power, as several contenders for the presidency of the United States have discovered to their chagrin during the last decade or so.

But in such cases the target of the press has often been not so much the sexual (mis)conduct itself as the surrounding hypocrisy and double standards. Even if politicians

and similar public figures can claim some privacy for their personal lives, the protection should not be available when they indulge in double standards. Present and recent senior members of the British government regularly intone support for 'the family' and family values, condemn 'permissiveness' and attack one-parent families for their corrupting and delinquent consequences. Such stances are (among other things equally bad) sheer hypocrisy. For many of these moralists are into their second marriage or that of their spouse, a position that is frequently not possible without leaving one-parent families behind. Contrary to their professed utterances politicians accept the inevitability and desirability of separation and divorce in many cases, and are also happy to accept the benefits in their own cases. There is no reason why the press should feel inhibited in exposing such double standards.

But the real problem with sexual peccadilloes is neither their intrinsic nature nor their consequences but the prurient and sanctimonious atmosphere in which they subsist. Thus while it is right that allegations of sexual misconduct against Clarence Thomas should have been fully investigated before he was confirmed as a justice of the United States Supreme Court, it does not follow that every detail of the investigation should be broadcast coast-to-coast. It would not be right for the media to cover up real or alleged sexual scandals, nor to blow them up out of all proportion. What is needed within society as a whole is a more moderate and healthy attitude towards human sexuality and sexual relations, both heterosexual and homosexual, and if this came about, the need for hypocrisy and double standards perceived by many in public life would diminish and eventually disappear. One clear ethical responsibility on the media—one they are a long way from fully accepting—is to fight bigotry and hypocrisy and to promote a new enlightened atmosphere about sex.

PRIVACY AND CONSENT

Consent is highly relevant to the issue of privacy. On the one hand it has been called 'a vital element';¹⁸ on the other it has been pointed out that 'it would be wrong to conclude that journalists ought to write only about persons who have given their consent'.

Some distinctions are needed. In the case of personalities, those who live by publicity, consent can be assumed. In the case of public people, for whom I have already argued the protection of privacy is at best very limited, consent can again be assumed outside any small protected domain. In cases involving criminality, corruption, hypocrisy and unethical behaviour, consent is not needed. In all other cases, those concerning ordinary people who find themselves thrust into the public eye, or family members who are innocent of any relevant involvement, consent should be a requirement.

And media ethics should borrow from medical ethics and insist on the consent being informed. One consequence of this is that it immediately rules out any form of deception by journalists in cases in which consent is required or can be assumed. In such cases deception would amount to dishonesty. In cases in which consent is not required, cases involving the corrupt or the hypocritical, the issue is less clear. Some form of deception might be required if any investigation was to take place at all. Perhaps the answer is that deception is acceptable so long as it does not become dishonesty. But the ethical line is difficult to draw.

PRIVACY, ETHICS AND POLITICS

The press has a difficult course to steer between privacy and publicity. But any suggestion that it should be forced into line by a statutory right to privacy would have, I believe, disastrous consequences. The British press is already too restricted by the repressive use of laws of official secrets, confidence, libel and contempt of court, and to add privacy to this list would be to invite further misuse of the law by public figures with something to hide. For example, Robert Maxwell prevented any serious investigation of his affairs by the constant and immediate presentation of libel writs, and, bearing in mind that much of his business was carried on through so-called 'private' companies, no doubt would have added an avalanche of privacy writs if they had been available.

No, it is ethics, not law, that should protect privacy, but a reasonable code of ethics would also not inhibit investigative journalism, but encourage it. In other words, rather than containing a negative list of restrictions, the code should have a positive emphasis on the role of the press within a democratic society.

Information is the substance and sustenance of a democratic society. 'Information' should be understood in a wide sense: not just factual information but also the opinion, comment, criticism, speculation, discussion and debate that are needed to keep democracy healthy and society free and fair. A democratic society therefore requires freedom of information and freedom of expression, and this gives the press its vital role, that of providing people with the information that they need to know in order to be democratic citizens. It does not follow that people should be forced to be politically active, nor that the press has only a political role. There is more to life than politics, and the press can be entertaining and relaxing as well as informative.

A democratic society is an ideal. In reality there is always slippage from the ideal. Here again the emphasis should be on the positive role of the press in promoting a fairer society, by attacking discrimination, hypocrisy and bigotry, for example, or by combating political corruption and corporate fraud. It is the big-time enemies of a fair and democratic society that should be the targets of the press, not trivial details about the lives of personalities. Unaccountable power is the enemy of democracy, and the investigation of both the use and abuse of power can never be an invasion of privacy.

Of course in a democratic society there will be protection for the privacy of citizens. But in a genuinely democratic society it would be unthinkable for the press to invade anyone's privacy. It would have better things to do, and would be content to do them.²⁰

TERRORISM AND REPORTING RESTRICTIONS

Paul Gilbert

SECRECY AND SUFFERING

At one time rulers used to cut out seditious critics' tongues. Now they merely deny them airtime—the 'oxygen of publicity'¹—for their subversive opinions. But if the critics clamour for the violent overthrow of their rulers might it not be right to silence them? If they support terrorism might it not be right to deny them airtime?

On 19 October 1988 the United Kingdom Home Secretary banned the broadcasting of utterances by the representatives or supporters of terrorist or pro-terrorist organisations in Northern Ireland (including the legal political party, Sinn Féin). The ban has been widely criticized as infringing the alleged right to freedom of opinion and expression, enshrined, for example, in the United Nations Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights.² Yet it has survived legal challenges all the way to the House of Lords, being found a not unreasonable use of the Home Secretary's powers to restrict broadcasting in the national interest.

'In a war,' said Mrs Thatcher at the time, 'you have to suspend some of your civil liberties.'³ The war she was referring to is, presumably, a war against the IRA, which sees itself as fighting to liberate the Six Counties of Northern Ireland from British control. The implications of this description of a response to terrorism as war is something to which we shall return. Meanwhile we need to ask what restrictions on freedom of opinion and expression a war against terrorists might justify. Pre-eminently, of course, it would justify a degree of secrecy with respect to military operations. In any war all governments impose restrictions on the reporting of the dispositions, movements and engagements, not only of their own troops, but of those of the enemy, in order to conceal the extent of their information. The reasons for such secrecy may be purely military: to maximise the chances of achieving victory by surprising the enemy. It is only the reporting of military operations themselves which might prejudice this. The reporting of opinions about the war could not, or rather it could only if these opinions concerned what military operations were involved.

Secrecy with respect to military operations is achieved in two ways, by the control of information available in the first place only to government, and by censorship. The extent to which either of these is justified in war is a matter of debate. But, since both methods are in question, this debate turns on the balance between State secrecy and the public's alleged 'right to know', rather than on that between enforced secrecy and freedom of expression. Whatever the extent of a public right to know, it is evident that it is often in the interests of people in a war zone to know enough about it to take effective precautions. The peculiarly covert character of military operations against terrorists undoubtedly exposes citizens to risks over and above the ordinary hazards of guerrilla warfare: they are, for example, caught in the crossfire following 'stakeouts', which are of necessity unpublicised. Similarly the reluctance of the authorities to countenance large-scale disruption of ordinary life and thereby concede the effectiveness of terrorist threats has sometimes led them to refrain from passing on warnings of bombs, with fatal consequences for citizens.

In both cases it is the special nature of what is termed 'terrorism' which creates problems in squaring the effectiveness of counter-terrorist operations with the openness about them which would safeguard citizens. For while politicians may sometimes describe their counter-terrorist campaigns as war, they are not, ostensibly, conducted like wars. Ostensibly troops act in support of the civil power to prevent the crime or to detain the criminals involved in terrorist activities. In this situation an assumption must be made which potentially imperils citizens: that terrorists must be pursued and brought to justice, rather than simply contained or rendered ineffective. Although there is no sharp distinction to be drawn between terrorism and guerrilla war, the response to terrorism differs in this respect from that made in a guerrilla war. Counter-terrorist operations display an overtly non-military character, since any military tactics must, as such, be

concealed. But this hampers the kind of disclosure which is made compatibly with military secrecy to safeguard ordinary citizens caught up in open war.

It is, then, not military necessity but political expediency which prevents an overtly military response that principally fosters restrictions on the reporting of terrorist and counter-terrorist incidents. As in open war, however, the preservation of morale and the erosion of the enemy's will to fight are motives for concealment or deception. In times of terrorism there is an additional but related motive. It is to maintain the impression—which may be illusory—that the life of citizens continues more or less normally. That government counter-terrorist tactics are merely policing operations is an essential aspect of this picture. The impression is maintained as long as possible in order to prevent citizens, or outside observers, from suspecting the breakdown of normal government control of its territory, with a consequent loss of morale among its own supporters and a boost to the confidence of its antagonists.

It is common—in cases where, on the one hand, terrorism is successful enough to shade into guerrilla war, or, on the other, popular enough to evoke sympathetic rioting—to suppress any reporting of incidents across an entire area, whether by the exclusion of journalists or by censorship of their reports. In this situation two crucial kinds of fact can be concealed: the territorial gains of terrorists, that is their power to hold and administer an area, if only for a period, and, correlatively, the essentially military response of government, its use of 'shoot to kill' rather than policing methods. What can also be concealed by such restrictions is State terrorism. Indeed there is a natural tendency for an ostensibly civil response to terrorism to become terroristic itself as it resorts to undercover military tactics. Then neither the rule of law nor the rules of war can be expected to constrain government forces, for the former has been exceeded and the latter need not be applied in the absence of any acknowledgement of open conflict, while such an acknowledgement is incompatible with the impression of control which the government seeks to preserve.

Although the political advantage to a government from this sort of reporting restriction may be great, its potential for causing harm is considerable. Ordinary citizens, especially if they are sympathetic to the terrorists' cause, may be subjected to State repression which is thereby shielded from adverse publicity. They may also suffer from the unintended effects of living in an area of conflict, not only as the casualties of attacks directed at others but as victims of hunger, disease and the other hardships of war. Reporting restrictions militate against the relief of their suffering, which may itself be deliberately concealed by government as unwelcome evidence of its failure to secure full control of its territory.

The common excuse of governments for restricting reports of terrorist incidents which command a measure of support or sympathy from some sections of the population is that the reports can induce further public disorder. What may look at first sight like a mere propaganda exercise is presented as conducive to the public good. Doubtless in some cases the disorder arising from imitative violence will be very great. Weighing the benefits and disbenefits of such policies along utilitarian lines is, however, notoriously difficult and uncertain. In this instance there is an additional problem, namely that the success or otherwise of the policy, when it is implemented, in conducing to the public good is something that only government can be in a position to judge, since it alone has access to the necessary information of which others are deprived precisely by the operation of the policy. It is hard to see how a policy which has this consequence can, in general, be to the public good. The temptation to substitute the sectional interest of a particular government for that of the public at large is too strong when the success of the policy is not open to public scrutiny. If a government succumbs to this temptation then no honest utilitarian calculation will be possible as to the public good.

This argument can be generalized. It applies not only to balancing the risks of spreading disorder against the dangers of repression or neglect, but to balancing the loss of any advantage to the State against possible harm to a section of its population. Here we should notice at once that it is not the public good, as the utilitarian conceives it, that government considers, but the national interest. Yet the government's duty to consider only the national interest is in fact not different in kind from the temptation for it to consider only sectional interests. In neither case are the interests of people in general under consideration. This point is particularly pertinent to situations in which there is a

terrorist threat. For these situations are most commonly those in which the official State view of what constitutes the nation is under challenge from the terrorists. In these circumstances what is to the good of the nation as the State conceives it, and what is to the good of the nation which the terrorist recognizes, may well differ. The terrorist will view government restrictions on reporting terrorism simply as seeking to preserve the existing national order in order to benefit its present population. In the process a putatively national minority may well be caused to suffer. But no utilitarian calculation has been made with respect to the benefits to people in general, rather than to the State's present population, that might outweigh the minority's suffering.

THE ARGUMENT FROM DEMOCRACY

The foregoing argument evidently applies not only to the justification for restricting reports of terrorist incidents, but also to that offered for restricting dissemination of terrorist opinions. Of the four considerations reported⁴ to have influenced the British Home Secretary in his decision to ban the broadcasting of live interviews with supporters of terrorism it is the fact that such interviews give terrorists publicity deemed contrary to the 'public interest' which is especially relevant here. By the 'public interest' the Home Secretary must have in mind the national interest, an interest in preserving British rule in Northern Ireland which is challenged by the IRA. Publicity for those who threaten it with force calls its continuance into question. In this connection even the ban's apparent evenhandedness in being directed at Loyalist as well as Irish Nationalist terrorist groups is significant. For the existence of proState terrorist groups is itself an indication of the extent of the threat to the status quo from Nationalist terrorism which the Government is anxious to under-play. It is for this reason that the publicity given to terrorists is described as 'undeserved'—it is undeserved in relation to the Government's official view of the solidity of the Northern Irish settlement.

The Home Secretary's Broadcasting Ban was challenged through the courts by a group of journalists. One of their arguments was that the ban contravened the duty laid upon broadcasters by law to observe 'due impartiality'. Although the argument was rejected by the judges it is an interesting one. It indicates the view that journalists take of their own duties, which some see as conflicting with the aims of the ban. The supposed fact that publicity for the advocates of violence in pursuit of a united Ireland works against the British national interest seems to journalists irrelevant to their duty to present an impartial picture of the present situation and of its possible resolution. So far as presenting an impartial picture of the situation is concerned the objection to reporting restrictions must be that they tend to distort the truth. The suppressing of certain facts in the national interest will not enable those who report the facts to give an accurate account—although the resulting account will not necessarily be a partial (i.e., a biased) one. The suppression of certain opinions as to the facts may lead to inaccuracy, and must lead to partiality (to bias).

The general relation between the journalist's job of uncovering the truth about current affairs and the governments of 'news management' is complex and problematic. What concerns us here is the specific relation between the journalist's role as an impartial reporter of views and a government's restrictions, imposed in the national interest, on the reporting of some views—in the case of the Broadcasting Ban by preventing broadcasts of their holders' voices. A situation analogous to the terrorist case arises in open war. The governments of both sides express views as to the progress of the war and each expects its own news media to give special emphasis to its views in the national interest. Is there a countervailing duty of impartiality here? Or is there, perhaps, a duty which may be overridden by an obligation to protect the national interest?

It is hard to see how to resolve this question in general terms. Radio and television or the press are made up of particular institutions with their own aims and responsibilities. The BBC, for example, is a public corporation which, though ostensibly impartial as between the major political contenders for government, is not expected to be impartial as between a British and a foreign government on any point affecting the national interest.

Journalists, whatever their aspirations to independence, are employed by such institutions or produce material for sale to them. The truth may not be what is required. Nor is it possible to imagine a journalistic context in which the truth for its own sake is all that is required. For the point of revealing the truth cannot be divorced from the political impact of doing so, and the impact will need to be assessed prior to publication.

That said, it is one thing to have regard to the national interest in publishing facts or opinions, it is quite another to be prevented by legal constraints from publishing material claimed to be contrary to it, where this does not fall within the limits of that proscribed for reasons of national security. The enforced dissemination of an official version of the facts, brought about by the suppression of other views, does run counter to the supposed role of the news media in a democratic society. In a democracy, the argument runs,⁵ voters need to be able to judge the success of government policies, and to do so they must have before them anything relevant to establishing it, not just the government's own rose-tinted version of the relevant facts. For a government to impose its own version is therefore for it to interfere in the democratic process with the aim of remaining in power longer than it might if voters had had at their disposal different versions of the facts. Politically naive as this 'Argument from Democracy' may be, it has the merit of locating press freedom within a framework of political choice. In its application to the reporting of the opinions of terrorist groups, however, it may appear to encounter difficulties. The terrorist's criticisms (for example, of government counter-terrorism), it may be argued, are not those of a group contending for political power within the democratic process. As such they are not pertinent to the political choices of voters, and therefore need not be accorded freedom of expression. This argument is without force. So far as opinions as to the relevant facts of the situation are concerned the origin of the opinions is not relevant to their value in establishing the truth, which is all the voter seeks to know.

There is, though, a further complication. In order to discover the truth about the situation and to assess government policy the voter will need to know the opinions of the protagonists on how it ought to be resolved. But, whereas the origin of opinions on the facts of the situation is irrelevant to their admissibility, the origin of opinions as to its proper outcome may not be similarly irrelevant. For these opinions enunciate policy options, and here it can be argued that only those that originate from parties involved in the democratic pursuit of power are pertinent to the voter's political choices. Others might then be suppressed as not protected by the Argument from Democracy. The knock-on effect of their suppression would be, however, to deprive voters of information relevant to their assessment of the facts, for while the policy opinions themselves might not be able to affect their choice, that others hold them might well do so. If this is so then these opinions too should be afforded freedom of expression under the Argument from Democracy.

This is a complex line of reasoning which raises many questions, pre-eminently that of the admissibility to the news media of policy opinions pursued 'undemocratically'; to this we shall return in the next section. What we should now observe is that the line of reasoning need not be taken to expose any incoherence in the Argument from Democracy. That argument attempts to identify certain illegitimate restrictions on the news media. It does not seek to identify what restrictions are legitimate. As a result a proponent of the argument can reason that if the voter needs information which can only be obtained by the dissemination of a policy opinion, then, however abhorrent that opinion is, it must be disseminated. Perhaps few would wish to follow down this path, which could license the dissemination of, for example, offensive and inflammatory racist policy opinions. The difficulty is to see how to redraw the Argument from Democracy in order to close it off. It could be argued that reports of the holding of the opinion, though not its actual expression, would fit the bill, by giving voters the information they need while not exposing them to undemocratic influences. If this is so then the form of the Broadcasting Ban is entirely apt for its purpose. We shall, however, have reason to question it.

ILLEGITIMATE OPINIONS

The presumption of the Argument from Democracy, that the rights of citizens to consider alternative viewpoints do not stop with their rights as voters to consider the policies of the parties involved in a democratic contest for power, is open to challenge. For, it may be contended, their right to hear viewpoints which take for granted the nature of their national interest does not exhaust their rights as citizens.

We can best consider this claim by examining another of the factors reported to have influenced the imposition of the Broadcasting Ban, namely that television broadcasts by supporters of terrorism create the false impression that such support is itself a legitimate political opinion. The common view that support for terrorism is not a legitimate political opinion may be understood to mean that it is not admissible to political debate and hence

not tenable as a political opinion. The view seems to have a number of possible grounds. One is the notion that terrorism in pursuit of a political objective is never right, or is never right in a democracy, and hence that the claim that it is right in particular circumstances is unacceptable. But even if terrorism never is right—and this would need to be questioned—it does not, of course, follow that the opinion that it sometimes is should be suppressed, for otherwise the mere falsity of an opinion would be a reason for its suppression, and this flies in the face of any belief in freedom of opinion and expression. Nor would it follow that if terrorism itself should be suppressed then opinions of support for it should be also. There may be many reasons against this, not least that it might exacerbate the unrest which gives rise to terrorism. And even if such opinions tend to foster further terrorism, which is doubtful, they cannot, so far, be construed as a threat of or incitement to violence, and hence something to be prevented in the course of preventing terrorism. For political support consists in the judgment that certain acts are right; it need not involve any behaviour intended to promote them (though this is a matter to which we shall return).

A further type of ground for the view that support for terrorism is not admissible to political debate is that it infringes the rules of debate by advocating violence rather than debate in the solution of political problems. The implied games-playing analogy would explain the inadmissibility of an argumentum ad baculum in philosophical debate, for example. Threatening to punch one's fellow symposiasts unless they express agreement is no longer conducting a philosophical discussion. The case is quite otherwise in politics. Threats or implied threats of force, or other sanctions affecting the well-being of the disputants, are always a part of the currency of political debate. Indeed it is unclear that we would recognize it as political debate—as having to do with power—unless they were. Perhaps threats of violence fall into a different category from these: they threaten, perhaps, the peace and order on the assumption of which political debate takes place. But, evidently, not all political debate does take place against a background of peace and order. And in any case, as we have just seen, those who enter the debate supporting acts of violence need not be threatening it: they may enter the debate seeking a peaceful, negotiated end to it. In its general form this argument to the illegitimacy of support for terrorism has little merit.

Yet this type of argument tends to be cast in a more specific mode. Political debate in a democracy, it is said, rests on the assumption that the contending parties will leave it to the voter to decide the issue. Support for terrorism indicates a disinclination to accept this assumption. Therefore, it is concluded, expressions of such support are not a legitimate part of political debate in a democracy. Unfortunately for this argument, however, the debate in which terrorists seek to enter is characteristically not one on which voters—in their ordinary role as people choosing between the contenders for power within an established democratic State—are able to adjudicate. Most terrorist campaigns are waged in support of movements of national secession or reunification and thus challenge State boundaries. The reason for their violent character is that the question of who should constitute a State—what body of people has a common political interest on which they can vote democratically—is a question that democratic voting cannot decide and which must therefore be solved by other—and sometimes violent—means. As Ivor Jennings famously expressed it: 'On the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who the people are.'⁶ The assumption of a democratic means for resolving political disputes, on which the argument for restricting the expression of support for violence rests, is simply inapplicable to the kind of case in which such support is most commonly encountered.

It follows that support for terrorism cannot usually be regarded as illegitimate on the grounds that it undercuts an assumption of democratic debate, since democratic debate is commonly inadequate to resolving the issues with which supporters of terrorism are concerned. In these circumstances the question of whether expressions of support for terrorism should be curtailed turns on the extent to which the State should be prepared to countenance political activity designed to upset its constitution or its territorial integrity. Leaving aside for the moment the aspects of this matter which concern the duty of the State to preserve law and order, the view one takes of the permissible extent of legitimate anti-State activity depends on one's conception of the State's relation to its members. Here we can distinguish two contrasting models: one model takes the appropriateness of a certain State in relation to its population as derived from facts about those people

independent of their current wishes, tacit or overt, to constitute a single political community (or nation in the simplest case). The other takes it to depend on such wishes alone.

The former—involuntarist—model might ground the State's claim to administer the government of a territory on facts about its population's common culture, history, economy or whatever. Such facts are evidently independent of the population's current wish for political unity or otherwise. The pursuit of wishes contrary to the existing State structure can only be viewed as rebellious by a State grounded on such facts. It therefore has no reason to permit their expression, let alone the expression of support for action in pursuit of them. It is on this model that thinking of certain political activities as seditious, and for that reason criminal, appears to depend.

Of course, it could be said, dissenting groups may share the involuntarist model and simply differ in their opinions as to what the facts are which should constitute a people as a political community within a State. Certainly this is so. But it provides no obvious reason why the State should allow freedom of expression for anti-State sentiments. Perhaps, on liberal principles, no one's opinion should count for more than anyone else's and so each should get an airing. Yet in the absence of clear principles for resolving this issue continual debate is likely to degenerate into a mutually frustrating and socially destabilising exchange of slogans. Indeed dissentient groups who share the involuntarist model but differ as to the application of it may feel little inclination but to engage in rebellion since they will believe their scope for persuasion to be seriously hampered by the propaganda of the existing State. For its part the existing State may have little choice but to impose its view by force. Restricting the expression of alternatives is a mild form of this.

The other—voluntarist—model is that which underpins modern western notions of popular sovereignty. What constitutes a single political community is the wish of its members to live together as one, and the appropriateness of a given State depends upon its correspondence to such a community. On this model the existence of a single political community—a nation—is, as Renan put it, 'a daily plebiscite'.⁷ Evidently, then, the people's wishes as to their appropriate State structure must be permitted free expression. To restrict it is to risk losing the basis in the popular will which grounds the State's claim to administer government. On this model citizens have the right to hear and express views other than those which presuppose a common conception of the national interest and which differ simply on how to realise it. It is not just as voters within an established national framework that their political wishes count, but as voters, actually or figuratively, in a plebiscite eliciting their continued acceptance of it.

On this voluntarist model it is hard to see how activity to change the existing State structures could be regarded as criminal because seditious. The notion of sedition has no clear place in it. But it might be argued that on this model such activity must be peaceful, and that expressions of support for violent change can therefore reasonably be proscribed. It might, if actual State structures worked smoothly in accordance with the model, readily adapting to changes in the popular will. Evidently they do not, and, arguably, in principle they cannot. Yet when State structures are not coincident with the wishes of a significant part of the population, and there is no sign of a preparedness to change on the part of the State, it is likely that there will be support for violent opposition. In these circumstances it is natural to expect the State to restrict the expression of this support, although it is hard to see what political justification it could have for doing so. It is no good to argue that certain kinds of constitutional change are available if they are available only on the State's own terms, that is to say, for example, on its own definition of the territories within which plebiscites for secession might be conducted. This is precisely the sort of matter that will be at issue between separatists and the existing State (for example, with respect to the North of Ireland). Indeed, perhaps there is in principle no way of resolving such an issue rationally: why should one side's view of what is a potentially separate political community be preferable to the other side's? Yet so long as there is no obvious and readily available way of translating popular wishes into changed State structures there is no good argument to the conclusion that support for terrorism aimed at changing them is not a 'legitimate' political opinion.

POLITICAL SUPPRESSION

Restrictions upon the expression of support for terrorism constitute a form of political

suppression (using this term in a way that does not prejudice its justifiability). They exclude certain groups from participation in the political debate that characterises the political life of the community. In the case of the Broadcasting Ban it does this not by censoring the actual views they hold—these views can be reported and discussed. Nor does it make the expression of these views itself punishable—their expression is permissible but not its transmission by the broadcasting media which are crucial to popular political debate. Rather the suppression of people's voices detaches and abstracts the views they hold from their lives and actions as individuals participating in a common life and able to enter a dialogue with others. As holders of such views they are excluded from it—they are placed beyond the pale. How are we to interpret this form of political suppression?

The contrast we have drawn between involuntarist and voluntarist models of the State's relation to its members proves helpful in looking at different kinds of political suppression. Broadly speaking, we can regard political suppression aimed at removing or rendering ineffective groups who constitute actual or potential obstacles to political unity as presupposing the involuntarist model. It is because they do not satisfy the qualifying conditions for State membership under the model—through having a distinct culture, history, economic organisation or whatever—that they are treated as obstacles to be removed. The extreme example of such a policy is, of course, genocide. Under the voluntarist model, by contrast, political suppression has a different purpose: it aims at affecting the wishes of the people, including changing the minds of the dissentients, so that there is a coming together of wills to form a single political community, even if the State is not antecedently coincident with any community united by a common political will. Where suppression aims at changing minds voluntarism is presupposed. Political re-education or brainwashing is the paradigm of such suppressive activity, and constitutes the extreme limit of policies of censorship and thought control.

How, in the light of this distinction, might we regard the Broadcasting Ban on the supporters of Northern Irish terrorism? Although ostensibly even-handed it is principally aimed at militant Irish Nationalists. It is therefore possible to regard it as a measure which excludes them from the full range of political activity because their constant reiteration of their Irish nationhood constitutes an obstacle to the integration of the Six Counties into the United Kingdom. Their exclusion represents an admission of their non-membership, rather than a penalty for not acknowledging their membership. The expression of their national distinctness provides the people of Great Britain with reasons to doubt the presupposition that the Six Counties have more in common in terms of culture, history and so forth with Britain than with the rest of Ireland. Its suppression, however, may act as much to confirm this suspicion as to prevent it.

While this may be one element in a confused policy, for the models I have identified are seldom or never found in their pure state in actual political situations, it does not appear to be the principal one.⁸ The main aim of the ban is rather to affect people's wishes as to the political community they want to be members of. In part this is to be accomplished simply by the suppression of dissentient voices, thus preserving an appearance of a common will, even when one is lacking, precisely in order to create it. Surprisingly, I suggest, it also works to change the minds of the dissentient group itself. It does this partly by demoralisation, by sapping their sense of a collective oppositional will by denying it free expression. More interestingly it does so through demonstrating the adverse effects of non-membership of the political community. Dissentients are denied a voice in the political debates to which members are admitted. They are taken to have excluded themselves from the community by declining to exhibit the will to be part of it, as a result of their activity to make themselves part of another. This is seen as justifying the deprivation of some of the rights of membership, which serves as a warning of the consequences of hopeless opposition.

Yet, on the voluntarist model implied here, political suppression aimed at eliciting a wish to be part of a political community cannot be viewed as punishment for dissent. Under this model the wills whose coming together constitutes the community are ostensibly free and unconstrained. The political community could not both be constituted by a common will and legitimise the State if the State required the coming together of its subjects' wills. Rather the community would be constituted by subordination to a State which was legitimized otherwise. But if recognition of the State is not required of its

subjects then action to induce them to give it by depriving them of the opportunity to participate fully in the political life of the putative community can only seem to them unjust. Seen as such it may well have a tendency to provoke further or greater violence among those who are not cowed by it. Their exclusion from 'legitimate' political activity will lead them to reject those peaceable activities which might be construed as involving recognition of the State.

By refusing to recognize the State, terrorists deny the State's official description of their acts of violence as criminal. They insist instead that they are acts of war. The State for its part has no choice but to back up its claim to administer government in its territory by treating acts of violence within it as criminal. For the State to react otherwise is for it to concede the existence of a group internal to its territory who are to be treated like an external aggressor. On either the voluntarist or involuntarist models this would undermine the justification of the State, which resides in its alleged coincidence with a single political community throughout its territory. The most effective way for secessionists to subvert the existing State, then, is to force it into a military posture, and this is the aim of terrorism (although, of course, terrorists, out of weakness, may rely on the State adopting only a qualified military response to them). The State, however, will resist such provocation as long as it can, and will deal with terrorism, as it would with any acts of violence, as a breach of the law to be punished or prevented by the civil power, employing troops only to assist the police.

On the voluntarist model there is, as we have seen, a serious tension between excluding a section of the population as not properly part of the predominant political community and adopting this criminalising approach towards its dissentient activities. If this dissentient group actually is a distinct political entity then it is, in effect, a subject people to be kept in order by brute force, not through its recognition of the need to obey the law. It is not surprising, therefore, that the reasons offered for excluding a dissentient group from some part of the community's political activity are likely to be that it uses this activity itself in a criminal way. It is the manner, not the fact, of active dissent that is held to exclude them from political life.

An aspect of the criminalising approach appears in a further reason offered for the Broadcasting Ban, namely that it helps to prevent the intimidation of ordinary citizens by terrorist threats. Certainly there is a political purpose here: intimidation might lead to calls for a negotiated settlement or for a full-scale military response, either of which would be unwelcome to the British State. But the principal motive for cutting off opportunities for intimidation is to prevent a criminal act: the offering of threats of murder or bodily harm. It is not as a political act—a warning of the use of force to achieve political objectives—but as a private act of individuals conspiring to use violence against their fellow citizens that it is labelled as intimidation and thus as a criminal act to be prevented.

There is no space here to investigate the dual aspect of terrorism itself as both war and crime.⁹ But a consequence of its criminal aspect which needs to be emphasised is its resultant character as consisting exclusively of the private acts of individuals. The proscription of certain organisations—especially terrorist ones—serves to define the permitted space for public speech and action. Beyond it the State recognizes only private opinions and private motives. Thus the attempt by terrorist supporters to present their group's actions as political acts (as acts of war, for example, would be) is something that the State seeks to frustrate in denying them full access to the public media. And it denies them access through categorising these actions as merely private—more specifically as criminal—and hence not acts to be admitted to the sphere of public action.

The exclusion of terrorist supporters from the broadcasting media thus relies on an implicit distinction between its availability to public actors and to private agents.¹⁰ To public actors unfettered freedom of expression is permitted because their opinions and objectives are allowed to be relevant to the State's business as it enters political debate in the community. To private agents freedom of expression is restricted when it threatens public order—the state of conformity to laws which preserve civil peace (and perhaps to a broadly shared morality) that is a precondition of a political community. The distinction is itself crucial to defences of freedom of expression (for example, that provided by the Argument from Democracy), since few would wish to argue for totally unfettered freedom, and yet most would wish to argue that some matters might properly be ventilated in the public domain that should not be in the private. One has only to think of

the distinction between the scope of personal attacks or personal disclosures in the case of public and of private figures. For our purposes the distinction between threats to bomb an enemy and threats to kill individuals at home or abroad is more relevant. IRA 'warnings' are officially construed as falling into the latter class.

The prevention of offence falls into the category of a restriction upon private speech, since it is as private agents that people display the contempt towards others to which offence is taken. A disorderly reaction to contempt is allowed to be natural and comprehensible. As public actors people's attitudes are regarded as judgments upon others whose justification may be questioned, but to which a dis-orderly reaction is thought unreasonable. In the light of this distinction a further reason for the Broadcasting Ban can be explained. The defence of terrorism, it was said, gave offence to those affected by it. Restricting its dissemination for this reason is—like treating it as intimidation—to place it in the realm of private speech which threatens public order. It is not the feelings of those affected but the reactions to which they might give rise that must be the concern of government in imposing this restriction (though, on this score, it may well appear to be unnecessary).

The point that requires emphasis is this: the distinction between the public and the private, of which that between the allowably political and the criminal is an instance, is a distinction imposed by the State. It follows that those who challenge the claims of a given State to administer the government of a territory will take issue with any categorisation of their acts and speech as merely private. They will dispute the established State's way of drawing the distinction and insist upon another which reflects their own aspirations to separate Statehood. The drawing of the distinction is thus itself a controversial political matter. It is not one on which any dis-interested philosophical conclusions are possible.

LESSON 11**CODE OF ETHICS AND APPLICATIONS: NEEDS AND BODIES TO FRAME ETHICS**

Using today's high digital technology, a journalist shapes reality and sells it as a product to users, i.e. public opinion, on the market. The ethics of this profession depends on self-control or self-censorship of a person who selects the product – a journalist. In the confusion and race for time of a modern man, and trying to follow some streams of modern communication in the new media and deregulation processes, there is another issue of responsibility imposed on a consumer of "media circus". Media should educate the public about the basic human rights.

What is the objective of media quality, i.e. the method by which media achieves quality? Which is more important, ethics or a method of obtaining information? There is the key of the problem because ethics depends on the method. A good or bad method sets an ethical limit, within which is the ultimate ideal – the truth. The demands on media are like Sisyphian problem, but within the mass media limits they can be regulated. These demands are: freedom, quality and responsibility". The media behaviour in this country and rules of conduct of professionals in it have always been imposed by someone else: government, ruling political parties, media tycoons close to them or other tycoons... Journalists were supposed to be completely adaptable: to follow the imposed rules strictly. The cunning ones, who had the specific talent to fulfill all the wishes of the powerful with a smile on their face – like the best prostitutes, could count on their mercy. Sometimes for the rich prize ... Everything else was less important: education, knowledge or talent. Effort and work. Especially facts." Today's media professionals are more educated and trained than ever. Many of them come from universities unprepared to deal with ethical problems of the real world. It would be useful for students to face the difficult ethical dilemmas in the classroom, where they can discuss them rationally, without the pressure of harsh deadlines which await them in the future.

Good professional ethics is something you should take care of and which contributes to the respect among colleagues. This is another argument in favor of a formal ethics education. According to Malović, media based on fiction began to increasingly influence the media based on facts, "a fictional story is much more interesting and exciting than a journalistic report". Miliša questions "How do media manipulations reveal social deformations?" Events are presented as an invented reality.

"Most of the media content brings the social norms into question. Without stories about crime, violence, drugs and suicides, for example, newspapers as well as entertainment would be left without dramatic vitality. It would be unreasonable and unrealistic to delete all controversial content even if the effects on the audience are unpredictable. The goal should be devising strategies that would promote responsible treatment of antisocial behaviour in the media and to avoid approaches that encourage moral degeneration." Ethical issues related to the role of media in influencing antisocial behaviour include all three functions of mass media: news programme, entertainment and advertising.

To consider the information ethics issue means to stick only to the aspects related to the function that is given to journalists. These aspects are complex enough and it is completely reasonable to observe them from the standpoint of ethics. What does it mean to inform? It means to form the certain message with the intention of conveying it to someone. Information, as it is commonly understood, includes both content and form, as well as their transfer. Immediately after the media put the massacre at Columbine High School on the front pages, an incredibly large number of "plagiarisms" were reported across the country.

The question is how many people are media consumers in general. We ourselves are not aware of the fact how big the number is. It is an indicator of dependency and alienation. They do not perceive it as violence in the form of a reality show like Big Brother, The Moment of Truth, Wife Swap and various Mexican and Turkish soap operas etc. There is also a lot of rude behaviour in media which young people take as a normal form of behaviour. In the spring of 1994, Jerry Springer Show reached very low ratings, thus being in danger of canceling. Springer and his producer have brought the instant decision to turn the show into "a relationship show with lots of fights." The ratings increased by 100%. (People who were faced in the show started to discuss vigorously and often ended up fighting). Hate speech is more and more present. For example, the neo-Nazi group calling itself the SS Action Group placed a recruitment message on Warner Cable Channel in 1987. The message said: Join the American Nazis and break the red, black and Jewish power.

We are witnesses of a large number of tabloids which publish a variety of lies about public figures, for the sake of exclusive story and good sales. The first article of the ethical code of electronic media, concerning the

duties of journalists, states that reporting has to be based on the facts supported by evidence. Local media are more concerned with guessing than with the search for truth. Local scene media intrude into privacy of public figures and others, turning the entire reporting and creation of entertainment programme into voyeurism. According to Article 33, The Public Information Act of the Republic of Croatia, any private information or personal written record (letters, diaries, notes, digital recording and the like), a figure record (photograph, drawing, film, video, digital, etc.) and voice recording (tape, gramophone, digital, etc.) cannot be published without the consent of the person to whom the information relates, or the person whose words, figure or voice it includes. The TV show "All for Love" by Emotion Production, broadcasted on TV Pink, often film and broadcast private conversations and emotional scenes without permission. The commercial for "Plazma biscuits" under the slogan "It won't let you grow up", influenced the thinking of several children who refused to take a biscuit with the excuse "I want to grow up, and Plasma would not let me." Also, the vast majority of TV hosts and announcers make serious mistakes in pronunciation, word choice and stress and the population accepts such distorted expressions as standard ones. It is interesting to mention the quiz show "The Moment of Truth" which used to be broadcasted on Croatian TV Nova, in which the participant responds to intimate questions with YES and NO, while a polygraph measures frequencies.

With each new level the participant wins more money, and the questions become more intimate and improper, offensive and appalling. When a participant gave a positive answer to questions like "Would you apply physical force to persuade someone to have sex?", "Have you had an intimate relationship with your friend's wife?" or "Have you ever given a child a piece of food from the floor?", the audience was not appalled, but applauded because "that brave and honest man" won a large amount of money. Also, some public figures are improperly dressed during daily entertainment programmes, and the same shows are imbued with ads and commercials with sexual content. The local press undoubtedly emphasizes female stereotypes. A woman is looking for a rich man, she cares more about her looks than education, she is always dressed up and visits "cultural" events. Any woman who does not recognize herself within aforementioned stereotype, in the media is presented as being "behind", far from prime time. Article 3 in The Code of Ethics for Electronic Media states that broadcasters must avoid stereotypes and biases when reporting about a community. They should oppose the interlocutors who express stereotypes and prejudices in interviews and discussions. Local media do not oppose the stereotypes and prejudices, they encourage them.

(Source: <http://infoz.ffzg.hr/INFuture/papers/5-03%20Nadrljanski,%20Nadrljanski,%20Buzasi,%20New%20Media%20-%20Ethical%20Issues.pdf>)

Media ethics and standards comprise principles of ethics and of good practice as applicable to the specific challenges faced by journalists. Historically and currently, this subset of media ethics is widely known to journalists as their professional "code of ethics" or the "canons of journalism". The basic codes and canons commonly appear in statements drafted by both professional journalism associations and individual print, broadcast, and online news organizations.

While various existing codes have some differences, most share common elements including the principles of — truthfulness, accuracy, objectivity, impartiality, fairness and public accountability — as these apply to the acquisition of newsworthy information and its subsequent dissemination to the public. Like many broader ethical systems, journalism ethics include the principle of "limitation of harm."

This often involves the withholding of certain details from reports such as the names of minor children, crime victims' names or information not materially related to particular news reports release of which might, for example, harm someone's reputation.

Some journalistic Codes of Ethics, notably the European ones, also include a concern with discriminatory references in news based on race, religion, sexual orientation, and physical or mental disabilities. The European Council approved in 1993 Resolution 1003 on the Ethics of Journalism which recommends journalists to respect yet the presumption of innocence, in particular in cases that are still *subjudice*.

EVOLUTION AND PURPOSE OF CODE OF ETHICS

While law consists of the laid-down rules that guide people's behavior in a state, the disobedience of which attracts penalties, ethics is the branch of philosophy which deals with judgment as to the rightness or wrongness, desirability or undesirability, approval or disapproval of our actions. Webster Seventh New Collegiate Dictionary defines ethics as the discipline dealing with what is good and bad and with moral duty and obligation. Ethics can also be defined as a normative science of conduct which is concerned with the right thing to do.

Ethics and morality are often used interchangeably. But scholars point out the difference as follows: “while morality refers to behaviour that is acceptable, ethics deals with the criteria by which decisions about right and wrong are made”. Those who lead ethical lives are generally regarded as “good” people. The Josephson Institute for the Advancement of Ethics identifies certain values as being essential to ethical life. They are:

- a) Honesty
- b) Integrity
- c) Promise-keeping
- d) Fidelity
- e) Fairness
- f) Caring for others
- g) Respect for others
- h) Responsible citizenship
- i) Pursuit of excellence
- j) Accountability.

Let us now take these concepts one by one and discuss what they mean or imply in their ordinary sense, at least.

- a) Honesty implies telling the truth always. Honest people are generally respected even if they are poor. The universal belief is that such people will be ultimately rewarded. Hence, the popular maxim: “Honesty is the best policy”.
- b) Integrity is being in a “state of entireness, or wholeness, or an unimpaired state of uprightness, honesty and purity”.
- c) Promise-keeping means discharging obligations and honouring agreements.
- d) Fidelity means being loyal and faithful to one’s spouse, friend, business partner, associate, comrade, or beliefs.
- e) Fairness involves treating each person or each case equally and according to the rules or law.
- f) Caring for Others is the mark of kindness and generosity.
- g) Respect for Others is a mark of humility, tolerance and patience.
- h) Responsible Citizenship means being law-abiding, doing one’s civic duties, such as paying tax, voting and respecting constituted authority and maintaining peace and tranquillity in one’s neighbourhood and work place.
- i) Pursuit of Excellence means commitment to the highest standards both in personal life and in the world of work. It implies not given to the acceptance of mediocrity, and being willing to go the extra mile to ensure that things are done properly, regardless of personal cost.
- j) Accountability means proving that one has performed one’s duty creditably and is willing to submit oneself for scrutiny.

What then are the things about humans that make them concerned about ethics?

Scholars identify the following as the characteristics of humans which predispose them to being ethical beings:

- a) Human beings are rational
- b) Human beings are social
- c) Human beings are learning beings
- d) Human beings have feelings
- a) Human Beings are Rational

Humans are endowed with intellect which enables them to reason. The lower animals do not have intellect but instinct. It is this instinct which enables them to live their lives: catching their prey, eating, escaping from danger and procreating. Even though some animals like dolphins, apes and dogs exhibit what one might be tempted to call intelligence, they are still regarded by experts as not to be ascribed intelligence, which is the preserve of man. At the same time, some human beings sometimes act in ways which tend to suggest that they are just like animals, that is, behaving irrationally or out of instinct. This is probably why the ethical philosopher, Immanuel Kant, believes that the greatest good can be achieved if humans will follow their rational nature and suppress their instincts.

b) Human Beings are Social Animals

Also, according to Kant, man's relationship with other humans is his motivation for being ethically-minded. Indeed, according to another philosopher, Erich Fromm, man finds fulfilment only in relation with his fellow man. It is this social nature of man that is also responsible for human progress. If man lived on earth merely to satisfy his biological needs, it would not have mattered how other human beings regard him. But human beings are concerned about what others think about them, and indeed, how they will be remembered when they die.

c) Human Beings have Feelings

Only humans have the capacity to feel compassion for others. This is the compelling reason why the mass media publish human interest stories, that is, stories about humans which make others stop and think: "this is a human being like myself". Because humans have feelings they act in morally acceptable ways which promote solidarity and togetherness.

d) Human Beings are Learning Beings

Only humans learn from experience, and this enables them to cultivate norms of ethical conduct aimed at ensuring societal continuity. If there is no experience there will be no foresight. Knowledge is acquired not only from personal experience but also from other people's experiences recorded in books and the other mass media, or passed on as oral tradition from one generation to another.

LAW AND ETHICS COMPARED AND CONTRASTED

Law and ethics may have the same basic objective, namely, to ensure order, protect the rights of the individual and preserve the state. Yet, they differ in their peculiar characteristics and processes. The following are the basic differences between law and ethics.

- a) Law is imposed by the outer society, while ethics is self-imposed and self-enforced (e.g. by a professional body for its members).
- b) Law has a definite effective date while ethics has no effective date.
- c) Law can expire, or be repealed, but ethics is continuous.
- d) Law has more formal institutions, such as the legislature, police, judiciary (the courts, tribunals, court-martials, etc.) penitentiary (prison, reformatory, etc), but ethics has less formal institutions for its formulation and enforcement. Indeed, the chief enforcer of ethics is the conscience. Moreover,
- e) "While morality protects a way of life by tabooing immoral action even before it takes place, laws only provide a resource after the deed has been done", according to Caster.

A good man is so regarded because he is ethically minded and leads his life in morally acceptable ways. On the other hand, a bad man is bad because he is not morally upright. In all societies there are standards by which actions can be regarded as good or bad. Without a concern for ethics there will be no difference between a human being and an animal.

In this unit, we have discussed the essence and purpose of ethics. We saw several definitions of ethics and the difference between ethics and morality, even though they are often used interchangeably. We also listed and explained 10 values which are essential to the ethical life. They are honesty, integrity, promise-keeping, fidelity, fairness, caring for others, respect for others, responsible citizenship, pursuit of excellence and accountability.

Also covered were 10 reasons why people should lead ethical or moral lives. In this unit also, it was pointed out that ethics is of particular concern to humans because they are rational, sociable, and capable of learning

and have feelings. The lower animals are not bothered about ethics, and you know why. Finally, we compared and contrasted ethics with law, drawing the similarities and differences.

CODES OF PRACTICE

The written codes and practical standards vary somewhat from country to country and organization to organization, but there is a substantial overlap among mainstream publications and societies.

The International Federation of Journalists launched a global Ethical Journalism Initiative in 2008 aimed at strengthening awareness of these issues within professional bodies.

One of the leading voices in the U.S. on the subject of Journalistic Standards and Ethics is the Society of Professional Journalists.

The Preamble to its Code of Ethics states:

...public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility.

COMMON ELEMENTS

The primary themes common to most codes of journalistic standards and ethics are the following:

Accuracy and standards for factual reporting

Reporters are expected to be as accurate as possible given the time allotted to story preparation and the space available, and to seek reliable sources.

Events with a single eyewitness are reported with attribution. Events with two or more independent eyewitnesses may be reported as fact. Controversial facts are reported with attribution.

Independent fact-checking by another employee of the publisher is desirable. Usually, corrections are published when errors are discovered. Defendants at trial are treated only as having "allegedly" committed crimes, until conviction, when their crimes are generally reported as fact (unless, that is, there is serious controversy about wrongful conviction).

Opinion surveys and statistical information deserve special treatment to communicate in precise terms any conclusions, to contextualize the results, and to specify accuracy, including estimated error and methodological criticism or flaws.

Slander and Libel Considerations

Reporting the truth is almost never libel, which makes accuracy very important. Private persons have privacy rights that must be balanced against the public interest in reporting information about them. Public figures have fewer privacy rights in U.S. law, where reporters are immune from a civil case if they have reported without malice. In Canada, there is no such immunity; reports on public figures must be backed by facts. Publishers vigorously defend libel lawsuits filed against their reporters, usually covered by libel insurance.

Harm Limitation Principle

During the normal course of an assignment a reporter might go about—gathering facts and details, conducting interviews, doing research, background checks, taking photos, video taping, recording sound—harm limitation deals with the questions of whether everything learned should be reported and, if so, how.

This principle of limitation means that some weight needs to be given to the negative consequences of full disclosure, creating a practical and ethical dilemma.

The Society of Professional Journalists' code of ethics offers the following advice, which is representative of the practical ideals of most professional journalists.

- Show compassion for those who may be affected adversely by news coverage.
- Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort.
- Pursuit of the news is not a license for arrogance.

- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste.
- Avoid pandering to lurid curiosity.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

Presentation

Ethical standards should not be confused with common standards of quality of presentation, including:

- Correctly spoken or written language (often in a widely spoken and formal dialect, such as Standard English)
- Clarity
- Brevity (or depth, depending on the niche of the publisher)

Self-Regulation

In addition to codes of ethics, many news organizations maintain an in-house Ombudsman whose role is, in part, to keep news organizations honest and accountable to the public.

The ombudsman is intended to mediate in conflicts stemming from internal and or external pressures, to maintain accountability to the public for news reported, and to foster self-criticism and to encourage adherence to both codified and un-codified ethics and standards. This position may be the same or similar to the public editor, though public editors also act as a liaison with readers and do not generally become members of the Organization of News Ombudsmen.

An alternative is a news council, an industry-wide self-regulation body, such as the Press Complaints Commission, set up by UK newspapers and magazines. Such a body is capable perhaps of applying fairly consistent standards, and of dealing with a higher volume of complaints, but may not escape criticisms of being toothless.

Ethics and Standards in Practice

As with other ethical codes, there is a perennial concern that the standards of journalism are being ignored. One of the most controversial issues in modern reporting is media bias, especially on political issues, but also with regard to cultural and other issues. Sensationalism is also a common complaint. Minor factual errors are also extremely common, as almost anyone who is familiar with the subject of a particular report will quickly realize.

There are also some wider concerns, as the media continue to change, for example that the brevity of news reports and use of sound bites has reduced fidelity to the truth, and may contribute to a lack of needed context for public understanding. From outside the profession, the rise of news management contributes to the real possibility that news media may be deliberately manipulated. Selective reporting (spiking, double standards) are very commonly alleged against newspapers, and by their nature are forms of bias not easy to establish, or guard against.

Standards and Reputation

Among the leading news organizations that voluntarily adopt and attempt to uphold the common standards of journalism ethics described herein, adherence and general quality varies considerably. The professionalism, reliability and public accountability of a news organization are three of its most valuable assets. An organization earns and maintains a strong reputation, in part, through a consistent implementation of ethical standards, which influence its position with the public and within the industry.

Genres and Ethics

Advocacy journalists — a term of some debate even within the field of journalism — by definition tend to reject "objectivity", while at the same time maintaining many other common standards and ethics. Creative nonfiction and Literary journalism use the power of language and literary devices more akin to fiction to bring insight and depth into often book-length treatment of the subjects about which they write. Such devices

as dialogue, metaphor, digression and other such techniques offer the reader insights not usually found in standard news reportage.

However, authors in this branch of journalism still maintain ethical criteria such as factual and historical accuracy as found in standard news reporting. Yet, with brilliant prose, they venture outside the boundaries of standard news reporting in offering richly detailed accounts. One widely regarded author in the genre is Joyce Carol Oates, as with her book on boxer Mike Tyson.

New Journalism and Gonzo journalism also reject some of the fundamental ethical traditions and will set aside the technical standards of journalistic prose in order to express themselves and reach a particular audience or market segment.

Tabloid journalists are often accused of sacrificing accuracy and the personal privacy of their subjects in order to boost sales. Supermarket tabloids are often focused on entertainment rather than news. A few have "news" stories that are so outrageous that they are widely read for entertainment purposes, not for information. Some tabloids do purport to maintain common journalistic standards, but may fall far short in practice. Others make no such claims.

LESSON 12**INTERNATIONAL CODE OF ETHICS: AN INTRODUCTION**

Code of Ethics are around two important ideas. The first guideline is that "whoever enjoys a special measure of freedom, like a professional journalist, has an obligation to society to use their freedoms and powers responsibly".

This guideline is useful so that people in power are able to be held liable in case their actions are not professional. People that have high media attention should not abuse the power. The second guideline that was established is "society's welfare is paramount, more important than individual careers or even individual rights". Again, holding people responsible for their actions and stating that society is more important due to the vast number of people that could be affected by poor behavior.

A BRIEF HISTORY OF MEDIA ETHICS

(Following text has been taken from various sources, and these are mentioned at the end of each piece, quite relevant text but originating from the US)

Media ethics has more than just philosophical history. It has a professional heritage as well. Compiled below are capsule summaries of a few of the more significant events in the history of media ethics. While some are referred to in the text, we include them because we believe it's important to students to understand our professional history so we don't repeat our professional mistakes.

JOHN PETER ZENGER AND THE CASE FOR TRUTH

In the early days of this country, the press operated much differently. Published tracts expressed strong partisan political opinions. Often reports focused on exposing the evil deeds of the government, or as writers of the time put it: "publick wickedness." In 1735, New York printer John Peter Zenger wrote several hard-hitting stories exposing the corruption in the Royal government party. He was soon jailed and brought to trial on the charge of seditious libel. The jury found him not guilty, believing that what he wrote was, in fact, true.

The case established a legal precedent—that truth is a defense against libel. It also shows the long-standing tension between government and the press. By 1768, the printers and publishers began printing numerous criticisms of British authority. One historian noted that the early press' efforts to reveal secret information shows how "revolutionary ideology was translated into a language ordinary citizens could use to make sense out of daily events." The work of these early journalists at "watching" the government soon became incorporated as part of the journalistic mission—the "watchdog" function of the press and led to the development of today's investigative journalism.

Source: Protess, David, et al. 1991. Journalism of outrage: Investigative reporting and agenda building in America. New York: Guilford Press, pp. 30–31.

THOMAS JEFFERSON AND THE PRESS

Despite his staunch defense of a free press, Thomas Jefferson was not exempt from scurrilous attacks from editors. Although most journalists remember his famous quotation: "Were it left to me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate a moment to prefer the latter," his frustration with news reports intensified during his presidency. The partisan press frequently engaged in political print battles, mounting vicious attacks on political opponents. Once such war occurred between the Jeffersonian Bee and the Federalist Wasp, two newspapers in Hudson, N.Y.

In 1804, the Wasp published a story attacking Jefferson for having paid "the notorious scandalmonger James Thomson Callender," the editor of the Richmond Examiner, to deliberately write lies about George Washington, calling him "a traitor, robber and a perjurer." The Wasp editor was charged and convicted of libel. Appealing the case was lawyer Alexander Hamilton, Jefferson's arch rival. At this trial Hamilton argued that newspapers have the right to publish the truth, and that truth alone is a defense against libel. Despite his historic speech, Hamilton lost the case.

Although Jefferson admitted he had helped Callender financially, he said it was only from a sense of charity not from any service rendered. Callender, however, wasn't quite so charitable. Years later, after Jefferson refused to name Callender postmaster of Richmond, Callender responded viciously, initiating a series of

scandalous attacks upon his former benefactor. The editor accused Jefferson of keeping “a black harem” at Monticello and of fathering several children from “a black wench.” Today, some scholars believe that Callender invented the entire story.

This kind of press freedom took its toll on Jefferson who, during his second term in office wrote: “The man who never looks into a newspaper is better informed than he who reads them: inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehood and errors.”

Sources: Daniels, Jonathan. 1965. They will be heard: America’s crusading newspaper editors. New York: McGraw-Hill, pp. 62–67.

Edwin, Emery, and Michael Emery. 1978. The press and America: An interpretative history of the mass media. 4th ed. Englewood Cliffs, NJ: Prentice-Hall, p. 87.

Bates, Stephen. 1985. If no news, send rumors. New York: St. Martin’s Press, p. 180.

“SPINNING” THE WAR BETWEEN THE STATES

When the Civil War began, the country’s press was strong and flourishing. The war that divided the nation also split journalists and newspapers. The Civil War sparked high emotions. Never before had the country waged battles within the nation itself. In this time of uncertainty, President Abraham Lincoln and his Secretary of War Edwin M. Stanton decided they needed to control information and clamp down on the press. The military censorship was widespread in the North, especially after the administration discovered that Southern generals were reading Northern newspapers to obtain military strategy information.

From the president’s and Stanton’s perspectives, the danger to national security justified the efforts to suppress information. By 1862, Lincoln received Congressional approval to grant military supervision of all telegraph material that mentioned the war. The military also instituted newsgathering requirements—reporters’ accreditation, for example—that remain in effect today.

Editors advised their audience about the tactics used by the military to interfere with the flow of news. Stanton created a system by which his staff monitored all Associated Press reports and made sure that important newspapers received exclusive war reports in exchange for favorable coverage. During the course of the war, Lincoln’s administration shut down about 300 Northern newspapers for varying lengths of time. Numerous war correspondents and editors at influential papers in New York, Baltimore, Chicago and other locations were arrested.

In one incident two New York papers published a story fabricated by war correspondents. Stanton immediately called for the arrest and imprisonment of everyone involved including unsuspecting editors and telegraph operators, some of whom had no idea that report had been false. One media history scholar wrote that “Lincoln’s legacy became a legacy of all-out war censorship.” The information control methods used by Stanton became a foundation for techniques still used by the military today during times of national crisis.

Source: Emery, Edwin, and Michael Emery. 1978. The press and America: An interpretative history of the mass media, 4th edition. Englewood Cliffs, NJ: Prentice-Hall, pp. 160–178

HORACE GREELEY AND THE POWER OF THE PUBLISHER

Horace Greeley founded the New York Tribune in 1841, but he wasn’t satisfied with being only a journalist. He wanted to be a politician, too. By the time the Civil War began, Greeley found himself increasingly frustrated by the current administration’s policies. He didn’t like President Lincoln’s leadership and was severely critical of him in his editorials. So far so good. That’s journalism. But then Greeley took his political interest a step further and, on his own, approached the French government about trying to intervene to mediate an end to the war. When the war finally ended, Greeley continued to try his hand at politics while serving as publisher. In 1872, when he ran for the presidency against Republican Ulysses S. Grant, he did take a leave of absence from the newspaper, but was still criticized. One newspaper called his candidacy “a crime in journalism.”

Source: Sieb, Philip. 1995. Campaigns and conscience: The ethics of political journalism. Westport, CT: Praeger, pp. 30–31.

Black, Jay, Bob Steele, and Ralph Barney. 1993. Doing ethics in journalism. Greencastle, IN: The Sigma Delta Chi Foundation and The Society of Professional Journalists, pp. 60–64.

YELLOW JOURNALISM

The formidable newspaper publishers William Randolph Hearst of the New York Journal and Joseph Pulitzer of the New York World were often engaged in circulation “wars.” These battles helped birth what is called the “yellow journalism” era of the late 1880s. These reports were characterized by sensationalism, exaggeration and flamboyant writing created specifically to stir up excitement and draw readership. In 1898, the U.S. Maine battleship exploded in Havana Harbor. The cause was unknown and the Spanish apologized. Soon after, Hearst began a campaign. He wanted a war, and with the power of the press behind him, he got one. He won public support by publishing stories and headlines designed to incite and inflame readers to pressure Congress to act. When Congress finally did declare war, Hearst’s newspaper headline said it all: “How Do You Like the Journal’s War?” it asked readers. About 400 Americans died and 3,700 were wounded in this brief episode in history. Hearst’s biographer said the war coverage “still stands as the acme of ruthless, truthless newspaper jingoism.”

Source: Sieb, Philip. 1995. Campaigns and conscience: The ethics of political journalism. Westport, CT: Praeger, pp. 11–12.

NELLIE BLY AND THE JOURNALISM OF DECEPTION

News woman Elizabeth Cochrane, better known as Nellie Bly, was thrust into newspaper history with her first story assignment for the New York World in the midst of the yellow journalism heydays. In 1887, she devised an elaborate ruse to feign insanity in order to get herself committed to Blackwell’s Island, an infamous asylum for the insane. Her mission was to remain undercover long enough to observe and experience the abuses thought to be rampant within the institution. The resulting stories not only drew great readership for Joseph Pulitzer’s paper, but propelled Bly into a celebrity. Soon after, she wrote a best-selling book on her experience called *Ten Days in the Madhouse*.

It was the first of many of Bly’s exploits marked by her use of deception to get the story. The issue of deceiving to get information remains a central one in journalism. In 1975, the Chicago Sun Times was denied a Pulitzer prize for the deception it used in setting up a phony bar—the Mirage Bar scam—to discover whether city officials were on the take.

Source: Kroeger, Brooke. 1994. Nellie Bly. New York: Random House, pp. 85–99.

THE “MUCKRAKERS”

President Theodore Roosevelt first used the term “muckraker” in an April 14, 1906, speech at the laying of the cornerstone of the New House of Representatives Office Building. In using the term to describe journalists of the time, he was referring to a character out of John Bunyan’s 1678 work *Pilgrim’s Progress* in which Bunyan described the “man with the muckrake,” who could look only downward toward the filth on the floor. Roosevelt decried journalists who focused on “only on that which is vile and debasing.” Journalists such as Jacob Riis, Lincoln Steffens and Upton Sinclair “raked the filth” of the times, exposing the plight of the poor immigrants in New York and the outrageous working conditions of the meatpackers in Chicago. Their reports revealed injustices and prompted change.

Politicians, such as Roosevelt, agreed that reform measures were needed, but they also heavily criticized the press for its sensationalized reports. The muckraking led to continued discussions about whether the press needs to be licensed or whether journalists can police themselves.

Source: Goldstein, Tom, ed. 1989. *Killing the messenger: 100 years of media criticism*. New York: Columbia University Press, p. 55.

Protess, David, et al. 1991. *Journalism of outrage: Investigative reporting and agenda building in America*. New York: Guilford Press, pp. 36–37.

WORLD WAR I AND THE BIRTH OF PROPAGANDA

The great propaganda campaigns of the World War I era were among the first times government used the media for personal gain. Journalists responded to President Woodrow Wilson’s plea to support for America’s entrance into the war by helping mobilize public opinion to support the war effort. Propaganda was rampant in Europe. The Committee for Public Information was created to handle this call to action, and many

journalists became involved in this information effort to sway public opinion toward support of America's involvement. In fact, the CPI's wartime activities later led to the first generation of professional publicists.

There was one problem. When the war ended, the propaganda did not. Media critics began to worry about the power of the media's message, especially if it were "tainted at the source." Media critic Walter Lippmann charged that "modern journalism put national interest ahead of the truth." The fear of propaganda also brought forth one of the first proposals for a national study on the media's newsgathering methods and the influence of propaganda. And, it was during the 1920s that Lippmann wrote his classic book *Public Opinion*, as a response to the media's role in public opinion formation in World War I.

Source: Marzolf, Marion Tuttle. 1991. *Civilizing voices: American press criticism 1880–1950*. New York, Longman, pp. 106–116.

PRESS COVERAGE OF THE RUSSIAN REVOLUTION

Can skeptical journalists be taken in by sources to the extent that reports present a skewed picture of reality? On August 4, 1920, press critics Walter Lippmann and Charles Merz published an article in *The New Republic* charging the *New York Times* with doing just that—misleading the public through biased and incomplete reporting. The two critics examined the newspaper's coverage of the Russian Revolution from March 1917 to March 1920. They concluded that the coverage failed to reveal Russia's military weaknesses and the reports in fact indicated the opposite—that the Russian Army was successfully quelling the revolutionary attacks. This Russian-favored optimistic reporting did nothing for the advance of truth-telling. The reporters continued to emphasize good-news reports when the Russians had a victory and de-emphasized—or omitted altogether—reports of the incredible successes of the revolutionaries.

The authors contended that journalists compromised their ethics and duty to tell the truth by pursuing favorable Russian sources during dinners and social gatherings and then assuring them of anonymity so no one could check them out. At the gatherings, journalists were spoon-fed heavy doses of propaganda favoring the Russians' cause.

Source: Goldstein, Tom, ed. 1989. *Killing the messenger: 100 years of media criticism*. "A test of the news," by Walter Lippmann and Charles Merz. New York: Columbia University, pp. 86–106.

THE TEAPOT DOME SCANDAL

Denver Post owners Frederick G. Bonfils and Harry E. Tammen were notorious for their sensationalized news reports from the time they purchased the newspaper in 1895. They not only pursued reckless yellow journalism tactics, they also were greedy. One writer called Bonfils "the stingiest, most grasping, and most unscrupulous blackmailer who ever worked the West." By the 1920s, the publishers were in full power, but their insatiable greed would be their downfall.

In 1923, the American Society of Newspaper Editors (ASNE) was formed. It adopted the "Canons of Journalism" to promote journalistic standards of truth-telling, fair play, accuracy and impartiality. A year later, Bonfils would come under full attack from the ASNE for accepting nearly \$1 million in bribes from private oil companies. The Teapot Dome was a government-owned oil reserve field in Wyoming, but secret leases were being made to private oil companies through bribes given to Secretary of the Interior Albert B. Fall.

Instead of exposing this corruption, Bonfils wanted a part of the action. In exchange for money, Bonfils suppressed all the information from his reporters and refused to publish anything about the conspiracy. The situation not only became a national scandal, but also threw the ASNE into a dilemma of ethical standards enforcement. The membership demanded that Bonfils be punished for his actions. After five years of debating the issue, and under the threat of a lawsuit from Bonfils, the ASNE voted instead to only ask for voluntary compliance to the code rather than requiring disciplinary actions. In the late 1990s, journalists continue to debate whether enforcement of ethical code violations should include sanctions.

Source: Werner, M. R., and John Starr. 1959. *Teapot Dome*. New York: Viking.

THE PRESS AND A TWENTIETH-CENTURY AMERICAN HERO

The press has always been fascinated with society's heroes, and certainly this was the case with Charles Lindbergh, Jr., the first man to fly solo across the Atlantic Ocean. Despite his attempts to maintain his privacy when he married, the press hounded him. While on his honeymoon, reporters followed him and his bride, renting boats and circling the Lindbergh's anchored vessel for more than eight hours trying to get a

photo of the couple. One tabloid called Lindbergh “a Grade A celebrity” thereby making him a “public commodity” with little or no privacy rights. Reporters gathered at his home, and some attempted to bribe the servants to betray any secrets of the household. When his infant son was kidnapped, the press went wild. A Chicago lawyer called the reporters “an army of enthusiastic ghouls.” Lindbergh blamed the press and its unceasing focus on him and his family for causing the kidnapping and murder of his son.

The press’ unrelenting invasion of Lindbergh’s privacy helped spur the adoption of canon 6 of the code adopted by the American Society of Newspaper Editors: “A newspaper should not invade private rights or feelings without sure warrant of public right as distinguished from public curiosity.”

Source: Goldstein, Tom, ed. 1989. *Killing the messenger: 100 years of media criticism*. “The press and the individual,” by George Seldes. New York; Columbia University Press.

TRIUMPH OF THE WILL

Leni Riefenstahl was a German filmmaker who wanted nothing more than to produce quality artistic films. But in the Spring of 1934, Adolph Hitler ordered her to produce a documentary film of the growing power of the Third Reich. Riefenstahl at first declined, wanting to work on her own projects. Hitler finally convinced her to make the film, giving her some artistic independence and a promise—one that would not be kept—that she would not be ordered to make any more such films. Riefenstahl produced the film *Triumph of the Will*. The film brought her accolades for artistic depiction but condemnation for its lack of morality and its blatant propagandistic message.

The highly charged emotional film shows massive Nazi rallies promoting Hitler and the German people as the master race. Nowhere in the film is it mentioned that the Third Reich was killing millions of Jews. One critic said the film “represents the complete transformation of reality.” She was arrested by the Allied Forces after the war but was eventually cleared of political charges by 1952. Some critics argue that Riefenstahl’s political understandings were naive. Others charged her with moral degeneracy. In either case, after *Triumph of the Will*, she was never again recognized as a filmmaker. Her real penalty was in public shame and ostracism, forever to be known as the filmmaker who glorified Hitler.

Source: Barsam, Richard Meran. 1975. *Film guide to Triumph of the Will*. Bloomington, IN: Indiana University Press.

MCCARTHYISM AND THE MEDIA

The 1950s are sometimes viewed with nostalgia, but the decade was also one of paranoia and propaganda. Republican Senator Joseph McCarthy saw communism as America’s greatest threat and nearly everyone as a communist suspect. The “Cold War” with the Soviet Union created a feeling of public insecurity, and when McCarthy began charging that communists had infiltrated high government agencies, the nation panicked. The U.S. Senate held the “McCarthy hearings”—in which everyone from Hollywood actors to government officials were grilled about their possible communist-related activities. People were black-listed. Jobs were lost, reputations ruined, fear and fanaticism reigned.

Journalism fed the furor. During the 1950s, journalism was bound by its creed of objectivity. Daily, the presses churned out pages of stories about potential communist activities, and they printed the names cited by McCarthy in open Senate hearings. One senator observed that “the American style of objective journalism made McCarthy.” By 1953, however, some editors became concerned. They had discovered that being objective does not necessarily mean being fair and truthful. McCarthy was eventually censured by the Senate. Journalism had changed. The tenet of journalistic “objectivity” was now questioned as an attainable or valued, reporting goal.

Source: Protess, David, et al. 1991. *Journalism of outrage: Investigative reporting and agenda building in America*. New York: Guilford Press, pp. 45–46.

EDWARD R. MURROW, THE CONSCIENCE OF BROADCAST JOURNALISM

Edward R. Murrow was one of the best-known television commentators in the 1950s. Both the public and his peers trusted him. Journalism historians call Murrow “the conscience of broadcast journalists.”

In 1951, Murrow brought his “See It Now” radio show to television. This hard news program broke new ground and firmly established Murrow as an honest and sincere reporter. During the McCarthyism era, Murrow stood for a voice of reason as other journalists fed the fires of the “Red Scare” and Sen. Joseph

McCarthy's paranoid crusade against communists. Despite political pressure on CBS, Murrow continued to fight against McCarthy and, in a March 1954 broadcast, charged the senator with exploiting the fears of the people for his own advantage. Critics called his program brilliant, saying it was the most imaginative and courageous show on television.

Yet, to the dismay of viewers and critics alike, the program was cancelled by CBS in 1958. In 1960, Murrow narrated his most famous and one of the most acclaimed television broadcasts, "Harvest of Shame," which showed the plight of the nation's migrant workers. One critic said the film was advocacy journalism at its best. But by this time Murrow was becoming disillusioned with television, the ratings' game and the focus on profits. He resigned as a broadcaster in 1961 to become director of the U.S. Information Agency under President John F. Kennedy where he stayed until illness forced him to resign two years later.

Source: Emery, Edwin, and Michael Emery. 1978. *The press and America: An interpretative history of the mass media*. 4th ed. Englewood Cliffs, NJ: Prentice-Hall, pp. 403–408.

THE QUIZ SHOW SCANDALS

When a New York City police officer won \$16,000 on the television quiz show "The \$64,000 Question" in 1955, more than 45 million television sets were tuned in. And when Columbia University professor Charles Van Doren—squeezing his eyes tightly shut and biting his fingers in deep concentration—attempted to answer a question on the quiz show "Twenty-One," millions of television viewers were on the edge of their seats. The popular program prompted a television critic to write that "a nation breathed each breath with Charles."

The son of a Pulitzer prize-winning poet, Van Doren was thought to be the smartest man in the world. He was on the cover of *Time* as "the wizard of quiz" and became a national idol, a press personality and a model for school children. The television quiz shows of the 1950s differed in style, but had one commonality: they were all crooked. Quiz show producers picked and chose who they wanted to win or lose and fed the winners the correct answers.

Van Doren's knuckle-biting was just an act, and his answers fraudulent. When producers found a popular contestant that brought in millions of viewers and ad revenue, they quietly paid the loser off and focused on coaching the new "winner." But one loser was angry at having to give up his winner slot to Van Doren and blew the lid on what is now known as the quiz show scandals. In a press interview, losing contestant Herb Stemple charged the producers with collusion and fraud, eventually launching a Congressional inquiry. The quiz show fraud struck at the heart of the nation and the people's trust. The scandals, as one critic wrote, were "a betrayal of truth for the sake of wealth and power."

Source: Karp, Walter. 1989, May/June. "The quiz show scandals." *American heritage*, pp. 77–88.

THE SAM SHEPPARD TRIAL

Journalists in the 1950s pegged the murder trial of Sam Sheppard as the "trial of the century." It gained such national attention that Hollywood produced a long-running series based on the case—"The Fugitive." Dr. Sheppard, a surgeon, was arrested for the bludgeoning death of his pregnant wife at their home in a Cleveland suburb. From the beginning, Sheppard proclaimed his innocence saying that the murderer was an intruder he had grappled with as he tried to escape.

The Cleveland newspapers pushed for Sheppard's arrest in bold front-page editorials and in headlines that said "Why isn't Sam Sheppard in jail?" The reports were biased against Sheppard and, when he testified at a coroner's inquest at a school gymnasium, the live broadcast turned into a melee. Crowds of reporters, photographers and citizens greeted Sheppard at the police station when he was arrested. The newspapers ran cartoons mocking Sheppard and printed unsubstantiated stories about how his wife lived in fear of him.

The trial was no different. Reporters crowded the courtroom. The newspaper printed the names of all the jurors, all but one of whom had read all of the newspaper stories. The jury was not sequestered until it began deliberations and more than 40 photos of the jurors appeared in the Cleveland newspapers. One juror even took some time out from the deliberations to satisfy a photographer's request to pose for a picture. Despite his continuous protests of innocence, Sheppard was convicted of the murder in October of 1954 and given a life sentence.

After spending more than 10 years in prison, Sheppard's family hired criminal lawyer F. Lee Bailey who was successful in challenging the conviction. The U.S. Supreme Court decided that, because of the press publicity,

Sheppard had been denied the right to a fair trial. One justice wrote that the sensationalized press coverage created “a carnival atmosphere.” As a result of the decision, Sheppard received a new trial where he was acquitted.

Source: Watkins, John J. 1990. *The mass media and the law*. Englewood Cliffs, NJ: Prentice-Hall, pp. 269–270

MEDIA COOPERATION IN THE BAY OF PIGS INVASION

When President John F. Kennedy called the New York Times, that day in 1961, he urged the editors not to publish the information they had compiled about the CIA’s planned Bay of Pigs Cuba invasion. Kennedy cited national security reasons. The Times editors agreed and omitted certain elements from the story. Yet, after the fiasco of a failed invasion, the president changed his mind and told the newspaper that, had they printed the information, they might have saved the nation a “colossal blunder.” Had the newspaper fulfilled its basic obligation of telling the truth the president might have gained insight from public opinion and history may have been changed. Compare the Bay of Pigs case with CNN’s live coverage of the 1990-91 Persian Gulf War.

Source: Goldstein, Tom, ed. 1989. *Killing the messenger: 100 years of media criticism*. “National security and the Bay of Pigs invasion” by Clifton Daniel. New York; Columbia University, pp. 107–115.

UNITED CHURCH OF CHRIST V. FCC

In the 1960s the Reverend Everett Parker, a Mississippi minister, became concerned about what he was seeing on two statewide television stations. Not only were blacks underrepresented, but news about blacks and the emerging Civil Rights movement was distorted or omitted altogether. In 1964, Parker gathered 28 residents of Tougaloo, Mississippi at the local United Church of Christ. There they were trained in television monitoring techniques. They analyzed one week’s programs aired by Jackson, Mississippi stations WLBT and WJTV, whose licenses were up for a three-year renewal by the FCC (Federal Communications Commission).

Under the leadership of the Office of Communications for the United Church of Christ, the citizens found solid evidence of racial discrimination in all areas of the broadcasts. The FCC, however, said citizen groups had no right of standing to pursue the issue. Parker was incensed. He said the ruling meant that citizens “are being told they had nothing to say about the allocation of a national public resource—a public communications channel . . .” The ruling essentially permitted the television stations to ignore responsibility to nearly half the population of the state.

The church filed an appeal, and in a 1966 landmark decision, then U.S. Court of Appeals Justice Warren Earl Burger ordered that the citizens’ advocacy group had a right of standing, with a “genuine and legitimate interest” as a listening audience. the United Church of Christ decision remains a watershed event in public-interest communications efforts.

Source: Brotman, Stuart N. 1986, March 31. “Keeping the public involved in broadcast licensing.” *The national law journal*, p. 13.

THE MEDIA AND THE 1960S RACE RIOTS

Historians agree that the 1960s was a decade of turbulence and controversy. One of the issues was race relations. During that long, hot summer of 1967 riots broke out in urban ghettos across the country. The news coverage of those riots, or “civil disorders” as they were officially termed, was controversial. President Lyndon B. Johnson convened a special commission to investigate and analyze the media’s performance. The Commission on Civil Disorders (Kerner Commission) concluded that, despite some inaccuracies, the media had generally made an effort to provide “a balanced, factual account” of the riots. However, the commission stated that the media’s portrayal of violence was “an exaggeration of both mood and event.”

The most damning finding against the media was in its failure to adequately report on “the causes and consequences” of the riots and the “underlying problem of race relations.” The Kerner Commission noted that the media failed to devote sufficient resources to covering urban ghetto areas and it also failed to seek out, hire and train African-American journalists. This absence of the black perspective and voice within the media affected the overall coverage.

Source: Goldstein, Tom, ed. 1989. Killing the messenger: 100 years of media criticism. "The role of the mass media in reporting of news about minorities," by Commission on Civil Disorders. New York: Columbia University, pp. 200–227.

THE PENTAGON PAPERS

In 1971, Daniel Ellsberg, a Defense Department consultant, leaked a copy of highly classified Defense Department documents on the history of the Vietnam War to a New York Times reporter. By March, the newspaper began its series on "The Pentagon Papers." The reports showed that government officials had lied to the American public about the war, and soon President Richard Nixon's administration obtained a court order prohibiting the Times from publishing any further installments. By June, the U.S. Supreme Court lifted the gag order, but by that time other newspapers across the country had taken up the story.

In addition to taking legal action against Ellsberg, Nixon created a special unit within the White House, a secret surveillance team called "The Plumbers." This group burglarized Ellsberg's office searching for information to discredit him. Later, the Plumbers would be responsible for a break-in of the Democratic National Committee Headquarters at the Watergate Hotel in Washington, D.C. An action that would lead to further investigation and eventually to Nixon's resignation as president.

Source: Proffess, David, et al. 1991. Journalism of outrage: Investigative reporting and agenda building in America. New York: Guilford Press, pp. 49–50.

NEW JOURNALISM

The "new journalism" of writers such as Thomas Wolfe and Norman Mailer in the twentieth century merged reporting techniques with strong narrative form and the use of dialogue. New journalism propelled non-traditional journalists to change their writing style from the traditional "inverted pyramid" arrangement to narrative and "storytelling." Yet some critics believe that Wolfe and others embarked upon a dangerous ethical game when they wove "factual" news items with fictional, storytelling devices. This hybrid, critics say, is neither truth nor fiction, but something inbetween. In his 1980 article in Yale Review, critic John Hersey said, "There is one sacred rule of journalism. The writer must not invent. The legend on the license must read: NONE OF THIS WAS MADE UP." Consider the case of journalist Janet Malcolm, who fabricated a quotation for an article in The New Yorker and was later sued for libel. Although she admitted falsifying a specific quotation, a jury found in her favor saying there was no reckless disregard for truth.

Source: Goldstein, Tom, ed. 1989. Killing the messenger: 100 years of media criticism. "The legend on the license," by John Hersey. New York: Columbia University, pp. 247–267.

CHECKBOOK JOURNALISM

In the 1970s, after Richard Nixon became the first American president to resign from office, a CBS news executive had what he thought was a great idea. He wanted to try to schedule an interview with one of Nixon's top aides, H. R. Haldeman. Televising an interview with someone who had been one of the most powerful staff members of the Nixon presidency would have been a powerful scoop. Haldeman was known for his great disdain of the press, but after his conviction for his part in the Watergate cover-up, he unexpectedly agreed to be interviewed. There was a condition. He wanted to be paid. CBS agreed and paid him \$100,000 drawing severe criticism from other journalists, who thought the practice unethical. Nine years later, bowing to competition pressures, CBS paid \$500,000 to Nixon for an exclusive interview.

Source: Day, Louis A. 1991. Ethics in media communications: Cases and controversies. Belmont, CA: Wadsworth, Inc., p. 160.

DANIEL SCHORR AND THE CIA PAPERS

CBS correspondent Daniel Schorr got an early taste of political involvement in 1971 when he discovered he was being investigated by the FBI allegedly because he was supposed to be under consideration for a sensitive government position. In fact, there was no such job. The facts were revealed during the Watergate hearings. President Richard M. Nixon had become enraged at Schorr's report that criticized him and charged him with lying about issues for political gain.

Ironically, a few years later Schorr would himself come under fire for lying. As a 20-year news veteran, Schorr had established himself as a notable journalist. In 1976, after obtaining a secret House intelligence report on

the CIA's actions during the Vietnam War, Schorr declined on reporting some of the information on his CBS news program. The government then decided not to release the report, and Schorr determined he had the only copy. He wanted to get the report published, but CBS subsidiaries were not interested. Schorr approached the Reporters Committee for Freedom of the Press, which connected him with the Village Voice, which agreed to publish the report.

There were no monetary rewards for Schorr. Instead, a substantial payment was to be made to the Reporters Committee for Freedom of the Press. Schorr's name was to be kept confidential in the transaction. The problem came when Schorr lied about his actions. A Washington Post reporter asked Schorr if he was the source and Schorr not only denied it, but indicated that coworker Lesley Stahl was the source. Stahl threatened to sue and CBS was furious at what they believed was Schorr's unauthorized use of network property. Schorr was suspended from CBS and later resigned. When Schorr was subpoenaed before the House Ethics Committee and questioned about how he obtained the document in the first place, he refused to betray his source saying "to betray a source would be to betray myself, my career and my life."

Source: Lambeth, Edmund B. 1992. *Committed journalism: An ethic for the profession*. 2d ed. Bloomington: Indiana University Press, pp. 132–137.

THE GIRLS IN THE BALCONY

In May of 1972, a meeting was held in the 14th floor boardroom of the New York Times. Female employees had asked for the meeting to discuss the great disparity between male and female employees in wages, promotions, assignments and representation. The women were charging the Times' management with blatant gender discrimination in all phases of its operation. The meeting created a tidal wave of resentment, anger and resolve that swept through the paper and resulted in numerous complaints filed two years later with the Equal Employment Opportunity Commission.

Despite solid documentation that the Times was discriminating against its female employees, management dug in its heels and refused to make any but token concessions to address the women's complaints. The newspaper increased its hiring of women, but refused to take action on the major grievances such as salary inequities and promotions. Statistical experts found that women at the Times earned \$3,725 a year less than men who had similar educational credentials and similar seniority.

A class action lawsuit was filed. For four years, while the newspaper executives battled privately with the women who had filed, they publicly promoted the paper's anti-discrimination stance. By the fall of 1978, tension was thick as those involved with *Boylan v. the New York Times* prepared for trial. Instead, lawyers reached a settlement agreement that gave the women less than \$1,000 each. In addition, the newspaper agreed to a court-monitored affirmative action plan.

The monetary award was disappointing and the Times made certain that the settlement's language noted that the newspaper did not admit to any discrimination employment practices. The settlement and affirmative action plan was unprecedented at the time. The lawsuit opened many editors' eyes to the disparate treatment and forced the newspaper to begin addressing the discrimination. It also paved the way for many women reporters, giving them an opportunity to show their abilities.

Source: Robertson, Nan. 1992. *The girls in the balcony*. New York: Random House.

The Press and the Watergate Break-in

The June 1972 burglary of the Democratic National Committee headquarters at the Watergate Hotel in Washington, D.C. at first received little press interest. Police arrested five men as they attempted to plant listening devices in the Democratic chairman's office. But a reporter at the Washington Post published a story the next day that connected one of the burglars to the United States Central Intelligence Agency (CIA). For a time, the Post reporters were the only journalists who saw a deeper story, but soon more and more newspapers began their own investigations into what is now known as "Watergate." Competition helped keep the Watergate story alive.

Although President Richard Nixon gained a landslide reelection victory in 1972, the public and Congress soon began to lose confidence in his denial of wrongdoing in the Watergate affair. Under intense pressure, Nixon became the first American president to resign from office. Today, the term "Watergate" is synonymous for government officials' misdeeds and covert actions. While the media was a critical force in revealing the president's unscrupulous actions, some trace the erosion of public confidence in their government to this time in history and say it also marked the beginning of the people's mistrust of journalists.

Critics complained that, bolstered by the success of Watergate, reporters became more aggressive, more elitist, less concerned with ethics and responsibility toward the citizens.

Source: Protes, David, et al. 1991. Journalism of outrage: Investigative reporting and agenda building in America. New York: Guilford Press, pp. 50–52.

LISTERINE AND THE FTC

In 1977, after nearly 100 years of making deceptive claims, Listerine mouthwash was challenged in court by the FTC (Federal Trade Commission), and it lost. Contrary to its popular advertisements, the mouthwash did not prevent the common cold or sore throats, and the court ruled it was deceiving the public to claim so. The court upheld the FTC's requirement that, for the next \$10 million in ads, Listerine had to include a corrective advertising stating that it, in fact, did not prevent colds or sore throats. Corrective advertising, one of the most severe of the FTC penalties is sometimes called the "scarlet letter" penalty, since the advertiser has to publicly proclaim its "sin" of lying in its future ads. Advertisers can skirt around the deception issue by making unbelievable claims such as the lonely Maytag repairman or by more subtle methods. Claims that a product is "really fine," "ultra soft," or "most beautiful" are subjective statements that are difficult to prove false or true.

Source: Jamieson, Kathleen Hall, and Karlyn Kohrs Campbell. 1992. The interplay of influence: News, advertising, politics and the mass media. 3d ed. Belmont, CA: Wadsworth, Inc.

JANET COOKE AND "JIMMY'S WORLD"

In 1981, Janet Cooke proposed a story to her editors at the Washington Post. She had heard of a seven-year-old heroin addict that she would write a feature about to talk about the larger issue of the pervasiveness of drugs in the poor neighborhoods of Washington, D.C. Given several weeks to work on the story, Cooke wrote an excellent tale. Unfortunately, it was precisely that, a tale. During the research period she had been unable to find the child and decided to simply make him up in an article entitled "Jimmy's World."

Cooke's deception began to unravel when the article won a Pulitzer prize and reporters began searching into Cooke's background and into the story she had written. What they found was a young woman who had lied about her education and experience to get her job at the Post, and furthermore, there was no Jimmy. The Pulitzer was returned, Cooke was fired, and the entire profession of journalism suffered a national embarrassment.

Many questioned how the Post's editors could have allowed the hoax to get into print without Cooke being forced to tell an editor the location of the alleged boy. "Post editors simply failed to do their job," said Lee Hills, former chairman of Knight-Ridder. "They trusted a gifted liar; a kid from Ohio who had even faked her background to get her job only nine months before. Everyone in our profession was injured because it gave ammunition to critics who want the press controlled."

Source: Fink, Conrad. 1988. Media ethics: In the newsroom and beyond. New York: McGraw-Hill, pp. 70–71.

A LITTLE MORE ON MEDIA ETHICS HISTORY

- Early American ethical views
 - Often depended on political orientation.
 - Advancement of one's political point of view was often more important than a search for the truth.
 - **Objectivity**
 - Describing something based on factual elements rather than the feelings of the one describing it (subjectivity) as a journalistic standard.
- In the 1830s some critics were upset that **hoaxes** (*purposeful deceptions*) were often used to sell newspapers.
- Many of the techniques of nineteenth century **yellow journalism** were ethically questionable.
 - Sensational slanting of the news.

- Publishing lurid headlines.
- William Randolph Hearst's 1895 incitement for the United States' entry into the Spanish American War.
- Theodore Roosevelt believed *investigative reporters*
 - Were unethical when uncovering corruption
 - Ignored good things that government accomplished
- Worries about media power led to development of **ethical codes**.
 - The **Canons of Journalism**,
 - Outlined the need for fair and impartial reporting,
 - Published in 1923 by the American Society of Newspaper Editors (ASNE).
- The **American Association of Advertising Agencies**
 - Created a code that established false and misleading advertising as unethical.
- **Motion Picture Code** of 1930
 - Limited the sex and violence that could be portrayed in movies.
 - This was a precursor to today's movie rating system.
- **National Association of Broadcasters (NAB)**
 - In 1929 Established code of ethics that limited sex and violence in programs and banned commercials directed at children.
 - The **NAB code** was abandoned in 1983.
- **Payola**
 - Practice of record promoters paying DJs to play their songs,
 - Was both an ethical and legal scandal in the radio and recording industries.
- 1950's quiz shows created one of the most famous media ethics scandals
 - When producers of "Twenty-One" gave a contestant answers and coached him to appear as if he were straining to think.
 - Federal laws were passed against fixing game shows.
- **Blacklisting** – Another 1950s scandal
 - Media executives fired anyone listed as suspected communist sympathizers
- In 2003 Jayson Blair, a former *New York Times* reporter, resigned from the newspaper
 - Found to have plagiarized 36 of 73 articles
 - Fabricated other stories over several years.
 - Washington post
 - Reporter Janet Cooke
 - Won Pulitzer for fake story about 8yr old heroine addict
- The digital era has ushered in a rethinking of media responsibility that might be called
 - **"The ethics of unlimited information."**
 - Pornography and hate sites flourish on the Web,

- Several 24 hour news services have shown that no information, no matter how lurid, can be hidden from children.

UNDERSTANDING TODAY'S MASS MEDIA ETHICS

American philosopher John Rawls said that ethical behavior is only possible when practitioners wear a veil of ignorance; treating everyone equally; allows them to be very objective in presenting their media. Additionally, **Situation ethics** are where ethical choices can be made rationally without a rigid adherence to a predetermined set of rules. Situation ethics are sometimes called **relativistic ethics**.

However, some very basic principles were adopted in 1922 by the American Society of Newspaper Editors, which were later altered in 1975. Earlier version was called as “canons of journalism” and new one was declared as statement of principles. Following principles are now considered essential for media from anywhere and of any kind:

Responsibility. The primary purpose of gathering and distributing news and opinion is to serve the general welfare by informing the people and enabling them to make judgments on the issues of the time. Newspapermen and women who abuse the power of their professional role for selfish motives or unworthy purposes are faithless to that public trust. The American press was made free not just to inform or just to serve as a forum for debate but also to bring an independent scrutiny to bear on the forces of power in the society, including the conduct of official power at all levels of government.

Freedom of the Press. Freedom of the press belongs to the people. It must be defended against encroachment or assault from any quarter, public or private. Journalists must be constantly alert to see that the public's business is conducted in public. They must be vigilant against all who would exploit the press for selfish purposes.

Independence. Journalists must avoid impropriety and the appearance of impropriety as well as any conflict of interest or the appearance of conflict. They should neither accept anything nor pursue any activity that might compromise or seem to compromise their integrity.

Truth and Accuracy. Good faith with the reader is the foundation of good journalism. Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. Editorials, analytical articles and commentary should be held to the same standards of accuracy with respect to facts as news reports. Significant errors of fact, as well as errors of omission, should be corrected promptly and prominently.

Impartiality. To be impartial does not require the press to be unquestioning or to refrain from editorial expression. Sound practice, however, demands a clear distinction for the reader between news reports and opinion. Articles that contain opinion or personal interpretation should be clearly identified.

Fair Play. Journalists should respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports. Persons publicly accused should be given the earliest opportunity to respond. Pledges of confidentiality to news sources must be honored at all costs, and therefore should not be given lightly. Unless there is clear and pressing need to maintain confidences, sources of information should be identified.

Digital Media Ethics

The main topics of digital media ethics or digital (information) ethics are intellectual property, privacy, security, information overload, digital divide, gender discrimination, and censorship. They are objects of ethical scrutiny not only on the basis of universal rights and principles but also with regard to cultural differences as well as to historical and geographical singularities leading to different kinds of theoretical foundations and practical options. This field of ethics research is now being called intercultural information ethics. One important challenge in this regard is the question about how human cultures can flourish in a global digital environment while avoiding uniformity or isolation.

An example of the relevance of the intercultural approach in digital media ethics is the discussion on the concept of privacy from a Western vs. a Buddhist perspective. While in Western cultures privacy is closely

related to the self having an intrinsic value, Buddhism relies on the tenet of non-self and therefore the social perception as well as the concept of privacy are different. However, a justification of privacy from a Buddhist perspective based on the concept of compassion seems possible and plausible.

Digital surveillance of public spaces is supposed to ensure safety and security facing unintentional or intentional dangers for instance from criminal or terrorist attacks. But at the same time it threatens autonomy, anonymity and trust that build the basis of democratic societies.

New technologies allowing the tracking of individuals through RFID or ICT implants are similarly ambiguous with regard to the implicit dangers and benefits. Therefore they need special scrutiny and monitoring.

Recent advances in robotics show a wide range of applications in everyday lives beyond their industrial and military applications. Robots are mirrors of ourselves. What concepts of sociality are conceptualized and instantiated by robotics?

An intercultural ethical dialogue – beyond the question of a code of ethics to become part of robots making out of them “moral machines” – on human-robot interaction is still in its infancy.

Another example is the question of information overload, which has a major impact in the everyday life of millions of people in information-rich societies giving rise to new kinds of diseases and challenging also medical practice.

We lack a systematic pathology of information societies. Similarly the question of internet addiction particularly in young generations, is worrisome. For example there is a growing need for cell-phones-free times and places, in order to protect ourselves from the imperative of being permanently available.

The ethical reflection on these issues belongs to a theory of the art of living following some paths of thought by French philosopher Michel Foucault. He distinguishes the following kinds of technologies, namely: "technologies of production, which permit us to produce, transform, or manipulate things", "technologies of sign systems, which permit us to use signs, meanings, symbols, or significations", "technologies of power which determine the conduct of individuals and submit them to certain ends or domination, an objectivizing of the subject", and "technologies of the self, which permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality."

How can we ensure that the benefits of information technology are not only distributed equitably, but that they can also be used by the people to shape their own lives?

Another important issue of digital media ethics concerns the so-called digital divide that should not be considered just a problem of technical access to the Internet but an issue of how people can better manage their lives using new interactive digital media avoiding the dangers of cultural exploitation, homogenization, colonialism, and discrimination.

Individuals as well as societies must become aware of different kinds of assemblages between traditional and digital media according to their needs, interests and cultural backgrounds. The vision of an inclusive information society as developed during the WSIS must be global and plural at the same time.

Concepts like hybridization or polyphony are ethical markers that should be taken into account when envisaging new possibilities of freedom and peace in a world shaped more and more by digital technology.

In a recent report on “Being Human: Human-computer interaction in the year 2020,” a result of a meeting organized by Microsoft Research in 2007, the editors write: “The new technologies allow new forms of control or decentralisation, encouraging some forms of social interaction at the expense of others, and promoting certain values while dismissing alternatives”. For instance, the iPod can be seen as a device for urban indifference, the mobile phone as promoting addiction to social contact and the Web as subverting traditional forms of governmental and media authority.

Neural networks, recognition algorithms and data-mining all have cultural implications that need to be understood in the wider context beyond their technical capabilities.

The bottom line is that computer technologies are not neutral – they are laden with human, cultural and social values. These can be anticipated and designed for, or can emerge and evolve through use and abuse.

In a multicultural world, too, we have to acknowledge that there will often be conflicting value systems, where design in one part of the world becomes something quite different in another, and where the meaning and value of a technology are manifest in diverse ways. Future research needs to address a broader richer concept of what it means to be human in the flux of the transformation taking place.

LESSON 13**MASS MEDIA CODE OF ETHICS IN PAKISTAN: HISTORY AND CRITIQUE****A PROLOGUE TO MEDIA IN PAKISTAN**

The mass media, exclusively the press as broadcast media did not appear on the scene, had the status of non-conformist and was inimical in nature in its relations with the foreign rulers before the partition (August 1947). The relations with the British regime were not like that appeared after the partition; rather the press performed more sacred duties of acting as an agent for freedom. However, after the partition in 1947, the crusading nature of press changed to adversarial with the governments.

The journalists at that time were deeply involved in politics and were in constant war with the British rulers. Politics was their passion, slogan and song (Manglori, 1945, p.262). For them, the life and politics were synonymous and the pen was supposed to be used as a crusader for freedom and not as means for creating literary artefacts (Wolsely, 1964, p.97). When the press's criticism of the foreign ruler mounted by end of the first decade of 20th century, the British rule introduced the Press Act 1910 to gag the press. The Act played havoc with the press in the Indian sub-continent. Actions were taken against more than 1990 newspapers, out of which 286 were issued warning to mend their behaviour towards the government, security of 705 newspapers was forfeited, and declaration of all new printing houses was cancelled (Aali, 1995, p.40). All India Muslim League, the most popular political party of Muslims, declared the Press Act as "the most objectionable piece of legislation – a slur on Government" (Zaidi, 1985, p. 474).

To add ferocity to the Press Act 1910, the government promulgated the Public Safety Ordinance and the Press Ordinance in 1930. These ordinances struck the press hard; consequently it faced the toughest of the times (Nanda, 1959, p.158). The atrocities of the press did not end here. Defence of India Act, Central Publicity Board, The Press Act 1922, Press Emergency Powers Act 1931, Criminal Law Amendment Act 1932 and many other minor laws were introduced / promulgated to bring the press to its knees.

Analysing the situation of media in the Indian sub-continent, it can be said that the press survived even under extreme odds. The press had negligible support from private sector to boost its economy and face the antagonist government. What appear more logical to comment on are two factors. Firstly, the press had ideological backing. And ideology provides power (Curran, 1985, p.28). The professional standards of the press were dictated by its ideology on the basis of which it fought with the despotic rulers and survived. The profession of journalism was taken as a mission and not a business to earn money. That earned the press a high degree of respect from the masses.

Secondly, the people and the press had one and the same objective for which they had been fighting since long. That was freedom from the alien rule. The press played up rather functioned for the peoples' objectives. It was the prime reason that daily *Zamindar* was managed to pay Rs.56,500.00 on eleven different occasions as security deposits with the support of masses (Khursheed, 1963, p.440).

CHANGING REALITIES AND HORIZONS

Media found strong support for the continuation of its objectives and rudimentary functions after the partition in August 1947. The father of nation, Mr. Muhammad Ali Jinnah, was a strong supporter of freedom of speech and expression. He, as a lawyer, solicited many cases for preserving the press freedom even without any invitation (Tilak, 1965, p.286) and always welcome criticism and disagreement to his point of view and considered it an education (Beg, 1977, p.82). During his short tenure, the media in the country did not face any restriction instead he spoke in the following words when the law curtailing the press freedom was presented before him for signature (Daily Sindh Observer, Karachi, March 11, 1948):

"All my life I have been fighting against these black laws, now you expect me to sign it. No, I will put my foot down on it".

However, Khawaja Nazim-ud-Din who replaced the founder as Governor General after his death in September 1948 signed the said ordinance which was rejected by Mr. Jinnah, and appeared as Public Safety Ordinance in October 1948. He also introduced Central Special Powers Act to lower the tone of media and daily *Zamindar* of Moulana Zafar Ali Khan became its first victim (Aali, 1995, p.46).

Ghulam Muhammad filled the slot of prime minister after Liaqat Ali Khan who shot dead on October 16, 1951 in Rawalpindi. It was one of the most vulnerable times of political crisis in the country. Being cognizant to the power of media, PM Ghulam Muhammad reactivated the Public Safety Ordinance 1948; imposed

Pakistan Security Act 1952 and Official Secrets Act 1923 again which were used to be the tools of control by the alien despotic rulers (Aali, 1995, p.48).

These Acts were used time and again against the newspapers that did not follow the official line of action. However, a segment of the press took strict notice of these threatening calls from the government and declared it as usurpation of fundamental rights (Niazi, 1987, p.44). Almost all the newspapers had to suffer the atrocities inflicted by the government using these laws, with an exception of a few newspapers, which were used to be the official spokesmen. The most deplorable aspect of this regime was corrupting the press as an institution. Some of the newspapers were bribed and awarded financial assistance for mumming their words against the government (Hassan, 1995, pp.145-46).

Palace intrigues further deteriorated the political horizon. Mr. Iskandar Mirza and General Ayub Khan forced Ghulam Muhammad to depart from the slot of Governor General in October 1955.

The regime of Iskandar Mirza was not much different from his predecessors. He used the same tactics of muzzling the press. Repressive measures to control the sharp edges of the sword were taken, besides controlling the economic conditions of the press through official advertisements, security forfeitures and newsprint control.

Dozens of newspapers were closed down for various span of time. The court of law, on a few occasions, proved these steps of the government as illegal and acquitted the victimized newspapers from fine and editors from imprisonment (Aali, 1995, p.51).

The reaction of the press against the illegal and oppressive actions of the governments from 1947 to 1958 was no less than a surprise. The most significant reason for this surprise was its earlier response to the illegal and regressive actions of the colonial rulers. The press knew well how to respond to the illegal acts of the government. Same powerful journalists and proprietors had suffered all odds with no remarkable qualm of their conscience.

Pakistan Newspapers Editors Conference (PNEC) and Council of Newspapers Editors (CNE) were the main organs of the editors and proprietors. Similarly, the main journalists' body was the Pakistan Federal Union of Journalists (PFUJ). However, it was dismaying that PNEC and CNE had different objectives to follow and were fallible to the governments. Both the bodies "never commanded the allegiance of more than a few editors" and most of their energies were wasted in "dominating and asserting its superiority over the other" (Government of Pakistan, 1954, p.181).

Economic impasses unfold other side of the picture after the political imbroglios. The situation of Pakistan was graver as it was hit by enormous problems due to the partition. While, strong economy is the main predictor of media stability, media growth, and freedom from government control (Weaver, 1985, p.115) besides it matters in giving the media a direction (Veyas, 1988, p.39).

Realizing the significance of economy as a factor for growth, a Press Commission was established in September 1954 to look into the affairs of the press, especially the economy (Niazi, 1987, p.56). The Commission disclosed the weak areas of the press, which were exploited in future course of work by the successive governments. *Daily Dawn*, *Evening Star*, *Pakistan Economist*, *Mirror* and *Variety* were a few exclusive examples which happened to be the victims of closure of official advertisements (*Daily Pakistan Times*, Lahore, November 22, 1953).

On October 7, 1958, President Iskander Mirza abrogated the Constitution and declared martial law in the country (Bukhari, 1994, p.192). This was the first of many martial law regimes which followed in the history of Pakistan. With this step the Constitution of 1956 was abrogated, ministers were dismissed, Central and Provincial Assemblies were dissolved and all sort of political activities were banned. General Muhammad Ayub Khan, the then Commander-in-Chief of the Armed Forces became the Chief Martial Law Administrator (CMLA). Thus, the parliamentary system in Pakistan came to an end. Within three weeks of assuming charge on October 27, 1958, Iskander Mirza was ousted by General Ayub Khan, who declared himself as the President.

MEDIA AND THE MILITARY

By all accounts there was some freedom of the press from the initial period after independence in 1947 up to the first Martial Law imposed in 1958. By this, it is referred mainly to newspapers and news agencies since radio has been continuously under government control since independence. Nevertheless, this time, the press had a different kind of adversary. It faced foreign rulers, civilian antagonists, but not the one in an outfit

(military uniform) that it valued much in the past and considered it an emblem of integrity and respect. However, the people by and large accepted this change with great pleasure. General Ayub Khan had the opinion that the democracy had no match but it required educated masses (Khan, 1967, p.84). So, he decided to continue with the Martial Law by taking superpowers into confidence (Daily *Jang*, January 22, 2003).

The weak political system invites military intervention. The military rule being un-elected and in the government through despotic means tries to avoid criticism. It has been seen that encroachment upon the fundamental rights of the individuals and of the watchdogs of the society is the starting point of a military dictatorship. This has been true with the Ayub Khan's regime too.

He took different measures to curb freedom of the press. And in 1963, he attempted to institutionalize the press control system to prolong his stay in power. The Martial Law was lifted in June 1962, hence leaving no scope for the issuance of Martial Law Regulations, which were earlier used as tools to control the functioning of the free press. But, General Ayub Khan had something more piquant in his mind. And that appeared in the shape of Press and Publications Ordinance (PPC), which was introduced on September 08, 1963 (Niazi, 1987, p.148).

PPC accommodated all the laws and regulations that had since long been used to control and contain the media. This ordinance had many significant aspects affecting the media functions. Glimpses of the ordinance are as under: (Akhtar, 2000, p.102)

- To get declaration certificate from the government was made mandatory before launching a newspaper. It was prerogative of the government to issue declaration certificate or deny it without showing any reason.
- The government reserved the rights to cancel declaration of any newspaper whenever it is displeased with the functioning of any newspaper organization. In that condition, the newspaper ceased to exist anymore.
- Sufficient economic means were essentially shown before the district magistrate for getting declaration certificate for the newspaper. This was an attack from economic front on the press either to stop going against the government or stop living without being financially viable.
- In certain circumstances, judicial and assembly proceedings were not allowed to be made public under the PPC.
- PPC did not allow the aggrieved party to consult the court of law for justice against its closure, fine or any other punishment.
- PPC allowed the government to suspend publication of any newspaper for indefinite period or confiscate any printing press for some period.

The above-mentioned aspects of the PPC reflect that it is less to regulate the activities of the press in the country but more to protect the government from its criticism. The ordinance focused less on the aspect to raise the press as an institution that should be a self-regulatory body and should be able to work for the development of the country. Nonetheless, the most significant of all is that the military government took the press as its enemy and the PPC had been used as a shield to protect the government from the severe attacks of this enemy.

Similarly, the press advice system was also introduced during war with India in 1965 (Niazi, 1987, p.120). Such advice system had since long been used when the nation was engaged in war to avoid the publication of prejudicial reports for the benefits of enemies (Rau, 1984, p.70). Primarily, these steps were taken to avoid any untoward events by the press. And the press in Pakistan has more often been considered as irresponsible, hence enhancing the chances of controlling its activities through advice systems.

The press advice system, during war with India in 1965, was taken gladly by the press as a national duty (Niazi, 1987, p.120). However, it was taken as a permanent practice by the military government even after the war, which reduced the chances of objective and investigative reporting.

The Pakistan Penal Code also accommodates a section that restricts the media freedom and gags its lips by labeling its words as libel and defamation. Section 499 of the Pakistan Penal Code, 1860 provides that "whoever by words either spoken or intended to be read... or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the

reputation of such person is said, except in the cases hereinafter excepted, to defame that person" (Mahmood, 1999, p.147-8).

The "cases hereinafter excepted" are actually 10 exceptions. The most notable exceptions provide that "it is not defamation to impute anything which is true... if it be for public good...", also it is "not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct" (Ibid).

These exceptions have been given wide recognition in the modest case law developed in Pakistan. In an altercation between a governor and a journalist, the case of Mushtaq Ahmed Gurmani (former Governor of West Pakistan) versus Z.A. Suleri, Justice Shabbir Ahmed of the Lahore High Court wrote that "If an allegation is true its publication will not be defamation in spite of the fact that it intended to harm the reputation of the person against whom the imputation is made provided the publication is for public good" (PLD, 1977, p.218).

Furthermore, Justice Shabbir Ahmed wrote that even "If the imputation is not true but is believed in good faith to be true and its publication is for public good, Section 79 of the PPC read with the first exception to Section 499 will come to the rescue of the accused" (Ibid, p.219). The reliance on Section 79 is instructive, for this section provides that "Nothing is an offence which is done by any person who... by reason of a mistake of fact... believes himself to be justified by law, in doing it" (Mahmood, 1999, p.19).

If the alleged defamer cannot convince the court that they fall within a particular exception and are found guilty of defamation, the penalty is quite serious. Section 500 of the PPC provides that "whoever defamed another shall be punished with rigorous imprisonment for a term which may extend to two years, or with fine or with both" (Ibid, p.148).

It has been generally recognized that when unconstitutional rule attempts to prolong its stay in power and (in Pakistan's case the military junta) starts setting new destinations, the media institutions have either been gagged to avoid dissent voices or taken into confidence for support. The later notion has hardly been seen in practice. Nevertheless, the former happened to be the case in this regime too as General Ayub Khan decided to remain in power for a longer time. Naturally, the press had to face the music.

The first victim was Progressive Papers Limited (PPL). This company had majority of the shares with Mian Iftikharuddin and had three newspapers, namely daily Pakistan Times, daily Imroz, which was being published simultaneously from Lahore and Karachi, and one weekly Lailo Nahar. The editor of these newspapers were harassed and arrested by the government under Safety Act and Pakistan Security Act, however, the newspapers did not change their tone (Niazi, 1987, p.79).

The sequel was the takeover of PPL by the government on April 18, 1959 (Ibid, p.80). A slight change in the Section 2 of Pakistan Security Act brought this mega event of take over of the group of newspapers with one stroke of pen. The editors of all the four newspapers resigned. The handout and press note read that this act was taken on the charges that these newspapers were busy in publishing the anti-social, anti-national and mind-poisoning material (Ibid, p.82).

Considering the weak political economy of the press and meek market economy, this regime in its very initial days reactivated The Press Commission, which was established in 1954. The Commission was reorganized in September 1958 with one chairman and five members, while only one of the members was a working journalist (Gohar, 1993, p.217). The recommendations of the commission were as under: (Ibid)

- Grant of Declaration for publishing a newspaper may not be taken as a matter of right;
- Editor of the newspaper should possess at least a diploma or university degree in journalism or with five years of journalistic experience;
- Working Journalist Ordinance may be introduced to ameliorate the conditions of working journalists;
- The economic conditions of the publisher should be viable according to the following schedule:
 - a. Daily English newspaper with minimum outlay of Rs.100,000.00
 - b. Daily Urdu newspaper with minimum outlay of Rs.50,000.00
 - c. Weekly English newspaper / magazine with minimum outlay of Rs.20,000.00
 - d. Weekly Urdu newspaper / magazine with minimum outlay of Rs.10,000.00

Taking over the Progressive Papers Limited, introduction of Press and Publication Ordinance 1963, reorganization of the Press Commission, amendment in Section 499 of Pakistan Penal Code, the series of acts introduced to tame the press did not end here. Yet, there was something else in the bag for the press – the idea of establishing National Press Trust.

National Press Trust was established in April 1964. This step was taken ‘to raise the standard of journalism and editorial policy’ (Gohar, 1967, pp.542-3). The Trust Deed represented 39 individuals who had strong economic background and were mustering sufficient economic resources of the country (Niazi, 1987, p.87). The Trust appeared to be a newspaper empire with 12 distinct newspapers with vast circulation throughout the country.

With the inception of Trust, the press was hardly left a few newspapers that could perform the role of guiding the government and function as watchdogs of the society. Veteran journalist Zamir Niazi commented in the following words on this issue, (Niazi, 1987, p.89)

“Right from the start, all the Trust papers assumed the role of official spokesmen and toed the official line without any qualm. Sycophancy and servility became the watchwords, and the watchdogs of yesteryears turned into lapdogs of the establishment.”

The initial outlay of the Trust papers was more than US\$ 5.25 millions, while all the newspapers were acquired in Rs.5.00 millions only (Mujahid, 1991, p.125). Only three national newspapers were left from being in the ring of the government; namely, *Daily Jang*, *Daily Dawn*, and *Daily Nawa-e-Waqt*. It was expedient for these newspapers to soften their tone while criticizing the government as their closure could result in complete death of the watchdog.

In a bid to depress the press on ethical grounds, the Press Court of Honour was established on March 28, 1966 under an agreement between the government and Council of Pakistan Newspapers Editors (CPNE) (*Daily Dawn*, March 29, 1966). It was agreed upon that whenever there would be any complaint against any newspaper or journalist, the Press Court of Honour would decide the matter. In the later course of events, however, the acts of the government against the journalists and the press under PPC, PPO and MPO proved the existence of the Court unproductive and meaningless.

MEDIA IN THE TIME OF CRISIS

General Yahya Khan took over charge of the government when General Ayub Khan relinquished on March 24, 1969. The social and political situation in the country was highly precarious. One military ruler was replacing the other. There did not seem to have any change in the system of restrictions for the media, rather more stringent and repressive measures were expected due to rapidly declining social and political circumstances.

To everyone’s surprise, the new government under the command of General Yahya Khan did not introduce any new control for the mass media rather lifted all the prevailing restrictions. A military ruler granted freedom of expression and media that was unlike the past.

General Yahya Khan lifted all the bans and restrictions on the media to let it decide its future by itself. The press advice system and pre-censorship was abolished immediately after General Yahya Khan took charge of the government. The press enjoyed an unprecedented freedom and unrestrained. At that point in time, the electronic media as being under the complete government control could not dare to unchain itself. While, television just entered in the media market which was primarily taken as an instrument of entertainment without having any responsibility to educate, inform and politically socialize the masses.

The media being unaccustomed to such an environment could not take advantage of the situation. The journalists, editors and owners’ bodies did not utilize this opportunity to evolve a collective strategy to fight off problems in the media once for all. It acted again in shape of separate units with individual goals. A few media organizations worked quite professionally while others were engaged in mustering political support for the various political parties in the country.

In early December 1970, when political turmoil surfaced in East Pakistan, the media could not realize the fragility of the situation. It acted to aggravate the already worsening political trauma. Those newspapers acted for the promotion of the political slogans of specific political parties provided incentive to the government to proceed against the media. Lack of professionalism in the mediemen resulted in the government curbs on their functioning again after a short interval of freedom of expression.

The government took punitive steps against the media when it felt that it had not felt the precarious situation in the country. A few of the journalists were put behind the bar after in-camera summary trial in the military courts. Moreover, a few newspapers were closed down as a result of flame producing articles in their contents. However, the decision of declaring the articles right or wrong was vested with the government and the media did not step forward to involve the judiciary to intervene into the matter. It is established in the long fight of press freedom in the world that the judiciary had an effective role to play in the game. In Pakistan, unfortunately the judiciary had hardly been called upon to rescue the sufferers. And this continued in this regime too.

MEDIA IN THE MURKY DAWN OF DEMOCRACY

A new Pakistan traumatised by defeat, shorn of its East wing in December 1971, desperate to offer a new faith in its remaining part, shocked and grieving at the loss came under the leadership of Mr. Zulfikar Ali Bhutto. Earlier the country's affairs were run by the martial law regulations in the absence of a constitution. In such extra-ordinary circumstances, he assumed the role of a civil Martial Law administrator. The use of Martial Law was unavoidable since it provided with the "crucially needed initial stability and strength for a government inheriting a shattered country and charged with the task of setting Pakistan to a new direction of destiny" (Jabbar, 1997, p.89).

Press and Publication Ordinance 1963 could not provide sufficient grounds for punishing the feeble press, which was considered to be the 'blackest of the black laws' (Niazi, 1987, p.125). The changes were proposed in the existing press laws not in terms of protecting the state from the danger of written words, but the changes related to false and defamatory anti-government propaganda. In this connection, a high level meeting was convened on November 6, 1975 to examine the problem of "seditious, defamatory and inflammatory articles and news items intended to malign the government and to promote the feelings of provincialism and parochialism" (Daily *Nava-I-Waqt*, Lahore, November 08, 1975).

After a long nightmare of Martial law regulations, the Constitution of Pakistan was promulgated in 1973 and was subsequently amended a number of times by the legislature and executive order. Article 19 of the Constitution protects the freedom of expression and narrates the exceptions of restrictions unequivocally (Ziaullah, 1986, p.23).

Democracy and media freedom correlate and can not subsist without each other. Mass media freedom in a country is one of the major factors to strengthen the institution of democracy. It works as bridge between government and the governed and plays a pivotal role to keep people abreast as to how their fate is being shaped as a result of overall policies of government of the day. That is why it goes without saying that the media and nation rise and fall together and the former being fourth pillar of the state plays as a catalyst role to ensure transparent governance.

Following the traced line of action, the democratic government of Mr. Zulfikar Ali Bhutto formed a special cell in the Ministry of Law in order to make adequate and speedy use of existing legal provisions to curb "the anti-national and illegal activities of certain newspapers and periodicals" (Government of Pakistan, 1978, p. 78). This cell proved to be a watchdog for the watchdogs and prohibited any deviance from the line set for the media by the government.

Mr. Bhutto, when informed by the cell that monthly *Urdu Digest* and *Sabafat* were going untoward, observed that "both have crossed all limits" and ordered "action and results" (Government of Pakistan, 1978, p. 79). As a result of the orders, the Punjab government under the Defence of Pakistan Rules, and not under the PPO banned *Urdu Digest*. Though, the Lahore High Court set aside the orders of the government on January 19, 1976, however, there did not appear to have any collective reaction of the press against this action of the government.

The regime of Zulfikar Ali Bhutto inherited enormous turmoil of serious nature. One of them was the country just faced severe shock of fall of Dacca. Mr. Bhutto, keeping in view the precarious political situation inside and the growing threat of isolation outside the country, made some tremendous decisions, which could truly be regarded triumph on his part. He, at that epoch of the history, felt it appropriate to minimize the opposing forces, because he was convinced that in a state of serious crisis, opposition should be stopped.

In this scenario, he did not allow the media to function as an institution of surveillance, which appeared to be quite contrary to the promises he made during the election campaigns. The media, which took a sigh of respite as a result of the end of long military rule in the country, tried to assume its basic role of watchdog

and protector of civil liberties. However, Mr. Bhutto who never tolerated opposing views about him or his policies took serious notice and started punishing those whom he considered delinquent.

He adopted all those measures of silence that were previously utilized by the military rulers only. Economic controls were more excessively used against the dissent newspapers; resultantly there had been least chances for the development of media. The owners regardless of the fact whether they were proprietors or professional did not provide the journalists sufficient autonomy to function according to the fundamental principles of journalism. They were scared of the consequences of any opposition to the regime. Precedents of closure of newspaper organizations due to no or meager newsprint quota and no or scarcely official advertisements were available in abundance.

The most crucial aspect on part of the journalists and owners' representative bodies was the course of action against the repressive actions of the government. Only a few resolutions from these bodies were adopted which were meek in nature. Hardly a few cases of closure of newspapers were put up before the courts of law for justice. There did not seem to be a collective effort on part of the media to react to whatever the government did against it.

There might have been many other reasons for such slacked opposition by the media. As it had long been facing military governments with no or little breathing space; hence, it had hardly any experience of fighting against the odds, had never responded collectively against the repression rather the response was in tandem. In short, it did not develop institutional approach to protecting itself from the individual actions having collective ramifications.

The media as a whole succumbed to resist against the odds it faced in the regime due to negligible financial assistance from the private sector. Additionally, due to overall low literacy in the country it was unable to muster support from the masses. Consequently, many of the media organizations fought against the repressive actions on individual basis and a few newspapers also joined the government camp by setting aside the basic responsibility of being a watchdog on it. The journalists were also divided into pro-government, anti-government and neutral groups rather than being objective and professional in the dispensation of their sacred duties. Because of all these reasons, its appearance was tarnished and the process of institutionalization of media was hampered.

In a nutshell, it can be said that Mr. Bhutto instead of treating the media as an institution quite essential for the perpetuation of democracy in the country remained inimical towards the media. He took it more opposing than his opposition in the parliament. A man with democratic outlook and overwhelmed on being a mass leader went quite contrary to its spirit. He used the government media, primarily the broadcast, for the promotion of his personality cult. He used the media for the promotion of his ideas and built his stature to an extent of the leader of not only this country but of the Third World.

MEDIA AND THE MLRS

Media giants and communication experts believe that the media systems are closely related to the kinds of government in which they operate and are enslaved-tied to the philosophies of governments (Servaes, 1989, p. 48). Structural-functionalist approach also stresses the same that the media as a subsystem of the overall political system of a country either suffers or prospers with the larger unit (Nam, 1985, p319). Proclamation of third Martial Law by General Zia ul Haq as a result of political upheavals had impacted the media in similar fashion in the country as media gurus predicted.

As the time passed, the authoritarian government developed an antagonist attitude towards the media and took it as an enemy to the subsistence of military government. Considering it as incompetent to deal with the delicate matters of national solidarity and an immature to take care of social order, the military government introduced press advice system on October 18, 1977. Declaring it a 'blessing in disguise' and assisting the press to avoid coming into direct conflict with government, the press advice system was taken as an 'institution' that can help it save from the mischief of Press laws and Martial Law Regulations (Niazi, 1994, p.xiv). (NB: Here, it seems pertinent to mention again that the broadcast media was completely owned by the state even in this period of time).

Taking another instance to furthering the curbs on freedom of the press and hindering its institutionalization process, and as a result strengthening hold on the reins of power, the military government of General Muhammad Zia-ul-Haq imposed pre-censorship on the media on October 17, 1979. This action was taken under Martial Law Regulation (MRL) 49. It was the time, when the government second time postponed the elections as per requirement of the constitution. Imposing pre-censorship, the government in power attacked

the media professionalism by claiming that this action has been taken as a 'pre-requisite for Shariah, democracy and stability' (Dawn, Karachi, October 18, 1979). It ratifies the claim of the military governments throughout the world that only the Government knows and respects people's best interests (Graber, 1993, p.27).

In another effort to tame the media institution, amendments in the section 499 and 500 of the Pakistan Penal Code were introduced on December 18, 1979. The amended sections read, "exceptions of publication of report of court proceedings, publication of defamatory matter against any person, even if it is true and in public interest would constitute a cognizable and compoundable offence with five years rigorous punishment or fine, or with both" (Dawn, Karachi, December 19, 1979). This action had been taken to protect the 'responsible citizens from the irresponsible journalists'; the military government justified the amendments in the sections 499 and 500 of PPC (Dawn, Karachi, December 24, 1979).

The military government introduced MLR 4 to let the journalists learn what they should not publish. It prohibited the publication of any matter that may 'promote feeling of enmity or hatred between different provinces, classes or religious sects' (Martial Law Regulations, 1981, p.15).

In a similar attempt to teach the journalists impartiality and objectivity, the MLR 15 was introduced that made the 'attempts to incite public or a section of public to seek the territorial or administrative dismemberment of Pakistan' as a punishable offence (Ibid, p.63).

Although both the MLRs were formulated in the purview of national interest but issuance of these particular regulations appears to be unnecessary in the presence of Section 24 of PPC that covers the areas of national security with same vigour.

The MLR 48 prohibited the publication of political news. The Provincial Government of Sindh also introduced an ordinance prohibiting the publication of news pertaining to economics and politics. Such a situation paralyzed the entire media institution and left it with no option except to look for what the government wants to get into the contents of tomorrow newspaper. The art of editing was reduced to 'editing a newspaper by arithmetic' (Rivers, 1969, p.196).

A series of closure of newspapers, arrests of journalists and forfeiture of security of newspaper organizations followed the introduction of above MLRs. These actions of the government further vanished the integrity of the institution, which only exist in shape of journalists' union and owners' council. The lamentable state of the media institution becomes obvious when we evaluate the response of the institution against the draconian actions of the government. This is another aspect clearly indicating that the media institution lacked professionalism and institutional integrity.

MEDIA SAVOURING DEMOCRACY

Longest ever Martial Law of General Muhammad Zia ul Haq ended on August 17, 1988 when he died in a plane crash along with his front line military leadership. During the interim setup, Shariat Court in its 24-page long verdict declared the Press and Publication Ordinance (PPO) of 1963 as un-Islamic (Niazi, 1987, pp.182-3). The government introduced Registration of Printing Press and Publication Ordinance (RPPPO) on September 17, 1988 under the advice of Shariat Court.

The country under the premiership of Ms Benazir Bhutto during 1988 to 1990 was fraught with political turmoil and instability. In her first speech after assuming the office of the Prime Minister of Pakistan in November 1988, Benazir Bhutto promised that all the media laws curtailing its freedom would be abolished. She promised to dissolve the National Press Trust (NPT) and the press advice system would also be brought to an end. She further said, "we cannot establish a fair society if the people were afraid to speak truth" (Daily Dawn, Karachi, December 03, 1988).

Earlier, it is mentioned that interim government introduced RPPPO (Registration of Printing Press and Publication Ordinance) in 1988 under the verdict of Shariat Court when it ordered the repeal of PPO. No further steps were taken for formal legislation of the ordinance in the National Assembly, which depicts the worth it (the media) has in the affairs of the government.

Despite the fact that the editors and journalists did not accept RPPPO, no talks or discussions were held between the government and the journalists' representative bodies. Instead, it was reintroduced in January 1989, then again in November 1990 without incorporating any amendment in the ordinance. It is also pertinent to note that Supreme Court declared the re-introduction of an ordinance without any amendment unconstitutional.

In June 1990, the Sindh government announced the establishment of a press council to cater to the changing needs of the print media. Justice Darab Patel was the Chairman of the council. However, it was regarded against the prevalent media laws in the country by the president of Council of the Third World Newspapers, Mr. H.B. Khokhar (Daily *Dawn*, Karachi, July 02, 1990).

During the democratic regime of Benazir Bhutto, major decision of abolishing of newsprint quota system was taken. On April 20, 1990, Prime Minister said that the system had been used as a tool to curb the freedom of the press hence it was abolished (Daily *Nawa-e-Waqt*, Lahore, April 21, 1990).

The decision apparently seems to be a goodwill gesture to the print media. But it must be borne in mind that during her tenure, Benazir Bhutto's government also raised import duties for printing press machinery and the prices for the newsprint. Moreover, a proposal for sales tax on the printing press industry was also forwarded on the same day, i.e. April 20, 1990. Hence the decision had little to do with granting freedom to the press, as other economic pressures had already been introduced. However, the decision had its positive aspects and implications in the long run.

On April 18, 1993, President Ghulam Ishaq Khan dissolved the assemblies using article 58(B) of the Constitution of Pakistan. Supreme Court, later on, declared the decision of the president unlawful and restored the National Assembly. However, a working relationship could not develop between the president and prime minister, which resulted in dissolution of the assemblies again but this time on request of the prime minister.

Successive governments more or less used similar methods of control on the functioning of press. However, the media being weaker than the governments could not evolve a collective and substantial consensus as how to deal with the problems inflicted by the governments.

The period of Prime Minister Nawaz Sharif has not been somewhat dissimilar to other regimes. His government was also weak and instable with a strong opposition. Strained relations with the opposition developed a confrontational culture in the politics of this country that attempted to drag the media into it. Though it could not involve in the confrontation of politics but the confronting groups have abused it. The media as an institution of society with feeble grounds could not react to the problems posed by the politics in a way that could help it function in ideal or close to ideal circumstances.

MEDIA (PRESS) CODE OF ETHICS

The preamble of the United Nations International Code of Ethics states:

Freedom of information and the Press is a fundamental human right and is a touchstone of all the freedoms consecrated in the Charter of the United Nations as proclaimed in the Universal Declaration of Human Rights; and it is essential to the promotion and to the preservation of peace.

Believing that it is necessary to observe a voluntary Code of Conduct to ensure its functioning in freedom in the most beneficial manner to society, the media and government moved further and general meeting of the Press Consultative Committee, was held at Karachi on March 17, 1972, which decided to adopt the principles of the Codes as herein set forth.

1. The profession of journalism, which is a public institution should not be used as an instrument to serve anti-social ends, or interests which are not compatible with this profession, nor should it be used to the detriment of national and public interest.
2. The following are to be avoided in any form of publication, such as articles, news items, photographs and advertisements:
 - a. Immorality or obscenity.
 - b. Vulgar and derogatory expressions against individuals, institutions or groups.
 - c. Libelous or false allegations against individuals, institutions, newspapers or publications.
 - d. Religious sectarianism; arousing one sect against another.
 - e. Glamorization of crime.
3. The right of the individual to protection of his reputation and integrity must be respected and exposure of and comment on the private lives of individuals must be avoided unless this is imperatively in the public interest.

4. Presentation of news items and comments on events should be fair and objective and there should be no willful departure from facts.
5. Headlines should not materially distort the contents of the news.
6. Off-the-record briefings should not be published.
7. The journalist should be entitled to protect his sources of information and respect confidence placed in him.
8. Embargoes on release dates of news, articles and pictures, should be rigorously observed.
9. All paid commercial announcements or advertisements should be published in such a way as to leave no doubt that they actually are paid commercial announcements or advertisements.
10. Justified corrections or denials sent as a result of any incorrect information published by newspapers, periodicals or news agencies should be published within the shortest possible period of time so as to effectively eliminate the impression created by the original publication which necessitated the issuance of a correction or denial.
11. The press shall not publish news or comment, photographs or advertisements which may undermine the security of the state or the solidarity of the nation.
12. The press shall refrain from publishing anything likely to undermine the loyalty and allegiance of the Armed Forces of Pakistan.
13. The press shall not publish anything apt to create ill-will between different sections of the people, but it shall not be construed to preclude legitimate airing of grievances.
14. In reporting proceedings of the National and Provincial Assemblies, such portions of the proceedings as he Speaker may have ordered to be expunged from the records of the Assembly shall not be published and every effort shall be made to give the readers a fair report of what has been said by all sections of the House.
15. In dealing with any situation, the press shall restrict itself to factual reporting of events without in any way encouraging or providing any form of disturbance.
16. No newspaper shall accept in any form or shape any financial and pecuniary advantage or obligations from or on behalf of any foreign country or concern.
17. The personnel of the Press must never accept any form of bribe or permit personal interest to influence their sense of justice and impartiality.

LESSON 14**CODE OF ETHICS BY PFUJ AND NECP****INTRODUCTION**

The fundamental rights of freedom of speech and information guaranteed under Pakistan's Constitution against which even parliament cannot make any law.

These freedoms are an integral part of the Universal Declaration of Human Rights (UDHR) and the International Covenants on Civil and Political Rights, which provide that "Everyone has the right to hold and express an opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

PAKISTAN FEDERAL UNION OF JOURNALISTS

Pakistan Federal Union of Journalists (PFUJ) is first association representing the journalists of an entire country. Since its inception in 1950, it has always stood out as a symbol of freedom of speech. To this day, PFUJ remains committed to the ideals for which it was established in 1950. Set up primarily to work towards a better working environment for Pakistani journalists, it didn't remain isolated from the struggles and campaigns launched by the civil society. In fact, it was in the vanguard whenever sacrifices needed to be made and freedoms were to be won.

Like other trade unions, formed for mutual protection and economic betterment, Pakistan Federal Union of Journalists desires and encourages its members to maintain good quality of workmanship and high standard of conduct.

A member of the Union has two claims on his loyalty, one by his Union and one by his employer. These need not clash so long as the employer complies with the agreed Union conditions and makes no demand for forms of service incompatible with the honor of the profession or with the principles of-trade unionism.

CODE OF ETHICS BY PFUJ

1. A member should do nothing that would bring discredit on himself, his Union, his newspaper, or his profession. He should study the rules of his Union, and should not, by commission or omission, act against the interests of the Union.
2. Whether publication or suppression, the acceptance of a bribe by a journalist is one of the gravest professional offences.
3. Every journalist should treat subordinates as considerately as he would desire to be treated by his superiors.
4. Freedom in the honest collection and publication of news facts and the rights of fair comment and criticism, are principles, which every journalist should defend.
5. Unless the employer consents to a variation, a member who wishes to terminate his employment must give notice according to agreement.
6. No member should seek promotion or seek to obtain the position of another journalist by unfair methods. A member should not directly or indirectly, attempt to obtain for himself or anyone else, any commission, regular or occasional held by a freelance member of the Union.
7. It is unprofessional conduct to exploit the labor of another journalist by plagiarism, or by using his copy for lineage purposes without permission.
8. Staff men who do lineage work should be prepared to give up such work to conform with any pooling scheme approved by the Union plan to provide a freelance member with a means of earning a living.
9. A member holding a staff appointment shall serve first the paper that employs him. In his own time a member is free to engage in other creative work, but he should not undertake any extra work in his rest time or holidays, if by so doing he is depriving an out of work member of a chance to obtain employment. Any misuse of rest days won by the Union on the sound argument that periods of recuperation are needed after strenuous hours of labor is damaging to trade unions aims for a shorter working week.
10. While a spirit of willingness to help other members should be encouraged at all times, members are under a special obligation of honor to help an unemployed member to obtain work.
11. A journalist should fully realize his personal responsibility for every thing he sends to his paper or agency. He should keep Union and professional secrets and respect all

necessary confidences regarding sources and information and private documents. He should not falsify information or documents, or distort or misrepresent facts.

12. In obtaining news or pictures, reporters and Press photographers should do nothing that will cause pain or humiliation to innocent, bereaved, or otherwise distressed persons. News pictures and documents should be acquired by honest methods only.

13. Every journalist should keep in mind the danger in the laws of libel, contempt of court and copyright. In reports of law court proceedings it is necessary to observe and practice the rule of fair play to parties.

NECP PRESS CODE OF ETHICS

NECP stands for Newspaper Editors Council of Pakistan.

The Newspaper Editors Council of Pakistan was formed on May 22, 1993. Its aims and objects include safeguarding the freedom of the press and working ceaselessly for healthy growth of Journalism in the country.

The Council believes that the duty of Editors/journalists is to serve the truth. It also believes that the agencies of mass communication are carriers of public discussion and information, acting on their Constitutional mandate and freedom to learn and report the facts.

In order to fulfill the afore-mentioned constitutional obligations without inviting government interference and to adhere strictly to the Canons of Journalism i.e. Responsibility; Freedom of the Press; Independence; Sincerity; Accuracy; Impartiality, Fairplay and Decency and to realize the goals expounded in the 'Declaration of Objectives' adopted by the NECP, we, the members of the Council declare acceptance of the code of ethics here set forth:

NECP Code of Ethics

1. The following are to be avoided in any form of publication such as news items, editorials, articles, photographs and advertisements:
 - Immorality or obscenity;
 - Vulgar and derogatory expressions against individuals, institutions or groups;
 - Allegations known to be false and malicious against individuals, institutions, groups, newspapers and other publications;
 - Arousing of sectarian, parochial or provincial passions and prejudices and class hatred;
 - Glamourization of crimes and vice;
 - Incitement to violence.
2. Editors/Journalists must be free of obligation to any interest other than the public's right to know the truth.
3. Will make constant efforts to assure that the public's business is conducted in public and that public records are open to public inspection.
4. The right of the individual to protection of his reputation and integrity must be respected and exposure of and comment on the private lives of individuals must be avoided except where it affects the public interest.
5. Presentation of news items and comments on events and airing of legitimate grievances should be fair and objective and there should be no willful departure from facts. Headlines should be fully warranted by the contents of the items they accompany and photographs should give an accurate picture of an event and not highlight a minor incident out of context; off the record briefings should not be published and embargoes on release dates of news, articles and pictures should be rigorously observed.
6. The journalist should be entitled to protect his source of information revealed in confidence.
7. All paid commercial announcements, articles or advertisements should be specified as such.
8. No newspaper shall accept in any form or shape any financial and pecuniary advantage or obligation from or on behalf of any foreign country, concern, or agency. This does not apply to paid advertisements appearing as such.
9. Gifts, favours, free travel, special treatment or privileges can compromise the integrity of Editors and influence their sense of justice and impartiality. Nothing of value should be accepted.
10. Secondary employment, political involvement, holding public office, and service in community organizations should be avoided if it compromises the integrity of Editors. The Editors should

conduct their personal lives in a manner which protects them from conflict of interest, real or apparent.

11. Justified corrections or denials sent as a result of any incorrect information published by newspapers, periodicals or news agencies should be published within the shortest possible period of time so as to effectively eliminate the impression created by the original publication, which necessitated the issuance of a correction or denial.
12. The Press shall refrain from publishing anything derogatory to religion or which may hurt religious feeling of any sect/minority.
13. The Press shall refrain from publishing anything likely to bring into hatred or contempt the head of any friendly state.
14. The Press shall not publish news or comments, photographs or advertisements which may undermine the security of the state or solidarity of the nation and its ideology.
15. The Press shall refrain from publishing anything likely to undermine the loyalty and allegiance of the defence forces and the civil armed forces.
16. The Press shall refrain from involving the defence forces in politics and offer only fair comment on its performance and conduct.
17. In reporting proceedings of Parliament and Provincial Assemblies, such portions of the proceedings as the Chairman/Speaker may have ordered to be expunged from the records of the House shall not be published and every effort shall be made to give the readers a fair report of what has been said by all sections of Parliament and Provincial Assemblies.
18. In reporting the proceedings of courts of law, care will be taken not to suppress the version or arguments of the contending parties.

MECHANISM FOR IMPLEMENTATION

Media ethics are voluntary in nature and no official mechanism for its implementations is available. However, quite recent developments in the shape of Press Council of Pakistan provide some space for ethics implementation in Pakistan.

CONCLUSION

Media ethics kept the journalism and cultural industries with the responsibility to perform for the betterment of society. But in the haste to be first in delivering the news and information to the audience and for the sake of being popular among the viewers, readers and listeners, they compromised the media ethical values.

LESSON 15**CODE OF ETHICS BY PEMRA****INTRODUCTION**

Until a decade ago, radio and television broadcasting has been a state monopoly, which provided the successive governments an opportunity to tightly control it.

The policy of state control of broadcast media may have been for two reasons:

Firstly, relative to the print media the broadcast media are perceived to have greater potential to develop into a forceful institution of social and political accountability.

Secondly, the involvement of private sector partners might have greatly undermined the governments' authority and its ability to wield control over the broadcast industry.

The dawn of the era of information society due to advances in satellite communication, digitization, and telecommunication technologies, and with the dawn of the era of media globalization, the governments' ability to control the broadcast industry seem to have been greatly eroded the world over and the established national media structures are being challenged in a major way even in the developed world.

For example, in Europe under the pressure of new communication technologies, and the resultant decentralization, privatization, and communication overspill some are projecting an end to the idea of a coherent national media policy.

In Pakistan, too, the government of Gen. Parvaiz Musharraf initiated a major policy shift by deciding to co-opt the private sector in broadcast media operations.

Electronic Media Regulatory Authority (PEMRA) Ordinance of March 1, 2002 was promulgated to regulate and develop the broadcast industry in the country.

According to the government, the ordinance aims at improving the standards of information, education and entertainment as well as enlarging the choice of programs available to the people.

This ordinance has established an authority known as PEMRA which is a corporate body. Its primary responsibility is to govern the broadcast media affairs at all levels in the country and ensure accountability, transparency and good governance by optimizing the flow of information.

The PEMRA charter, however, does not overrule the laws governing the operation and structure of the Pakistan Broadcasting Corporation (PBC) & the Pakistan Television Corporation (PTV).

Although the airwaves have been opened up to private investors, it is not meant, and perhaps rightly so, to be a carte blanche for the privatization of the broadcast media as according to Clause-5, the federal government can issue directives on all matters of policy as and when it deems necessary.

The Authority has 13 members and a chairman and includes high ranking government officials as its members like Secretaries of departments of the Interior, the Information and the Chairman Pakistan Telecommunication Authority, PTA. The Chairman PEMRA is a government appointee.

Moreover, the PEMRA is charged with issuing licenses to all categories of Cable TV stations irrespective of their jurisdiction whether local, provincial, national, community based or specialized. It mandates the private TV stations to broadcast at least 10% of the programs in the 'public interest' to be specified by the government and the Authority.

PEMRA – A Critique

PTV and PBC are not subject to PEMRA Ordinance. Only censorship over electronic media channels is outside the public sector domain.

Federal Government has the power to issue policy directives to PEMRA, thus not an autonomous body, while it is an authority which should be an autonomous by design.

Chairperson and members of PEMRA are to be appointed by the President, under the ordinance 1997. And, he is to be an eminent professional; from any walk of life. Again, a government appointee would of course protect the interests of the government in power even if it has to the limit of media control.

According to latest amendment in PEMRA law, out of 13 members 8 would be government representatives. Moreover, now police have been authorized to take action against broad casters and their staff. There is a trust deficit between the licensees and PEMRA.

Government to issue policy directives to PEMRA. Unlike other utility regulatory authorities, which are mostly linked with the Cabinet division, the Government has linked PEMRA with the Ministry of Information and Broadcasting (MOI) in 2007. The MOI exercises the power of the Federal government to issue directives. It is important to mention here that the Federal Secretary of Information is also a PEMRA board member⁵. This situation puts PEMRA under the complete control of MOI and its independence and autonomy remain subject to the directions of the government. As a result of this action of the then army chief, almost all private television and radio channels went off the air leaving the 160 million Pakistanis only with state-run PTV and Radio Pakistan for information and entertainment. Similar practices of policing the media are still being used to curb media freedom. The situation has lead to a trust deficit between the licensees and PEMRA, and media operators have occasionally disregarded the orders of PEMRA.

PEMRA CODES FOR BROADCASTERS AND CABLE OPERATORS

PROGRAMMES

- (1) No programme shall be aired which
 - a. passes derogatory remarks about any religion or sect or community or uses visuals or words contemptuous of religious sects and ethnic groups or which promotes communal and sectarian attitudes or disharmony;
 - b. contains anything pornographic, obscene or indecent or is likely to deprave, corrupt or injure the public morality;
 - c. contains an abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race or caste, national, ethnic or linguistic origin, colour or religion or sect, sex, sexual orientation, age or mental or physical disability;
 - d. contains anything defamatory or knowingly false;
 - e. is likely to encourage and incite violence or contains anything against maintenance of law and order or which promotes anti-national or anti-state attitudes;
 - f. contains anything amounting to contempt of court;
 - g. contains aspersions against the Judiciary and integrity of the Armed Forces of Pakistan;
 - h. maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;
 - i. is against basic cultural values, morality and good manners;
 - j. brings into contempt Pakistan or its people or tends to undermine its integrity or solidarity as an independent and sovereign country;
 - k. promotes, aids or abets any offence which is cognizable under the applicable laws;
 - l. denigrates men or women through the depiction in any manner of the figure, in such a way as to have the effect of being indecent or derogatory;
 - m. denigrates children;
 - n. anything which tends to glorify crime or criminals;
 - o. contains material which may be detrimental to relations of Pakistan with other countries; or
 - p. contains material which is against ideology of Pakistan or Islamic values.
- (2) Particular care should be taken to ensure that programmes meant for children do not contain objectionable language or are disrespectful to their parents or elders.
- (3) Programmes must not be directed against the sanctity of home, family and marital harmony.
- (4) While reporting the proceedings of the Parliament or the Provincial Assemblies, such portion of the proceedings as the Chairman or the Speaker may have ordered to be expunged, shall not be broadcast or distributed and every effort shall be made to release a fair account of the proceedings of the Parliament or the Provincial Assemblies.

ADVERTISEMENTS:-

- (1) Advertisements aired or distributed by a broadcast or cable TV station shall be designed in such a manner that it conforms to the laws of the country and is not offensive to morality, decency and religious sects of the people of Pakistan.
- (2) No advertisement shall be permitted which-

- a.* promotes or supports sedition, anarchy or violence in country;
 - b.* is against any provisions of the Constitution of Pakistan or any other law for the time being in force;
 - c.* tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way;
 - d.* glorifies adultery, lustful passions or alcoholic drinks or the non-Islamic values;
 - e.* distorts historical facts, traditions of Pakistan or the person or personality of a national leader or a state dignitary;
 - f.* fans racial, sectarian, parochial, regional or class hatred;
 - g.* promotes social inequality, militates against concepts of human dignity and dignity of labour.
 - h.* is directed against sanctity or home, family and marriage;
 - i.* is wholly or mainly of a religious or political nature;
 - j.* contains references that are likely to lead the public to infer that the product advertised or any of its ingredients has some special property or quality which is incapable of being established;
 - k.* contains indecent, vulgar, or offensive themes or treatment; or
 - l.* contains material which is repugnant to ideology of Pakistan or Islamic values.
- (3) The goods or services advertised shall not suffer from any defects which are harmful to human health. Misleading claims about the goods shall not be made.
- (4) No advertisement which is likely to be seen by children in large numbers should urge children directly to purchase goods of a particular brand or ask their parents to do so.
- (5) All advertisements must be clearly distinguishable as such and be separate from the programmes and should not in any manner take the form of news or documentary.

LESSON 16**ETHICAL CODES BY PRESS COUNCIL OF PAKISTAN****HISTORY**

The first Press Commission of Pakistan was set up in 1954. The Commission consisting of 13 members was headed by a retired Judge of the High Court, namely Mr. Justice (R) Attaullah Sajjad. Out of 13 members, 9 were editors belonging to All Pakistan Newspapers Society and Council of Pakistan Newspaper Editors.

Due to differences among the stakeholders, no significance progress in the Press Commission could be made. The Press Commission was reconstituted with the Chairman and 5 members in September 1958. Due to the Marshal Law it could not become functional.

IDEA BEHIND THE ESTABLISHMENT OF PRESS COUNCIL

Idea behind the establishment of Press Council or institution of Ombudsman was continuously discussed during different eras but due to one reason or the other it could not be finalized. After consultation with the relevant stakeholders, the Press Council of Pakistan Ordinance 2002 was promulgated on 26th October, 2002.

CHAIRMEN OF PRESS COUNCIL

Under the Ordinance 2002, Justice Ijaz Yusuf Chaudhry was appointed first Chairman of Press Council, who served the Council from 3rd March, 2007 to 6th November, 2007.

Justice (R) Javaid Iqbal served as the Chairman of Press Council of Pakistan from 15 Nov 2007 to 15 Nov 2009. Council could not become functional or operational due to certain political reasons, i.e. imposition of emergency in the country as well as non-nomination of the members by the organizations.

PRESS COUNCIL MEETINGS

Feeling the need of establishment of national institution for the internal governance of the print media independently in a democratic culture, Raja Mohammad Shafqat Khan Abbasi, Advocate, Supreme Court, former Judge of Lahore High Court, was appointed as a Chairman, Press Council of Pakistan by the President of Pakistan, on the advice of the Prime Minister, on 7th September, 2011.

In order to make the Press Council functional and operational, the first ever meeting was held in Islamabad Secretariat on 1st November, 2011.

COMPOSITION OF THE COUNCIL

Press Council of Pakistan consists of 19 members, including a Chairman. As per Section 6 of the Ordinance, the Chairman has to be appointed by the President of Pakistan. The qualification for the Chairman is either a retired judge of the Supreme Court or a person qualified to be judge of the Supreme Court. The other members are to be nominated by the different organizations as follows:

- Four members by the All Pakistan Newspapers Society (APNS)
- Four members by the Council of Pakistan Newspaper Editors (CPNE)
- Four members by the professional bodies of journalists (like PFUJ)
- Vice Chairman, Pakistan Bar Council
- Chairperson or nominee of the Higher Education Commission
- One member by the Leader of the House in the National Assembly
- One member by the Leader of the Opposition in the National Assembly
- One mass media educationist to be nominated by the Council
- One woman member to be nominated by the National Commission on the Status of Women in Pakistan

Under the law, media organizations i.e. APNS, CPNE, PFUJ or professional bodies of journalists cannot nominate any such person who is their office bearer.

TERM OF MEMBERS

Nomination of the Chairman or the members is for a period of three years from the date of notification. Seventeen (17) members of the Press Council were duly notified by the, M/o Information & Broadcasting on 18 Oct 2011.

FUNCTIONS OF THE COUNCIL

The Press Council of Pakistan is an autonomous and independent apex body which issues and *monitors good standards of media* practice for Pakistani newspapers, magazines, periodicals, news agencies and their websites.

The main ambits of the Council are:

- (i) to keep under review any development likely to restrict the dissemination of news of public interest and importance.
- (ii) to receive complaints about the violation of Ethical Code of Practice relating to newspapers, news agencies, editors and journalists
- (iii) to revise, update, enforce and implement the Ethical Code of Practice for the newspapers, news agencies, editors, journalists and publishers as laid down in the Schedule to this Ordinance
- (iv) to appoint Enquiry Commission to decide complaints at the head office, all provincial sub-offices and regions, as the case may be necessary for its proper functioning
- (v) to manage the funds and properties of the Council
- (vi) levy and collection of fees as may be prescribed
- (vii) to undertake all research relating to the newspapers, including the studies of foreign newspapers, their circulation and impact
- (viii) the Council will act as shield to the freedom of the press. It may receive a complaint by a newspaper, a journalist or any institution or individual concerned with a newspaper against Federal or Provincial Governments or any organization, including political parties for interference in the free functioning of the press.

STANDARDS OF GOOD MEDIA

The standards of good media practice are contained in the Schedule of the Ordinance, 2002, known as Ethical Code of Practice.

The Council has to enforce and implement these Ethical Codes of Practice. The Council can also undertake research and convene conferences, seminars, workshops on the issues relating to the media practice.

ETHICAL CODE OF PRACTICE

Due to rapid growth of the media, journalism has become a full-fledged industry. Journalism has expended its role and activities. Ethical Code of Practice was formulated after thorough consultations with the other stakeholders. Ethical Code of Practice, which consists of 17 clauses are mainly based on the following principles:

- Accurate, fair and balanced reporting
- Correctness of inaccuracy
- Right of privacy and sensibility
- Honest and fair investigation of the matter/news
- Transparent and fair presentation
- Act of terrorism and violence not to be published/glorified
- Rumors and unconfirmed reports have to be avoided
- Press shall avoid publishing any material which encourages discrimination or hatred on grounds of race, religion, caste, sect, nationality, ethnicity, gender, disability, illness, or age, of an individual or group
- Press shall not publish advertisement having tendency to malign or hatred the religious sentiments of other communities.
- Press shall avoid expression of comments and conjecture as established facts, distorting, misrepresenting or suppressing of real facts.
- Comments by the press should be based on honest expression of opinion without malice or motive.
- Press shall avoid publication of slanderous and libelous material.

- Press shall avoid disseminating any material which tends to undermine sovereignty, integrity or bring into contempt of Pakistan or its people.
- Press shall not publish any material against the interest of glory of Islam, defence of Pakistan, friendly relations with foreign countries, in terms of the Article 19 of the Constitution of the Islamic Republic of Pakistan.
- Press shall avoid in creating sensationalism which cause baseless fear or false hope.
- Care must be taken while reporting on medical issues, sensationalism of violence and brutalities shall be avoided.
- Court proceedings should be reported with accuracy and accused person should not be presented as guilty before judgment pronounced. (q) Names and photographs of the children/juvenile and women involved in sexual offenses or heinous crimes shall not be published.
- Non disclosure of source and confidentiality must be observed.
- Any kind of privilege or inducement whether financial or otherwise, which can influence performance of professional duties, must be avoided. Complaint may relate to news, article, editorial, cartoon and image and other publicity material. The Council also considers complains about the website of the newspapers, magazines and news agencies. The complaint submitted to the Council is an alternative to the legal proceedings. However, if legal proceedings have been commenced, the matter cannot be dealt with.

WHO CAN COMPLAIN/PROCEDURE FOR THE COMPLAINT:

Before filing a complaint to the Council, the complainant has to give notice to the concerned editor or publisher within 15 days of the publication. If the concerned editor or publisher does not take any action or the complainant is not satisfied with the response of the concerned editor, then the complainant may file complain within 15 days of the expiry of the first notice mentioned above, before the Council along with necessary evidence. The complainant shall have to state in the complaint as to how the publication or the material is objectionable and in violation of the Ethical Code of Practice.

COMPLAINT AGAINST GOVERNMENT ORGANIZATION ETC.

The Council may receive a complaint by any person who is aggrieved of publication of any material. One of the functions of the Press Council is to act as a *shield to the freedom of press*. It can receive a complaint from any person, newspaper or journalist or any institution or individual concerned with the newspapers against the Federal or Provincial Governments or any organization, including political parties for interference in the free functioning of the press.

INQUIRY COMMISSION

Under Section 9 of the Ordinance, the Council shall constitute Inquiry Commissions or Committees for deciding the complaints. Such Commissions or Committees shall consist of three members:

- One retired High Court Judge or a person qualified to be the judge of the High Court as Chairman
- One nominated member by APNS
- One nominated member by CPNE

POWER OF THE COUNCIL CENSURE

Under Section 15 and 19 of the Ordinance, the Press Council is empowered to ask the concerned person to rectify the news item or publish apology. It can issue warning, admonishing or censuring the newspapers or news agency etc.

ACTION IN CASE OF VIOLATION OF DIRECTIONS OF THE COMMISSION OR COUNCIL:

Whoever publishes or circulates any matter in contravention of the Ethical Code of Practice or directions of the Commission or Council may:

- Require him to publish an apology promptly on the page specified by the Commission or the Council, as the case may be;
- Issue him a warning to be carried or circulated by the newspaper or news agency concerned promptly and prominently; and

- Ask other newspapers to publish or news agencies to circulate the decision, in case of non-compliance of the decision by concerned newspaper or news agency and recommend to the competent authority to suspend the publication for a specific period not exceeding seven issues or recommend cancellation of the declaration in the event of persistent noncompliance.

ETHICAL CODE OF PRACTICE

An Ethical Code of Practice is formulated as under for the press for the purpose of its functioning in accordance with the canons of decency, principles of professional conduct and precepts of freedom and responsibility to serve the public interest by ensuring an unobstructed flow of news and views to the people envisaging that honesty, accuracy, objectivity and fairness shall be the guidelines for the press while serving the public interest in any form of publication such as news items, articles, editorials, features, cartoons, illustrations, photographs and advertisements; etc.:

- The press shall strive to uphold standards of morality and must avoid plagiarism and publication of slanderous a libelous material.
- The Press shall strive to publish and disclose all essential and relevant facts and ensure that information it disseminates is fair and accurate.
- The press shall avoid biased reporting or publication of unverified material, and avoid the expression of comments and conjecture as established fact. Generalization based on the behaviour of an individual or a small number of individuals will be termed unethical.
- The Press shall respect the privacy of individuals and shall do nothing which tantamount to an intrusion into private, family life and home.
- Rumours and unconfirmed reports shall be avoided and if at all published shall be identified as such.
- The information, including picture, disseminated shall be true and accurate.
- The Press shall avoid originating, printing, publishing and disseminating any material, which encourages or incites discrimination or hatred on grounds of race, religion, caste, sect, nationality, ethnicity, gender, disability, illness, or age, of an individual or group.
- The press shall not lend itself to the projection of crime as heroic and the criminals as heroes.
- The press shall avoid printing, publishing or disseminating any material, which may bring into contempt Pakistan or its people or tends to undermine its sovereignty or integrity as an independent country.
- The press shall not publish or disseminate any material or expression, which is violation of article 19 of the Constitution of the Islamic Republic of Pakistan.
- The press shall rectify promptly any harmful inaccuracies, ensure that corrections and apologies receive due prominence and afford the right of reply to persons criticized or commented upon when the issue is of sufficient importance.
- While reporting on medical issues, care must be taken to avoid sensationalism, which could arouse baseless fears or false hopes in the readers. Early research finding should not be presented as though they were conclusive or almost conclusive.
- Sensationalism of violence and brutalities shall be avoided. All reporting shall be accurate, particularly when court proceedings are covered and an accused person must not be presented as guilty before judgment has been pronounced.
- In the case of sexual offences and heinous crime against children, juveniles and women, names and identifying photographs shall not be published.
- Confidentiality agreed upon at briefings and background interviews must be observed.
- The press while publishing findings of opinion polls and surveys shall indicate the number of people, geographical area on which the polls and surveys were conducted, and the identity of the poll-sponsor.
- Any kind of privilege or inducement, financial or otherwise, which is likely to create conflict of interest and any inducement offered to influence the performance of professional duties and is not compatible with the concept of a reputable, independent and responsible press, must be avoided.

LESSON 18**MEDIA FREEDOM: AN INTRODUCTION****FREEDOM OF THE PRESS**

John Stuart Mill in his famous writing *On Liberty* argues that freedom of expression is the most inviolable right of an individual in a society. In *On Liberty* (1859), John Stuart Mill identifies a number of reasons why it is morally important to protect freedom of expression. One reason is that freedom of expression is a freedom that intrinsically matters a lot to most people. It involves both the freedom to express our beliefs and values, and the freedom to be informed by the publicly expressed beliefs and values of others. A second reason that it is morally important to protect freedom of expression is that freedom of expression typically promotes the discovery of, and the respect for, the truth. The knowledge gained matters both in its own right and because it leads to better decisions and thus a better quality of life. Although there are other reasons for some sort of protection of freedom of expression, these two reasons are sufficient to establish the moral importance of such protection.

Given the importance of human freedom generally, J.S. Mill concludes that legal restrictions on freedom are morally legitimate only if they are the least restrictive means of reducing the extent to which innocent people are significantly harmed by others. Applied to freedom of expression, this yields the result that legal restrictions that do not reduce significant harms to others, or which are not the least restrictive means of doing so, are not morally legitimate.

Nonetheless, J.S. Mill restricts freedom of expression only when it is harmful. His 'Harm Principle' is also quite interesting. Mill's Harm Principle says that the only purpose for which power can be rightfully exercised over members of a civilized community, against their will, is to prevent harm to others.

What is Harm? Mill is not clear on this, but in general: an action is **harmful** if it involves a setback in some person's interests; e.g. chopping of their leg or stealing their laptop

THE ORTHODOX OPINION

Mill: The time, it is to be hoped, is gone by, when any defence would be necessary of the 'liberty of the press' as one of the securities against corrupt government.

We cannot be democratically free without a free press because we need government-independent information to be able to properly evaluate the current government and make free voting/protesting/information-seeking decisions.

Summary of Mill's thought:

- any opinion could be true
- we shouldn't censor any opinion because any opinion could help lead to the truth
- even if they're false (which we can't be sure of), they can still help us appreciate the truth
- so, freedom of expression should be upheld
- that includes freedom of the press

SOME OTHER OPINIONS

We need an impartial press to provide us facts (and only facts) about how we are governed in order to exercise our democratic rights. But, we can't because there is a liberal bias in the media! And, also there is a conservative bias in the media!

TWO KINDS OF FREEDOMS**Freedom of action**

Hardly anyone believes that citizens should be allowed unrestricted freedom of action

Freedom of thought and expression

But should we be restricted in what we can think or say? Mill thinks it's more harmful to censor expression (even seemingly harmful ones!) because of the importance of truth. "It is the duty of governments, and of individuals, to form the truest opinions they can".

Freedom of Press

Freedom of Press is born or ensured by Freedom of expression which is a constitutional provision and widely acknowledged as a basic human right that should be available to all, playing a crucial role in a fair and open society. 

Press freedom means liberty to print or to disseminate info. in print, broadcasting, electronic or modern media, without prior restraints such as censorship or content review and without subsequent punishment for what is said.

Definitions:

Freedom of Press means that the media should be free to publish news and ideas without government control (World Public Opinion.com).

It is a condition of being free or restraints. It is the liberty of a person which empowers him/her to think, feel, do just as one pleases.

As human beings with complicated thought processes, we have the capacity to develop intelligent and informed opinions. We all need a venue to express these opinions and to be heard. Expressing ourselves in writing, in conversation, and through the arts is crucial to our development and sense of self.

The freedom to express our thoughts is an important part of our individual identity. When we talk and write about our opinions we are contributing ideas and participating in society. Freedom of expression is covered in article 19 of the United Nation's Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Freedom of expression is widely acknowledged as a basic human right that should be available to all, playing a crucial role in a fair and open society.

Many countries and organizations place limits on freedom of expression. These limitations can be a way of controlling people. Restricting voting rights, censoring speech and art and outlawing specific religious and political groups are some of the tools governments have used to control public opposition. Even societies that consider themselves free and democratic suppress opposing views. Consider your local newspaper; although you might expect objectivity, if you were to analyze the content, you might not find a variety of informed opinions and critiques. Editorial and news writers may be influenced by their own political views. In some places, reporters are trained to manipulate or omit information that could harm those in power.

Should there be no limits on freedom of expression? If we are entitled to express ourselves freely we must accept that others will express ideas very different from our own. This might include ideas that offend and possibly even hurt us. Hate speech attacks people based upon such distinctions as race, religion and gender. Should we censor ideas that damage and promote cruelty? The content of a book, a song or a film may cross societal lines of morality and decency. Should we censor art works that are violent, insulting or degrading? These are some of the complex questions you must think about. Feeling intimidated and forced to subscribe to traditional or mainstream beliefs is a violation of your personal freedom. But sometimes authorities set rules and boundaries for good reason. Understanding why the rules exist is more important than automatically obeying them.

According to UNESCO, it is Promoting Freedom of Expression, Press Freedom, Independence and Pluralism of the Media, Democracy, Peace and Tolerance

UNESCO promotes freedom of expression and freedom of the press as a basic human right, through sensitization and monitoring activities. It also fosters media independence and pluralism as prerequisites and major factors of democratization by providing advisory services on media legislation and sensitizing governments, parliamentarians and other decision-makers.

MEDIA IN CONFLICT AND POST CONFLICT SITUATION:

For several years now, UNESCO has been supporting independent media in conflict and post-conflict situations to enable them to gather and disseminate non-partisan information. In this respect, the assistance provided to independent media in South East Europe, Angola, the Great

Lakes Region in Africa, the Middle East, East Timor, and Afghanistan has contributed to peace building and reconciliation processes.

UNESCO's action in this area includes the promotion of dialogue among media professionals in zones of conflict and the outside world and provision of advice to the authorities of countries in post-conflict situations in drafting new media legislation, which enhances the development of freedom of expression.

This action in promoting independent media in conflict situations has been recognized by the international community. The humanitarian nature of this work was recognized by the Office of the United Nations High Commissioner for Refugees and the Department of Humanitarian Affairs in the June 1994 United Nations Inter-Agency Appeal. In 1996 the Appeal designated UNESCO as lead agency for assistance to independent media for the reconstruction period in the former Yugoslavia. Since then the Organization has received considerable financial support from a number of donor countries.

UNESCO assists Member States in adapting their media laws to internationally-recognized democratic standards.

In cooperation with professional media organizations, academic and legal experts as well as other international and regional organizations, UNESCO is ready to respond to requests from governments and national authorities by providing expert missions, technical and logistical assistance or through the organization of meetings and other events dealing with these subjects.

UNESCO promotes freedom of expression and freedom of the press and fosters media independence and pluralism by providing advisory services on media legislation and by making governments, parliamentarians and other decision-makers aware of the need to guarantee free expression.

UNESCO promotes freedom of expression and freedom of the press as a basic human right, through lobbying and monitoring activities. It highlights media independence and pluralism as fundamental to the process of democracy by providing advisory services on media legislation and by making governments, parliamentarians and other decision-makers aware of the need to guarantee free expression.

Other major UNESCO activities in this field include the proclamation in 1993 by the United Nations General Assembly of a World Press Freedom Day to be celebrated on May 3rd; the establishment of an advisory group on press freedom which includes media professionals from all parts of the world; the establishment in 1997 of the UNESCO/Guillermo Cano World Press Freedom Prize.

UNESCO supports independent media in zones of conflict to enable them to play an active role in conflict prevention and resolution and the transition towards a culture of peace.

Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.

Progress has been made in recent years in terms of securing respect for the right to freedom of expression. Efforts have been made to implement this right through specially constructed regional mechanisms. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting. New threats are emerging too, for example with global media monopolies and pressures on independent media outlets.

RIGHTS AT STAKE

(A) THE RIGHT TO FREEDOM OF EXPRESSION AND OPINIONS

The right to freedom of expression upholds the rights of all to express their views and opinions freely. It is essentially a right which should be promoted to the maximum extent possible given its critical role in democracy and public participation in political life. There may be certain extreme forms of expression which need to be curtailed for the protection of other human rights. Limiting freedom of expression in such situations is always a fine balancing act. One particular form of expression which is banned in some countries is “hate speech”.

There may be some views which incite intolerance or hatred between groups. This raises the debate about whether such *hate speech*, as it is known, should be restricted. An extreme example of this is the use of the mass media to promote genocide or racially-motivated attacks, such as the role played by Radio-Télévision *Libre des Milles Collines* in the Rwandan genocide in 1994. In some countries hate speech laws have been introduced to outlaw such expression. There is a fine balance between upholding the right to freedom of expression and protecting other human rights. The success of such laws has often been questionable and one of the consequences has been to drive hate speech underground. While it may be necessary to ban certain extreme forms of hate speech and certainly to make its use by the state prohibited, parallel measures involving the promotion of a pluralistic media are essential to give voice to counter viewpoints. 

(B) THE RIGHT TO SEEK, RECEIVE AND IMPART INFORMATION AND IDEAS

Restrictions on individual journalists: The freedom to impart information can come under attack in a variety of ways and particularly impinge on the freedom of the press. *Pressure on journalists* poses a very significant threat.

Informal censorship refers to a variety of activities by public officials - ranging from telephone calls and threats to physical attacks - designed to prevent or punish the publication of critical material. The right of journalists to *protect their sources* is also important in ensuring the free flow of information on matters of public interest. International and regional human rights mechanisms have asserted that journalists should never be required to reveal their sources except under certain conditions (it is necessary for a criminal investigation or the defence of a person accused of a criminal offence; they are ordered to do so by a court, after a full opportunity to present their case; necessary' implies that the information cannot be obtained elsewhere, that it is of great importance and that the public interest in disclosure significantly outweighs the harm to freedom of expression from disclosure).

Privacy laws can impede investigative reporting aimed at exposing corrupt and illegal practices. Privacy laws, while important in protecting the private affairs of individuals, should not be misused to deny discussion of matters of public concern.

The media should be *free to report on conflicts* and public scrutiny in such situations is essential to controlling humanitarian and human rights abuses. Exclusion of the media is a very severe restriction on freedom of expression and information in this regard and restrictions should only be placed where there are clear safety concerns. Elections are other times when the freedom of the press to provide balanced and impartial information becomes critical and more vulnerable to repression by political actors.

Structural restrictions on the press: These call into question whether the media are free from political control at an institutional level. Restrictions can take the form of press laws which allow for government interference in the media, or which impose unwarranted restrictions on published content. All bodies with regulatory authority over the media, print or broadcast, should be fully independent of government. Processing of license applications should be open and transparent, with decisions about competing applications being made on the basis of pre-established criteria in the interest of the public's right to know. In addition, the powers of broadcast regulatory bodies should be limited to matters relating to licensing and complaints.

Media monopolies are another way in which the right to receive information from a variety of sources is restricted. State broadcasting monopolies do not serve the public interest but then in some smaller markets, a monopoly newspaper may be the only way to provide access to local news. Rules on monopolies need to be carefully designed to promote plurality of content, without providing the government with an opportunity to interfere in the media.

Other examples of “structural censorship” i.e. use of economic measures by governments to control information, include preferential allocation of government advertising, government control over printing, distribution networks, or newsprint and the selective use of taxes.

Access to information held by public authorities is another aspect of the freedom of information debate. International/regional human rights mechanisms have asserted the public’s right to know and urged governments’ to adopt legislation along the following lines: the legislation should be guided by the principle of maximum disclosure; public bodies should be under an obligation to publish key information; public bodies should actively promote open government; exceptions should be clearly and narrowly drawn and subject to strict ‘harm’ and ‘public interest’ tests; individuals should have the right to appeal against a refusal to disclose information to an independent administrative body, which operates in a fair, timely and low-cost manner; the legislation should provide protection for ‘whistleblowers’ who release information on wrongdoing.

New technologies, such as the Internet, and satellite and digital broadcasting offer unprecedented opportunities to promote freedom of expression and information. Action by the authorities to limit the spread of harmful or illegal content through the use of these technologies should be carefully designed to ensure that any measures taken do not inhibit the enormous positive potential of these technologies. The application of rules designed for other media, such as the print or broadcast sectors, may not be appropriate for the internet. Obviously, limitations on such technologies will be a fine balancing act between defending the freedom of expression and information and ensuring protection from abuses e.g. spread of child pornography.

(c) These rights can only be restricted in certain circumstances: to protect the rights and reputations of others or to protect national security, public order, public health or morals.

Restrictions in the name of public order and national security can often be excessively broad and vague. International and regional bodies have said that such restrictions should only be imposed where there is a real risk of harm to a legitimate interest meaning there is a significant risk of imminent harm; the risk is of serious harm, that is to say violence or other unlawful action; there is a close causal link between the risk of harm and the expression; the expression was made with the intention of causing the harm.

Criminal sanctions accompany such restrictions. Often the expression in question may not pose a clear risk of serious harm to public interest and still it is subjected to penal sanctions, including imprisonment. International/regional human rights mechanisms on freedom of expression have concluded that imprisonment should not be imposed except in the very most extreme circumstances where there is intentional incitement to imminent and serious lawless action.

Criminal defamation laws still exist in some states to protect public figures from injury to their reputations. Such laws have a limiting effect on freedom of expression and are frequently abused in cases where there is no public interest at stake. International and regional human rights institutions have recommended that such laws should be abolished and replaced with civil defamation laws.

Civil defamation laws can also be misused to censor criticism and debate concerning public issues. International/regional human rights bodies have said that civil defamation laws should observe the following principles: public bodies should not be able to bring defamation actions; truth should always be available as a defence; politicians and public officials should have to tolerate a greater degree of criticism; publications regarding matters of public interest which are reasonable in all the circumstances should not be considered defamatory; damage awards should be proportionate to the actual harm caused and should take into account alternative remedies such as apologies and corrections.

Courtroom restrictions: There are various laws falling under the contempt of court rubric which restrict the flow of information in order to protect the administration of justice. Some restrictions exist to ensure a fair trial and to avoid a “trial by the media.” Other restrictions are more to do with protecting the court from being “scandalised”. There are increasing questions about whether freedom to criticise the judiciary should be limited in this way. Having cameras in the courtroom has become a lively area of debate in recent years. Again, as with many other questions to do with the freedom of expression, there is a fine balance to be struck between the desirability of opening up the judicial system on the one hand and protecting the privacy of victims and their families on the other.

INTERNATIONAL AND REGIONAL INSTRUMENTS FOR PROTECTION AND PROMOTION

International legal instruments take the form of a treaty (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are *ratification* or *accession*. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty *enters into force*, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

NORMATIVE THEORIES OF THE MEDIA

Four Theories of the Press given by Siebert, Peterson and Schramm

Frederick S. Siebert, Theodore Peterson and Wilbur Schramm in their famous work Four Theories of the Press published by University of Illinois Press, 1963 are as under:

AUTHORITARIAN THEORY

According to this theory, the mass media though not under the direct control of the State, had to follow its bidding. Under the Authoritarian set up in Western Europe, freedom of thought was jealously guarded by a few people (ruling classes), who were concerned with the emergence of a new middle class and were worried about the effects of the printed matter on their thought process. Steps were taken to control the freedom of expression - the result was a complete dictatorial set up. The theory advocated zealous obedience to the hierarchical superior and reliance on threat and punishment to those who did not follow the censorship rules or did not respect authority. The censorship of the Press was justified on the ground that the State always took precedence over the individual's right to freedom of expression.

This theory stemmed from the authoritarian philosophy of **Plato** (407 - 327 B.C), who thought that the State was safe only in the hands of a few wise men. **Thomas Hobbes** (1588 - 1679), a British academician, argued that the power to maintain order was sovereign and individual objections were to be ignored. **Engel**, a German thinker further reinforced the theory by stating that freedom came into its supreme right only under Authoritarianism.

The world has been witness to authoritarian means of control over media by both dictatorial and democratic governments.

LIBERTARIANISM OR FREE PRESS THEORY

This movement is based on the right of an individual, and advocates absence of restraint. The basis of this theory dates back to 17th century England when the printing press made it possible to print several copies of a book or pamphlet at cheap rates. The State was thought of as a major source of interference on the rights of an individual and his property. Libertarians regarded taxation as institutional theft. Popular will (**vox populi**) was granted precedence over the power of State.

Advocates of this theory were **Lao Tzu**, an early 16th century philosopher, **John Locke** of Great Britain in the 17th century, **John Milton**, the epic poet ("Aeropagitica") and **John Stuart Mill**, an essayist ("On Liberty"). Milton in his Aeropagitica in 1644, referred to a "self righting process if free expression is permitted....let truth and falsehood grapple". In 1789, the French in their Declaration Of The Rights Of Man wrote, "Every citizen may speak, write and publish freely". Out of such doctrines came the idea of a 'free marketplace of ideas'. George Orwell defined libertarianism as

“allowing people to say things you do not want to hear”. . Libertarians argued tat the press should be seen as the Fourth Estate reflecting public opinion.

What the theory offers in sum is power without social responsibility.

SOCIAL RESPONSIBILITY THEORY

Virulent critics of the Free Press Theory were Wilbur Schramm, Siebert and Theodore Paterson. In their book *Four Theories Of Press*, they stated “pure libertarianism is antiquated, outdated and obsolete”. They advocated the need for its replacement by the Social Responsibility theory. This theory can be said to have been initiated in the United States by the Commission of The Freedom Of Press, 1949. The commission found that the free market approach to press freedom had only increased the power of a single class.

And has not served the interests of the less well-off classes. The emergence of radio, TV and film suggested the need for some means of accountability. Thus the theory advocated some obligation on the part of the media to society. A judicious mix of self regulation and state regulation and high professional standards were imperative.

Social Responsibility theory thus became the modern variation in which the duty to one’s conscience was the primary basis of the right of free expression.

SOVIET MEDIA/COMMUNIST THEORY

This theory is derived from the ideologies of Marx and Engel that “the ideas of the ruling classes are the ruling ideas”. It was thought that the entire mass media was saturated with bourgeois ideology. Lenin thought of private ownership as being incompatible with freedom of press and that he modern technological means of information must be controlled for enjoying effective freedom of press.

The theory advocated that the sole purpose of mass media was to educate the great masses of workers and not to give out information. The public was encouraged to give feedback as it was the only way the media would be able to cater to its interests.

Two more theories were later added as the ‘four theories of the press’ were not fully applicable to the non-aligned countries of Asia, Africa and Latin America, who were committed to social and economic development on their own terms. The two theories were:

DEVELOPMENT COMMUNICATION THEORY

The underlying fact behind the genesis of this theory was that there can be no development without communication. Under the four classical theories, capitalism was legitimized, but under the Development communication theory, or Development Support Communication as it is otherwise called, the media undertook the role of carrying out positive developmental programmes, accepting restrictions and instructions from the State. The media subordinated themselves to political, economic, social and cultural needs. Hence the stress on ‘development communication’ and ‘development journalism’. There was tacit support from the UNESCO for this theory. The weakness of this theory is that ‘development’ is often equated with government propaganda.

DEMOCRATIZATION/DEMOCRATIC PARTICIPANT MEDIA THEORY

Defluer later added this theory which vehemently opposes the commercialization of modern media and its top-down non-participant character. The need for access and right to communicate is stressed. Bureaucratic control of media is decried.

LESSON 19**DEFINING THE LIMITS OF MEDIA FREEDOM**

We shall shed some light on the limits of media freedom from two different perspectives; though not exhaustive in nature, but the most popular indeed.

FREEDOM OF THE PRESS 1

Taking 'The Harm Principle' of Mill, which provides that the only purpose for which power can be rightfully exercised over members of a civilized community, against their will, is to prevent harm to others.

Mill's *basic argument is this regard is that every dissenting opinion either could be true or could not be true. If it could be true, then the dissenting opinion should not be censored. If it couldn't be true, then the dissenting opinion should not be censored (as it will automatically die in a short span of time, while killing a dissenting opinion would make it live long).* Therefore, no dissenting opinion should be censored.

The Orthodox Liberal View sets some limitations on free expression; like defamation. For instance, A defames B. This may be allowed as A is eroding the B's right of peaceful living.

More on it, for instance, causing panic like imagine the room is more crowded. If we don't disallow people entering in it, it may cause panic and result in a kind of stampede, causing damage to peoples' live. Similarly, invasion of privacy is another instance. Incitement to crime also falls in the same category and we could many examples in this regard like 1994 Rwandan genocide.

Mill's Harm Principle, though not much clear, also talks about some limitations on freedom of expression.

FEINBERG'S OFFENSE PRINCIPLE

Joel Feinberg, a retired soldier and then a philosopher, gives another way of defining limits to freedom of expression. He says, "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing [wrongful] offense (as opposed to injury or harm) to persons other than the actor." An action is wrongfully offensive if it willfully or recklessly causes unpleasant experiences (but not harm) in others without a good reason for doing so, to him. Unpleasant experiences such as: anger, disgust, shock, shame, embarrassment, annoyance, fear, humiliation, and affronts to one's senses and sensibilities are required to be prevented if caused by freedom of expression, as Feinberg's Offense Principle.

WRONGFUL OFFENSE OR OFFENSE?

When you feel queasy because you happen to see an accident victim while at the hospital, then the victim has not wronged you – your offense was not caused wrongfully. *However, when a colleague sends you a surprise picture of an accident victim via email and it makes you queasy, then they have wrongfully caused you offense.*

Wrongful offense should be dealt with by law, but not criminal law if civil law or regional legislation can better deal with it (because offense is not as serious a problem as harm).

BALANCING FREEDOM & OFFENSE

Curtailing someone's freedom requires a good reason; *either it should be causing offense or harm.* The damage to the offender that prosecution would cause needs to be outweighed by the damage to other members of society through their unpleasant feelings caused by the offense.

Other considerations should also be considered including the accessibility of alternate options open to the offender, the motives of the offender, and the location of the offending.

The Harm and Offense Principles should limit freedom of expression in the following cases:

- Defamation and "Malicious Truth"
- Invasions of privacy
- Causing panic
- Provoking retaliatory violence

- Incitement to crime or insurrection
- But not in cases of sedition (where it is not going to lead to the exceptions above)

Summary of Feinberg on the Freedom of the Press

- Actions and expressions should be restricted by the harm principle and the offense principle
- The press should be allowed to publish anything of legitimate public interest that does not cause a greater balance of harm or offense
- It should be very rare for a published opinion to be restricted (or punished) because of the large furthering of public interests from publishing compared to the small harm or offense caused a to much smaller group

LIMITS TO THE FREE EXPRESSION OF OPINION

Following text by Mogens Schmidt Deputy Assistant Director-General, Communication and Information Sector UNESCO provides a good insight into the limits that should universally be accepted.

Following is the language of Article 19 of the UDHR, which guarantees the right to freedom of expression and information in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

As such, one may argue that freedom of opinion and of expression constitute the cornerstone of any democratic society and a solid and fundamental basis for development. Indeed, the right that guarantees freedom of expression is widely seen as underpinning all other human rights and democratic freedoms. If the individual does not have the right to freely seek, receive and impart her ideas and opinions, she will also not be able to benefit from her other human rights. This also has consequences for the right to freedom of thought, conscience and religion as laid down in Article 18, for without freedom of expression, as a fundamental principle, this right cannot be practiced.

The right to freedom of expression and opinion also has a corollary, namely freedom of the press, which is normally perceived as the individual's right to freedom of expression extended to the media.

It is more and more generally accepted that freedom of expression and freedom of the press are of importance for the "three D's": Development, Democracy and Dialogue. In many studies researchers have documented the correlations between a free press and the three D's. Without an open space for the marketplace of ideas to flourish, societies fail to progress by any measure on the human, social, and economic development scale.

Participatory democracy requires citizens to reflect and debate in order to distill public opinion into a clear will of the people that enable the political leadership to absorb these values and translate them into policy. Democracy is also about accountability and good governance. The public not only has a right, but is obliged by the very definition of a democracy, to scrutinize the actions of their elected leaders and to engage in full and open debate about their priorities and actions. One of the most effective ways of addressing poor governance is through open and informed debate. This open and informed debate can take many forms and one should not ignore that in the light of day, well documented criticism can increase both knowledge and understanding, even though it might be both harsh and controversial.

From this point of view, any restrictions to Article 19, and especially straight forward censorship, would undermine the fundamentals of a democracy, doing harm to the public good. It is vital that political, national, and religious themes are discussed without being subjected to knee-jerk criticisms that are designed to stifle debate. It is not the rights of a particular political party, conviction or



religion which are protected in such open and frank debate but the rights of the individual citizens or believers.

Human rights are universal, inalienable and indivisible. Their universality and indivisibility embolden and protect these rights. Their inalienability is their guarantee to every citizen of the world upon birth. These basic human rights, which are non-discriminatory and non-flexible, are the same for all, and give us dignity as individuals. There is no hierarchy between these rights. They exist in a nexus-relationship. Equal respect and adherence to these rights rests with the political, social and religious leadership from the most local level to the heads of state. Therefore, there cannot be any cultural, historic, religious or political qualification for which rights to respect and apply. The UN must refuse attempts to subordinate one right in favor another as this is clearly against the core principles, which imply the non-hierarchical status of the various rights. If we start subordinating Article 19, for example, to Article 18, as has been argued by some representatives from the large monotheistic religions, what would be the consequences for all the other 28 articles of the UDHR? Would we need to tailor them as well, and in doing so obliterate universality, inalienability and the indivisibility of all human rights?

For UNESCO, respect for freedom of expression and respect for religious beliefs and symbols are two inseparable principles and go hand in hand in combating ignorance and lack of understanding with a view to building peace and establishing dialogue among cultures, civilizations, religions and peoples. All societies must comply with international standards advocating human dignity and human rights, including freedom of expression and respect for religious and cultural beliefs and values. Any conflict between the two must be expressed peacefully and constructively and must give precedence to seeking collective, lasting solutions. Given the importance of religion to peoples and to their sense of dignity and their way of life, respect for different religious beliefs is essential to international peace and security and to humanity's progress.

This is also the background for the Executive Board of UNESCO's unanimous decision at its 174 Meeting in 2005, in which it among other reads:

4. Reaffirming the international instruments that uphold freedom of expression and freedom of thought, conscience and religion,
5. Also reaffirming UNESCO's commitment to respect for freedom of expression and respect for religious beliefs and religious symbols,
6. Emphasizing that the media can have an important role to play in promoting tolerance, respect for and freedom of religion and belief,
7. Upholding the exercise of freedom of expression in a spirit of mutual respect and mutual understanding, urges mutual respect for cultural diversity, religious beliefs and religious symbols;
8. Requests the Director-General to strengthen UNESCO's programmes and actions, in its fields of competence, to fulfil its commitment towards mutual understanding and respect for all peoples' religious and cultural values, and freedom of expression;
9. Also requests the Director-General to accelerate the implementation of the plan of action for the dialogue among civilizations, cultures and peoples with a view to creating a culture of peace and of living together;

While universality, indivisibility and inalienability are sacrosanct, The International Covenant on Civil and Political Rights lays out the general principles for their implementation.

For Article 18, the Covenant says:

"3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

And for Article 19, the Covenant says:

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Permissible restrictions on freedom of the press will have to be derived from the implementation guidelines for Article 19 as well as from civil and criminal law in any given country. It is important to note that the permissible restrictions in the Covenant for these two articles both refer to a double condition: the limitations must be provided by law AND should be necessary to protect a number of public areas as well as the rights of others. It is also important to underline that “necessary” here means that there must be exceptional reasons for such restrictions.

In general, these exceptional reasons must comply with the following principles: they must be clearly and narrowly defined; they must be applied by a body which is independent of political, commercial or other unwarranted influences, and in a manner which is neither arbitrary nor discriminatory, and which is subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal.

Furthermore, restrictions must respect the principle that no one should be penalized for statements which are true; neither should they be criminally penalized for the dissemination of hate speech, unless it has been proven they did so with the intention of inciting discrimination, hostility or violence. As for the media, the right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance, and prior censorship should not be used as a tool to restrict the space for debate and discussion.

When sanctions are imposed they also have to be applied respecting some general principles. Care should be taken to apply the least intrusive and restrictive measures in order to minimize the chilling effect on freedom of expression; and any imposition of sanctions should be in strict conformity with the principle of proportionality. Offenses involving freedom of expression should never be considered under a penal code.

Finally, restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals holding specific beliefs or opinions, rather than to protect belief systems from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate, and criticize, even harshly and unreasonably, belief systems, opinions, and institutions, as long as this does not amount to advocating hatred against an individual. This does not mean that we should be “harsh” and “unreasonable”. That is not what good journalism is about. Good journalism will often be guaranteed through a whole set of self regulation practices, including ethical and professional standards, codes of ethics and media accountability mechanisms operated by the media themselves.

Article 20 states that

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

This is clear and should be left to the legal system to deal with. But the legal regulations can also facilitate the establishment of self- and co-regulatory accountability mechanisms that can play a very important role for the media and its efforts to exercise its functions according to established professional standards. Furthermore, the antidote to hate speech is professional journalism pure and simple. In fact, media professionals are the best arbiters of their profession because at a minimum their credibility is at stake, and without credibility, the economic viability of their enterprises.

In the era of knowledge and information society any effort at limiting the free flow of information is futile. For the UN system, and UNESCO in particular, the focus must remain on the promotion of

ethical and professional standards that result from an ongoing dialogue with the media and its associations, and with civil society. This includes ensuring that self- and co-regulatory mechanisms are entrenched in media law and regulatory frameworks, and that internet governance is applied in a way that respects the fundamental principles for freedom of expression, access to and the free flow of information. This, too, must be done according to a multistakeholder approach, as it is presently being done through the Internet Governance Forum.

Finally, one should never forget the other side of the right to freedom of expression, namely the ability to use it. Providing capacity building for media professionals and ensuring media and information literacy skills for each and every citizen remains a core commitment for UNESCO.

FREEDOM OF THE PRESS 2

Phillip Montague *in his famous work* Government, the Press, and the People's Right to Know,

His negative claim is:

- The moral justification for a free press is not to be founded on a general freedom of expression.

Montague's Positive claim is:

- The moral justification for a free press is to be founded on a 'right to know'.

It could be the case that freedom of expression was limited in some way for ordinary citizens, but not for the press or some other special group (academics). The moral justification for a free press should be based on the role that we expect the press to play in our society.

GENERAL CLAIM RIGHTS

General rights are rights held against the world at large. *General Claim Rights* create corresponding obligations from others, *e.g.* the right to education creates the obligation to provide education. General claim rights create obligations on everyone else to do or not do certain things. *For instance*, General Claim Right to Property: *everyone else has the obligation not to interfere with your property or make decisions about it (even if they don't affect you).*

General Claim Right to Privacy: *everyone else has the obligation not to interfere with your privacy or make decisions about it (even if they don't affect you)*

JUSTIFICATION FOR A FREE PRESS

The right to know needs an area of discretion as everyone *an't have a passive or active right to know everything!* So, "people have a right to be provided with information relevant to making certain decisions about their well-being", *but of course certain information may be kept away from masses.*

The freedom of the press to print opinions about relevant matters is mainly justified by the idea that a free press is likely to encourage government disclosure of relevant information. Relevant info is any info that helps citizens to determine the course of their own lives, pursue their own well-being; *e.g. political information, health information etc.*

AN OBJECTION TO MONTAGUE

If Montague's justification were the only one available, then justified legal rights to freedom of the press would be too limited in scope. It would extend only to the publication of material about the workings of Government. People can have rights to information that is non-political in nature but which government officials might be disinclined to divulge; *e.g. effects of education legislation on student well-being.* There might be information possessed by public officials with which citizens have rights to be provided, and which the officials are quite willing to divulge, but which the press is better able to disseminate; *e.g. Tsunami warnings.*

There are grey areas where whether people have rights to be provided with information is extremely difficult to discern with any confidence, and in which the press might justifiably be given the benefit of the doubt; *e.g. some celebrity's scandal.*

SUMMARY OF MONTAGUE

We have a passive and active general claim right to know (seek and be given) information that is important for determining the course of our lives. Political information is important for this. A free press makes it much more likely that we can obtain this information. Therefore, our right to know (about certain things) justifies a free press.

Presuppositions Common to all Models

- When the press is totally free, the public is more likely to obtain true info about any domain.
- The public has a right to know at least some things.
- Mill: the public always has a right to true info.
- Orthodox Liberals: the public has a right to true information (except when that causes greater harm).
- Feinberg: the public has a right to true information (except when that causes greater harm or extreme wrongful offense).
- Montague: the public has a right to true information (but only if it helps us determine the course of our own lives).

CHOMSKY'S CHALLENGE

A free press still seems to fail to provide us with the whole truth. The five filters on truth *are*:

- (i) Size, ownership, and profit orientation
- (ii) Advertising
- (iii) Sourcing
- (iv) Flak
- (v) Anti-communism (and its ideological counterparts).

Following lines describe the five filters by Chomsky, mostly famous for his discussions on propaganda model:

1. SIZE, OWNERSHIP, AND PROFIT ORIENTATION

The dominant media are firmly embedded in the market system. They are profit-seeking businesses, owned by very wealthy people or other companies. Alternatives such as co-operative ownership tend to fare badly. Any notion that free market competition supports free-ranging pluralism of interests is confounded by the available statistics. There tends to be an inexorable trend towards monopoly. At the end of World War II, 80 per cent of all US newspapers were privately owned. Within 40 years that figure was its exact opposite with 80 per cent of all newspapers owned by corporate chains. From 1960 to 1984, the number of corporations which owned US newspapers fell from 27 to 14. In 1992, 90 per cent of the UK press was controlled by Conrad Black, Rupert Murdoch, Lord Rothermere, Lord Stevens, and Mirror Group Newspapers.

Analysts prior to Chomsky and Herman had relied upon the free market system to provide a pluralist media but Herman regards this as naive given the close-knit composition of media ownership in the USA. Moreover, he observes that the same analysts had taken an opposite view when regarding media in authoritarian or totalitarian regimes. "The idea that journalists or public opinion can override the power of those who own and control the media is dismissed as nonsense and even considered an apology for tyranny."

Marshall McLuhan writes of a friend who, when trying to teach media in secondary school was struck by the unanimous response that the students could not for a moment accept the suggestion that the press or any other public means of communication could be used with base intent. "They felt that this would be akin to polluting the air or the water supply, and they didn't feel that their friends and relatives employed in these media would sink to such corruption."

When he was a columnist with the UK Daily Mirror, the journalist Paul Foot showed a similar naiveté at an NUJ day of action in 1988 when he called upon journalists to "Go over your editors' heads!" by breaking the government ban on reporting Sinn Féin. While Foot is a self-confessed socialist, media analysts in the USA can be forgiven for not addressing the fundamental question of media ownership given the revolutionary implications of doing something about it.

2. ADVERTISING

The media are funded largely by advertisers who are also profit-seeking entities, and who want their ads to appear in a supportive selling environment. As McLuhan says: "The ads are always good news." In order to balance the ads, the hot medium needs to carry a lot of bad news. This analysis goes some way to explaining the difficulties of politicians trying to peddle a positive message, and the rise of the spin-doctor.

3. SOURCING

The hot media are very dependent on government and major business firms as information sources. In *The News as Myth*, Tom Koch appears to agree: "As Chomsky has shown, the result, at least in terms of United States reportage of foreign affairs leads to a consistent exclusion of facts unacceptable to US officials and a consistent bias supporting official US positions."

Koch says a high percentage of US copy originates from official sources. "One survey of 2,850 stories in the N.Y. Times and Washington Post found that almost 80 per cent of the stories in both publications were based on the official pronouncements of public officials."

Koch gives the 1981 case of Judge Shinktaku in Hawaii in which this tendency was massively distorting. The judge found himself regaining consciousness in hospital after a household accident, only to discover that the newspapers were running a story that he had attempted suicide. Koch says that independent experts, and Shinktaku himself, all say that the story defied all rational interpretations of the physical evidence. However, the police spokesman had initially taken the suicide line, and the newspapers routinely put that at the top of the copy and rejected any other sources that failed to support the official view. The event remains on the record as actuality because of the status of a police spokesperson. As Tuchman puts it, "the act of making news is the act of constructing reality itself rather than a picture of reality."

Koch cites en passant that a 1988 report in the newspaper trade magazine *Editor and Publisher* revealed that 79 per cent of the content in the former Soviet Union's official newspaper *Pravda* originated not from press conferences nor official statements but from "citizens' complaints, queries, revelations and observations." This revelation may be startling even to unreconstructed socialists that withstood the collapse of the Soviet Union and tends to support Karl Marx's prescription that: "The first freedom of the press consists in its not being a trade."

4. FLAK

This filter is little more than the negative face of the three filters listed above. "Government and large non-media business firms are also best positioned (and sufficiently wealthy) to be able to pressure the media with threats of withdrawal of advertising or TV licenses, libel suits, and other direct and indirect modes of attack." As the director of journalism studies at London College of Printing likes to put it: "No newsdesk would dare run a story that 'Coca-Cola gives you cancer' - because none could withstand the withdrawal of the Coca-Cola company's advertising."

5. IDEOLOGY

The media are constrained by the dominant ideology, which heavily featured anti-Communism before and during the Cold War era, and was mobilised often to prevent the media from criticising attacks on small states labelled communist. Herman allows that this filter is possibly weakened by the collapse of the Soviet Union and global socialism, but this is easily offset by the greater ideological force of the belief in the "miracle of the market."

The thrust of Chomsky and Herman's thesis is that propaganda campaigns can occur only when consistent with the interests of those controlling and managing these five filters. For example, it was a generally accepted view that the Polish government's crackdown on the Solidarity union in 1980-81 was extremely newsworthy and deserved severe condemnation whereas in the same period the hot media did not find the Turkish military government's equally brutal crackdown on trade unions in Turkey to be newsworthy or reprehensible.

In the latter case the US government and business community liked the military government's anti-Communist stance and open door economic policy and the crackdown on Turkish unions had the merit of weakening the left and keeping wages down. In the Polish case, propaganda points could be

scored against a Soviet-supported government, and concern could be expressed for workers whose wages were not paid by free-world employers. The fit of this dichotomisation to corporate interests and anti-Communist ideology is obvious.

Chomsky and Herman used the concepts of worthy and unworthy victims to describe this dichotomy. The US backed the Indonesian invasion of East Timor in 1975. This crushed the popular left-Catholic government that had been established there by the Fretilin party in 1974 after the former colony had freed itself from Portuguese fascism. Chomsky considers the invasion the worst case of genocide since the Nazi holocaust, with atrocity stories and numbers that are easily comparable to those attributed to the late Pol Pot in Cambodia.

In his study of how the media serves as the lapdog of corporations who profit from their influence over US foreign policy, Chomsky compares the New York Times's coverage of East Timor with its coverage of the Khmer Rouge. The qualitative and empirical evidence is clear: the United States backed the invasion of East Timor, and the New York Times failed to cover it adequately, basically presenting a whitewash. During approximately the same period, Washington opposed the Khmer Rouge regime in Cambodia. "After the first two hundred deaths," Chomsky points out, "they [the New York Times] were already calling it genocide."

LESSON 20**ABSOLUTE VERSUS RESPONSIBLE FREEDOM OF MEDIA**

Freedom of Press means that the media should be free to publish news and ideas without government control. It is a condition of being free of restraints. It is the liberty of a person which empowers him/her to think, feel, do just as one please.

ABSOLUTE FREEDOM

Summary of John Stuart Mill “On Liberty”

- If we silence an opinion, *we may be silencing the truth.*
- A wrong opinion MAY contain the grain of truth *needed to secure the whole truth.*
- Commonly accepted opinion may not be truth but simply a prejudice that the public tends to hold until *it is forced to defend it.*
- Unless commonly accepted opinion is contested from time to time, it loses its vitality and its *affect on conduct and character.*

MILL’S DEFENCE OF UNRESTRICTED FREEDOM OF EXPRESSION

- No one has the right to censor a dissenting opinion, no matter how small.
- If the opinion is right, “they are deprived of the opportunity of exchanging error for truth”.
- If wrong, they lose “the clearer perception and livelier impression of truth, produced by its collision with error”.
- We can never be sure that the opinion we are endeavouring to stifle is a false opinion; and if we were sure, stifling it would be an evil still

MORE ON ABSOLUTE FREEDOM

John Milton’s *The Areopagitica* says, “Give me the liberty to know, to utter, and to argue freely according to *conscience, above all liberties*”.

Milton, John (1608-1674) - English poet and prose writer who is one of the most highly regarded figures in world literature and is widely considered the *greatest poet since Shakespeare*. Often called the “Puritan Poet,” he had many of the good traits of the Puritans as well as many of the bad and spent much of his life immersed in political and religious controversy. *Areopagitica* (1644) - Milton’s best-known prose work is a political pamphlet which argues against restricting the freedom of the press.

Some pieces out it speak on his approach towards freedom of the press, which he made when government of his time imposed some restrictions on the publishing houses in 1644:

On the human condition

Many there be that complain of divine Providence for suffering Adam to transgress. Foolish tongues! When God gave him reason, he gave him freedom to choose, for reason is but choosing; he had been else a mere artificial Adam, such an Adam as he is in the motions. We ourselves esteem not of that obedience, or love, or gift, which is of force: God therefore left him free, set before him a provoking object ever almost in his eyes; herein consisted his merit, herein the right of his reward, the praise of his abstinence. Wherefore did he create passions within us, pleasures round about us, but that these rightly tempered are the very ingredients of virtue? They are not skilful considerers of human things, who imagine to remove sin by removing the matter of sin; for, besides that it is a huge heap increasing under the very act of diminishing, though some part of it may for a time be withdrawn from some persons, it cannot from all, in such a universal thing as books are; and when this is done, yet the sin remain entire. Though ye take from a covetous man all his treasure, he has yet one jewel left: ye cannot bereave him of his covetousness. Banish all objects of lust, shut up all youth into the severest discipline that can be exercised in any hermitage, ye cannot make them chaste that came not thither so: such great care and wisdom is required to the right managing of this point.

WHY FREEDOM IS NECESSARY

Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making. Under these fantastic terrors of sect and schism, we wrong the earnest and zealous thirst after knowledge and understanding which God hath stirred up in this city. What some lament of, we rather should rejoice at, should rather praise this pious forwardness among men, to reassume the illdeputed care of their religion into their own hands again. A little generous prudence, a little forbearance of one another, and some grain of charity might win all these diligences to join and unite in one general and brotherly search after truth, could we but forego this prelatical tradition of crowding free consciences and Christian liberties into canons and precepts of men.

On the value of intellectual diversity and debate, and of its contribution to the overall advancement of learning.

And if the men be erroneous who appear to be the leading schismatics, what withholds us but our sloth, our self-will, and distrust in the right cause, that we do not give them gentle meetings and gentle dismissions, that we debate not and examine the matter thoroughly with liberal and frequent audience; if not for their sakes, yet for our own? -- seeing no man who hath tasted learning but will confess the many ways of profiting by those who, not contented with stale receipts, are able to manage, and set forth new positions to the world. And were they but as the dust and cinders of our feet, so long as in that notion they may yet serve to polish and brighten the armoury of Truth, even for that respect they were not utterly to be cast away. But if they be of those whom God hath fitted for the special use of these times with eminent and ample gifts, and those perhaps neither among the priests nor among the pharisees, and we in the haste of a precipitant zeal shall make no distinction, but resolve to stop their mouths, because we fear they come with new and dangerous opinions, as we commonly forejudge them ere we understand them; no less than woe to us, while thinking thus to defend the Gospel, we are found the persecutors.

On the importance of even wrong ideas

Good and evil we know in the field of this world grow up together almost inseparably; and the knowledge of good is so involved and interwoven with the knowledge of evil, and in so many cunning resemblances hardly to be discerned, that those confused seeds which were imposed upon Psyche as an incessant labour to cull out and sort asunder, were not more intermixed. It was from out the rind of one apple tasted that the knowledge of good and evil, as two twins cleaving together, leaped forth into the world. And perhaps this is that doom which Adam fell into of knowing good and evil, that is to say of knowing good by evil.

On the value to be placed upon officially sanctioned thought

And how can a man teach with authority, which is the life of teaching, how can he be a doctor in his book as he ought to be, or else had better be silent, when as all he teaches, all he delivers, is but under the tuition, under the correction of his patriarchal licenser, to blot or alter what precisely accords not with the hidebound humour which he calls his judgment? -- when every acute reader, upon the first sight of a pedantic license, will be ready with these like words to ding the book a quoit's distance from him: "I hate a pupil teacher; I endure not an instructor that comes to me under the wardship of an overseeing fist. I know nothing of the licenser, but that I have his own hand here for his arrogance; who shall warrant me his judgment?" "The State, sir," replies the stationer, but has a quick return: "The State shall be my governors, but not my critics; they may be mistaken in the choice of a licenser, as easily as this licenser may be mistaken in an author; this is some common stuff." And he might add from Sir Francis Bacon, that "Such authorized books are but the language of the times." For though a licenser should happen to be judicious more than ordinary, which will be a great jeopardy of the next succession, yet his very office and his commission enjoins him to let pass nothing but what is vulgarly received already.

Truth will win out

And now the time in special is, by privilege to write and speak what may help to the further discussing of matters in agitation. The temple of Janus with his two controversial faces might now insignificantly be set open. And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter? Her confuting is the best and surest suppressing. He who hears what praying there is for light and clearer knowledge to be sent down among us, would think of other matters to be constituted beyond the discipline of Geneva, framed and fabricated already to our hands.

Yet when the new light which we beg for shines in upon us, there be who envy and oppose, if it comes not first in at their casements. What a collusion is this, whenas we are exhorted by the wise man to use diligence, "to seek for wisdom as for hidden treasures" early and late, that another order shall enjoin us to know nothing but by statute! When a man hath been labouring the hardest labour in the deep mines of knowledge, hath furnished out his findings in all their equipage, drawn forth his reasons as it were a battle ranged, scattered and defeated all objections in his way, calls out his adversary into the plain, offers him the advantage of wind and sun, if he please, only that he may try the matter by dint of argument; for his opponents then to skulk, to lay ambushments, to keep a narrow bridge of licensing where the challenger should pass, though it be valour enough in soldiership, is but weakness and cowardice in the wars of Truth. For who knows not that Truth is strong next to the Almighty? She needs no policies, nor stratagems, nor licensings to make her victorious; those are the shifts and the defences that error uses against her power: give her but room, and do not bind her when she sleeps, for then she speaks not true, as the old Proteus did, who spake oracles only when he was caught and bound, but then rather she turns herself into all shapes except her own and perhaps tunes her voice according to the time, as Micaiah did before Ahab, until she be adjured into her own likeness.

Yet is it not impossible that she may have more shapes than one. What else is all that rank of things indifferent wherein Truth may be on this side or on the other, without being unlike herself? What but a vain shade is the abolition of "those ordinances, that handwriting nailed to the cross," what great purchase is Christian liberty which Paul so often boasts of? His doctrine is, that he who eats or eats not, regards a day or regards it not, may do either to the Lord. How many other things might be tolerated in peace and left to conscience, had we but charity, and were it not the chief stronghold of our hypocrisy to be ever judging one another! I fear yet this iron yoke of outward conformity hath left a slavish print upon our necks; the ghost of a linen decency yet haunts us.

A FINAL CAUTION

For if they fell upon one kind of strictness, unless their care were equal to regulate all other things of like aptness to corrupt the mind, that single endeavour they knew would be but a fond labour: to shut and fortify one gate against corruption, and be necessitated to leave others round about wide open. If we think to regulate printing, thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to man. No music must be heard, no song be set or sung, but what is grave and Doric. There must be licensing of dancers, that no gesture, motion, or deportment be taught our youth, but what by their allowance shall be thought honest; for such Plato was provided of. It will ask more than the work of twenty licensers to examine all the lutes, the violins, and the guitars in every house; they must not be suffered to prattle as they do, but must be licensed what they may say. And who shall silence all the airs and madrigals that whisper softness in chambers? The windows also, and the balconies, must be thought on; there are shrewd books, with dangerous frontispieces, set to sale: who shall prohibit them, shall twenty licensers? The villages also must have their visitors to inquire what lectures the bagpipe and the rebec reads, even to the balladry and the gamut of every municipal fiddler, for these are the countryman's Arcadias and his Monte Mayors.

FREEDOM OF EXPRESSION THEORIES

Four major theories of freedom of expression are described below:

ABSOLUTIST THEORY OF FREEDOM OF EXPRESSION

This theory advocates absolute or complete barrier to censorship. As said by Louis Brandeis, “Only remedy for bad speech is more speech.” If you limit any speech it means you fear it may be right. J.S. Mills and John Milton are considered to be the main advocates of this approach towards freedom of expression and speech.

Some people have argued that the First Amendment (in the US Constitution which guarantees media freedom) presents an absolute or complete barrier to government censorship of speech or press. When the First Amendment declares that “no law” shall abridge freedom of expression, the framers of the Constitution meant no law. This is the essence of the absolutist theory. The government cannot censor the press for any reason. There are no exceptions, no caveats, no qualifications. Few have subscribed to this notion wholeheartedly. US Supreme Court Justice Hugo Black, who sat on the high court from 1937 to 1971, and William O. Douglas, whose term lasted from 1939 to 1975, claimed adherence to this philosophy, but they were unable to persuade their brethren that this idea had much merit. A majority of the Supreme Court never has adopted an absolutist position. In fact, the Supreme Court has held that there are several types of speech that fall outside the scope of First Amendment protection and thus can be abridged without violating the freedoms of speech or press. As Justice Anthony Kennedy wrote for the court in 2002, when striking down a federal law prohibiting virtual child pornography, “[t]he freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children.”

PREFERRED POSITION BALANCING

Free expression is the most important right; however, sometimes rights come in conflict, then scale should be tipped toward freedom of expression. This theory, nonetheless, does not trump all other rights, just most other rights.

The US Supreme Court has held in numerous rulings that some constitutional freedoms, principally those guaranteed by the First Amendment, are fundamental to a free society and consequently are entitled to more judicial protection than other constitutional values are.

Freedom of expression is essential to permit the operation of the political process and to permit citizens to protest when government infringes on their constitutionally protected prerogatives. The Fourth Amendment guarantee of freedom from illegal search and seizure surely has diminished value if citizens who suffer from such unconstitutional searches cannot protest such actions. Freedom of expression does not trump all other rights. Courts, for example, have attempted to balance the rights of free speech and press with the constitutionally guaranteed right of a fair trial. On the other hand, courts have consistently ruled that freedom of expression takes precedence over the right to personal privacy and the right to reputation, neither of which is explicitly guaranteed by the Bill of Rights.

Giving freedom of expression a preferred position presumes that government action that limits free speech and free press to protect other interests is usually unconstitutional. This presumption forces the government to bear the burden of proof in any legal action challenging the censorship. The city, county, state or federal government must prove to the court that its censorship is, in fact, justified and is not a violation of the First Amendment. In most instances the government must only prove that the accused violated the law, not that the law itself is constitutional. Were it not for this presumption, the persons whose expression was limited would be forced to convince a court that they had a constitutional right to speak or publish. This difference sounds minor, but in a lawsuit this presumption means a great deal.

While this theory retains some of the negative features of ad hoc balancing, by tilting the scales in favor of freedom of expression, it adds somewhat more certainty to our definition of freedom of expression. By basing this balancing strategy on a philosophical foundation (the maintenance of all rights is dependent on free exercise of speech and press), it becomes easier to build a case in favor of the broad interpretation of freedom of expression under the First Amendment.

AD HOC BALANCING THEORY

This theory says that free expression is just one important right, and a separate decision should be made with regard to all different kinds of speech. This does not guarantee any predictability on what right will win out ultimately.

Freedom of speech and press are two of a number of important human rights we value. These rights often conflict. When conflict occurs, it is the responsibility of the court to balance the freedom of expression with other values. For example, the government must maintain the military to protect the security of the nation. To function, the military must maintain secrecy about many of its weapons, plans and movements. Imagine that the press seeks to publish information about a secret weapons system. The right to freedom of expression must be balanced with the need for secrecy in the military. This theory is called ad hoc balancing because the scales are erected anew in every case; the meaning of the freedom of expression is determined solely on a case-by-case basis. Freedom of the press might outweigh the need for the government to keep secret the design of its new weapons, but the need for secrecy about a new fighter plane might take precedence over freedom of expression.

Ad hoc balancing is really not a theory; it is a strategy. Developing a definition of freedom of expression on a case-by-case basis leads to uncertainty. Under ad hoc balancing we will never know what freedom means except as it relates to a specific, narrow problem (e.g., the right to publish information about some government secret). If citizens cannot reasonably predict whether a particular kind of expression might be protected or prohibited, they will have the tendency to play it safe and keep silent. This is known as a “chilling effect” on speech. This will limit the rights of expression of all persons. Also, ad hoc balancing relies too heavily in its final determination on the personal biases of the judge or justices who decide a case.

AUTHORITARIAN CONTROL THEORY

According to this theory, people may not be intelligent enough to understand the power of bad speech so the government should control. The control over speech will protect people and keep peace. This theory advocates that decisions are easily made as government will determine whether speech is acceptable. For more on this, please refer to Four Theories of the Press.

MEIKLEJOHNIAN THEORY

Philosopher and educator Alexander Meiklejohn presented the legal community with a rather complex set of ideas about freedom of expression in the late 1940s. Meiklejohn argued that freedom of expression is worth little as an abstract concept; that its primary value is as a means to an end. That end is successful self-government or, as Meiklejohn himself put it, “the voting of wise decisions.” Freedom of speech and press are protected in every constitution so that the system of democracy can function, and that is the only reason they are protected. Expression that relates to the self-governing process must be protected absolutely. There can be no government interference with such expression. Expression that does not relate to the self-governing process is not protected absolutely. The value or worth of such speech must be balanced by the courts against other rights and values. Meiklejohnian theory thus represents a hierarchical approach with political speech placed at the top of this hierarchy.

Critics of this theory argue in a telling fashion that it is not always clear whether expression pertains to self-government (public speech) or to other interests (private speech). While not providing the specific definition sought by critics, Meiklejohn argued that a broad range of speech is essential to successful self-government. He included speech-related education (history, political science, geography, etc.), science, literature and many other topics. This theory has been embraced by some members of the Supreme Court of the United States, most notably former justice William Brennan. American libel law was radically changed when Brennan led the Supreme Court to give First Amendment protection to persons who have defamed government officials or others who attempt to lead public policy, a purely Meiklejohnian approach to the problem.

MARKETPLACE OF IDEAS THEORY

The marketplace of ideas theory, writes professor Matthew Bunker, “represents one of the most powerful images of free speech, both for legal thinkers and for laypersons.” It could be taken as “the truth-seeking rationale for free expression.” Although the theory itself can be traced back to the work of poet John Milton and John Stuart Mill, it was US Supreme Court Justice

Oliver Wendell Holmes Jr. who introduced the marketplace rationale for protecting speech to First Amendment case law more than 85 years ago. In his dissent in *Abrams v. United States*, Holmes famously wrote:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

Today, the economics-based marketplace metaphor consistently dominates the Courts discussion of freedom of speech. For instance, in writing for a unanimous Supreme Court in 2003 in *Virginia v. Hicks*, Justice Antonin Scalia described how overbroad laws—laws that are drafted so broadly that they punish a substantial amount of protected free speech along with unprotected speech—are unconstitutional because they harm “society as a whole, which is deprived of an uninhibited marketplace of ideas.”

The marketplace theory, however, is often criticized by scholars. Common condemnations are that much shoddy speech, such as hate speech, circulates in the marketplace of ideas despite its lack of value and that access to the marketplace is not equal for everyone. In particular, those having the most economic resources (today, large conglomerates such as Viacom, News Corp. and Clear Channel) are able to own and to control the mass media and, in turn, to dominate the marketplace of ideas. Nonetheless, law professor Martin Redish observes that “over the years, it has not been uncommon for scholars or jurists to analogize the right of free expression to a marketplace in which contrasting ideas compete for acceptance among a consuming public.”

The premise of this idealistically free and fair competition of ideas is that truth will be discovered or, at the very least, conceptions of the truth will be tested and challenged.

LESSON 21

UNIVERSAL MEDIA LAWS: AN INTRODUCTION

INTRODUCTION

Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.

Progress has been made in recent years in terms of securing respect for the right to freedom of expression. Efforts have been made to implement this right through specially constructed regional mechanisms. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting. New threats are emerging too, for example with global media monopolies and pressures on independent media outlets.

RIGHTS AT STAKE

(A) THE RIGHT TO FREEDOM OF EXPRESSION AND OPINIONS

The right to freedom of expression upholds the rights of all to express their views and opinions freely. It is essentially a right which should be promoted to the maximum extent possible given its critical role in democracy and public participation in political life. There may be certain extreme forms of expression which need to be curtailed for the protection of other human rights. Limiting freedom of expression in such situations is always a fine balancing act. One particular form of expression which is banned in some countries is "hate speech".

There may be some views which incite intolerance or hatred between groups. This raises the debate about whether such hate speech, as it is known, should be restricted. An extreme example of this is the use of the mass media to promote genocide or racially-motivated attacks, such as the role played by Radio-Télévision Libre des Milles Collines in the Rwandan genocide in 1994. In some countries hate speech laws have been introduced to outlaw such expression. There is a fine balance between upholding the right to freedom of expression and protecting other human rights. The success of such laws has often been questionable and one of the consequences has been to drive hate speech underground. While it may be necessary to ban certain extreme forms of hate speech and certainly to make its use by the state prohibited, parallel measures involving the promotion of a pluralistic media are essential to give voice to counter viewpoints.

(B) THE RIGHT TO SEEK, RECEIVE AND IMPART INFORMATION AND IDEAS

Restrictions on individual journalists: The freedom to impart information can come under attack in a variety of ways and particularly impinge on the freedom of the press. Pressure on journalists poses a very significant threat.

Informal censorship refers to a variety of activities by public officials - ranging from telephone calls and threats to physical attacks - designed to prevent or punish the publication of critical material. The right of journalists to protect their sources is also important in ensuring the free flow of information on matters of public interest. International and regional human rights mechanisms have asserted that journalists should never be required to reveal their sources except under certain conditions (it is necessary for a criminal investigation or the defence of a person accused of a criminal offence; they are ordered to do so by a court, after a full opportunity to present their case; necessary implies that the information cannot be obtained elsewhere, that it is of great importance and that the public interest in disclosure significantly outweighs the harm to freedom of expression from disclosure).

Privacy laws can impede investigative reporting aimed at exposing corrupt and illegal practices. Privacy laws, while important in protecting the private affairs of individuals, should not be misused to deny discussion of matters of public concern.

The media should be free to report on conflicts and public scrutiny in such situations is essential to controlling humanitarian and human rights abuses. Exclusion of the media is a very severe restriction on freedom of expression and information in this regard and restrictions should only be placed where there are clear safety concerns. Elections are other times when the freedom of the press to provide balanced and impartial information becomes critical and more vulnerable to repression by political actors.

Structural restrictions on the press: These call into question whether the media are free from political control at an institutional level. Restrictions can take the form of press laws which allow for government interference in the media, or which impose unwarranted restrictions on published content. All bodies with regulatory authority over the media, print or broadcast, should be fully independent of government. Processing of license applications should be open and transparent, with decisions about competing applications being made on the basis of pre-established criteria in the interest of the public's right to know. In addition, the powers of broadcast regulatory bodies should be limited to matters relating to licensing and complaints.

Media monopolies are another way in which the right to receive information from a variety of sources is restricted. State broadcasting monopolies do not serve the public interest but then in some smaller markets, a monopoly newspaper may be the only way to provide access to local news. Rules on monopolies need to be carefully designed to promote plurality of content, without providing the government with an opportunity to interfere in the media.

Other examples of "structural censorship" i.e. use of economic measures by governments to control information, include preferential allocation of government advertising, government control over printing, distribution networks, or newsprint and the selective use of taxes.

Access to information held by public authorities is another aspect of the freedom of information debate. International/regional human rights mechanisms have asserted the public's right to know and urged governments' to adopt legislation along the following lines: the legislation should be guided by the principle of maximum disclosure; public bodies should be under an obligation to publish key information; public bodies should actively promote open government; exceptions should be clearly and narrowly drawn and subject to strict 'harm' and 'public interest' tests; individuals should have the right to appeal against a refusal to disclose information to an independent administrative body, which operates in a fair, timely and low-cost manner; the legislation should provide protection for 'whistleblowers' who release information on wrongdoing.

New technologies, such as the Internet, and satellite and digital broadcasting, offer unprecedented opportunities to promote freedom of expression and information. Action by the authorities to limit the spread of harmful or illegal content through the use of these technologies should be carefully designed to ensure that any measures taken do not inhibit the enormous positive potential of these technologies. The application of rules designed for other media, such as the print or broadcast sectors, may not be appropriate for the internet. Obviously, limitations on such technologies will be a fine balancing act between defending the freedom of expression and information and ensuring protection from abuses e.g. spread of child pornography.

(c) These rights can only be restricted in certain circumstances: to protect the rights and reputations of others or to protect national security, public order, public health or morals.

Restrictions in the name of public order and national security can often be excessively broad and vague. International and regional bodies have said that such restrictions should only be imposed where there is a real risk of harm to a legitimate interest meaning there is a significant risk of imminent harm; the risk is of serious harm, that is to say violence or other unlawful action; there is a close causal link between the risk of harm and the expression; the expression was made with the intention of causing the harm.

Criminal sanctions accompany such restrictions. Often the expression in question may not pose a clear risk of serious harm to public interest and still it is subjected to penal sanctions, including imprisonment. International/regional human rights mechanisms on freedom of expression have

concluded that imprisonment should not be imposed except in the very most extreme circumstances where there is intentional incitement to imminent and serious lawless action.

Criminal defamation laws still exist in some states to protect public figures from injury to their reputations. Such laws have a limiting effect on freedom of expression and are frequently abused in cases where there is no public interest at stake. International and regional human rights institutions have recommended that such laws should be abolished and replaced with civil defamation laws.

Civil defamation laws can also be misused to censor criticism and debate concerning public issues. International/regional human rights bodies have said that civil defamation laws should observe the following principles: public bodies should not be able to bring defamation actions; truth should always be available as a defence; politicians and public officials should have to tolerate a greater degree of criticism; publications regarding matters of public interest which are reasonable in all the circumstances should not be considered defamatory; damage awards should be proportionate to the actual harm caused and should take into account alternative remedies such as apologies and corrections.

Courtroom restrictions: There are various laws falling under the contempt of court rubric which restrict the flow of information in order to protect the administration of justice. Some restrictions exist to ensure a fair trial and to avoid a “trial by the media.” Other restrictions are more to do with protecting the court from being “scandalised”. There are increasing questions about whether freedom to criticise the judiciary should be limited in this way. Having cameras in the courtroom has become a lively area of debate in recent years. Again, as with many other questions to do with the freedom of expression, there is a fine balance to be struck between the desirability of opening up the judicial system on the one hand and protecting the privacy of victims and their families on the other.

INTERNATIONAL AND REGIONAL INSTRUMENTS FOR PROTECTION AND PROMOTION

BRITISH MAGNA CARTA (1215)

Article 11 of the French Declaration of the Rights of Man and Citizen, The French Revolution, 1789 : Freedom of Expression is one of the most precious rights of man.

Every individual has freedom to form his or her own opinions free from external indoctrination and to defend them in the “free market of ideas” without fear of repression.

Freedom of expression is an essential component of the individual's privacy, requiring absolute protection against external interference

International legal instruments take the form of a treaty (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are ratification or accession. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty enters into force, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

The following international instruments determine standards for the protection of the right to freedom of expression:

UNITED NATIONS

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) (ARTICLE 19)

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on 10 December 1948 and provides human rights standards accepted by all member states. The UDHR represents the normative basis that led to formulating the standards for freedom of expression. Article 19 states that "Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

International Covenant on Civil and Political Rights (1966) (article 19)

The International Covenant on Civil and Political Rights, also known by its abbreviation ICCPR, entered into force in 1976. It elaborates the principles laid out in UDHR and is legally binding on all states who have signed and ratified its provisions. Article 19 of the ICCPR stipulates that:

"(1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."

UN Special Rapporteur on Freedom of Opinion and Expression

The office of the UN Special Rapporteur on Freedom of Opinion and Expression was established by resolution of the UN Commission on Human Rights in 1993. The mandate of the Special Rapporteur requires that information be gathered from governments, NGOs and others on the discrimination, violence or harassment of persons, including professionals, in the exercise of their right of freedom of opinion and expression. The Rapporteur submits an annual general report plus country reports on site visits, and makes recommendations on the better promotion and implementation of these rights. The Special Rapporteur focuses on both broad thematic issues as well as individual cases in which he intervenes through urgent actions and communications. The rapporteur is able to visit countries for on-site assessment at the invitation of the government in question.

The guarantees of freedom of expression in the Universal Declaration and ICCPR are very general and the Special Rapporteur has sought to clarify the precise nature of this right, by making a number of statements and declarations, often in conjunction with other human rights mechanisms, containing authoritative interpretations of these articles.

Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996)

These principles were adopted by a group of experts in international law and endorsed by the UN Special Rapporteur in his annual report of 1996.

Article 19, an NGO campaigning for the right to freedom of expression, has been instrumental in coordinating the activities of international and regional mechanisms. It has convened meetings to bring together the UN Special Rapporteur, the OAS Special Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media. These three institutions have made a number of joint declarations on the issue of freedom of expression.

Convention on the International Right of Correction (1952)

This treaty offers a mechanism whereby states can clarify differences or problems arising from incorrect or misleading news dispatches.

A number of UN treaties concerned with the rights of specific groups expressly or implicitly protect their rights to freedom of expression. Such concerns have therefore been raised with the bodies overseeing the implementation of these treaties:

International Convention on the Elimination of All Forms of Racial Discrimination (1965) (article 5)

Racial and ethnic minorities equally should not be discriminated against and have equal access to airing their views and sharing information of concern to them. Broadcasters also have a responsibility to promote a culture of tolerance and ensure that their broadcasts do not become a vehicle for spreading hatred and contempt of minority groups. Violations of the treaty can be raised with the Committee on the Elimination of Racial Discrimination.

Convention on the Elimination of Discrimination Against Women (1979) (article 3)

Equal access to and representation of women in the media are crucial to ensuring proper coverage of issues of concern to women and to enable their full participation in public decision making. Effective measures need to be taken to combat discrimination against women and to promote their access to the media. Breaches can be raised with the Committee on the Elimination of Discrimination Against Women.

Convention on the Rights of the Child (1989) (article 13)

This treaty clearly establishes not only children's right to freedom of expression, but also their right to have their views heard and to be given due weight in matters concerning them. States should take positive measures to ensure that children are given effective opportunities to provide input into public decisions affecting them, for example in the areas of education, health and prevention of crime. Violations of these rights can be taken up with the Committee on the Rights of the Child.

AFRICAN UNION (FORMERLY ORGANIZATION OF AFRICAN UNITY, OAU)

African Charter on Human and Peoples' Rights (1981) (article 9)

Article 9 of the main African human rights treaty provides for freedom of expression.

In November 2000, the African Commission on Human and Peoples' Rights (ACHPR), and Article 19 adopted a joint statement noting the importance of freedom of expression, and the limited protection given to this important right by Article 9 of the Charter. A Declaration of Principles of Freedom of Expression was adopted by the ACHPR in October 2002.

COUNCIL OF EUROPE

The Council of Europe is a regional intergovernmental organization consisting of 45 countries. It aims to defend human rights, parliamentary democracy and the rule of law. All members of the European Union also belong to the Council of Europe.

European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (article 10)

Freedom of expression is protected by article 10 of the European Convention and has been the subject of a relatively large number of cases before the court. The European Court of Human Rights has promoted the free flow of information and ideas, established important precedents which limit state powers to restrict freedom of expression, particularly in the areas of press and broadcasting freedom, political expression, defamation, privacy, national security and demonstrations. Some decisions of the court however have been widely criticized for failing to uphold the right to freedom of expression. and resettlement, whatever the origin and nature of their disability."

ORGANIZATION OF AMERICAN STATES (OAS)

American Convention on Human Rights (1969) (article 13)

The American Convention on Human Rights, which entered into force in 1978, protects the right to freedom of thought and expression, the right to receive and impart information and for restrictions to be imposed on this right only for limited circumstances, reputations of individuals, national security, public order etc.

OAS Special Rapporteur on Freedom of Expression

This institution was created by the Inter-American Commission on Human Rights in October 1997 to strengthen the implementation of the right to freedom of expression. The mandate of the Special Rapporteur includes the collection of information, the preparation of annual and thematic reports

and country visits. It also covers immediate notification of serious situations, or early warning, as well as promotional activities.

The Inter-American Commission on Human Rights established a **Voluntary Fund for Freedom of Expression**, to which member states could contribute, to facilitate the functioning of the office of the special rapporteur. Promotional activities have included, the development of declarations, networks, and technical support to states.

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

The Organization for Security and Co-operation in Europe (OSCE) is the largest regional security organization in the world with 55 participating States from Europe, Central Asia and North America. OSCE was created by the 1975 Helsinki Final Act which contained a provision to "respect ... human rights and fundamental freedoms, including freedom of thought, conscience and religion, and belief", as well as "equal rights and self-determination of peoples".

The OSCE has been especially concerned with the freedom of the media which is one aspect of the broader issue of freedom of expression. Such principles have been reiterated in a number of OSCE documents e.g. 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (precursor to the OSCE). The OSCE has now created a special institution to deal with these freedoms.

OSCE Representative on Freedom of the Media

In 1997 the OSCE established a Representative on Freedom of the Media following an OSCE Heads of State declaration in 1996 that OSCE commitments to free press and media needed strengthening. The OSCE Permanent Council set out the mandate of the Representative by Decision 193 "to strengthen the implementation of relevant OSCE principles and commitments [relating to a free, independent and pluralistic media] as well as to improve the effectiveness of concerted action by the participating states based on their common values."

The Representative is required to carry out a variety of activities including observing media developments in OSCE states; and ensuring a rapid response to serious problems such as obstruction of media activities in cooperation with the concerned state and other parties.

The Representative reports to the Permanent Council frequently and other OSCE bodies and makes recommendations. He/she may also make oral or written statements on issues of urgent concern and interventions with particular OSCE states. He/she also makes country visits some of which result in in-depth reports and is able to receive information on violations from a variety of sources.

Human rights observers say that the OSCE Representative operating in the more close-knit structure of the OSCE has more political commitment and resources than the UN Special Rapporteur, for example, and is also able to undertake promotional or project activities e.g. holding conferences, producing publications, providing technical support and advice to governments, financial and material assistance to set up independent media outlets etc.

The Organization of Islamic Conference (OIC)

The Charter of the Organization of Islamic Conference, 57 state parties, established in Morocco in September 1969. Although Freedom of Expression is not explicitly mentioned in the Charter, among the objectives of the Charter, is (Chapter 1) Article 1, paragraph 12:

To protect and defend the true image of Islam, to combat defamation of Islam and encourage dialogue among civilisations and religions;

The Standing Committee for Information and Cultural Affairs of the OIC: established pursuant to resolution 13/3 – P (IS) adopted by the Third Islamic Summit Conference, held in Saudi Arabia in January 1981.

The Cairo Declaration on Human Rights in Islam, signed in August 1990, 54 states parties

Article 22:

a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

The League of Arabs

Arab Charter on Human Rights, 2004, entered into force March 15, 2008, 7 state parties

Article 32:

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

National Protection and Service Agencies

Countries that have ratified these international and regional treaties have agreed to meet their obligations under these conventions by implementing these provisions fully at the national level. This should mean in the first instance reviewing their laws relating to freedom of expression and adapting these to ensure they are in conformity or adopting new laws to meet these requirements.

Implementation of the right to freedom of expression remains problematic in many countries and governments in many cases are failing to fulfil their obligations. Problems and concerns with implementation in individual countries is well documented in reports of the Special Rapporteurs of the UN, OAS and OSCE as well as submissions to them by NGOs.

LESSON 22

UNIVERSAL DECLARATION OF HUMAN RIGHT: THE ARTICLE 19

INTRODUCTION

The role of the media is vital in generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over time. It is through the media that people generalize their experience, learn from others and become aware that government does not always tell them the truth. It is how a constructive political debate about options and policies develops. The media is crucial to the exercise of freedom of expression because it is only meaningful if the right is exercised in public; what a person says privately is important, but to have greater effect it needs public expression where others can hear or read it. The media acts as our voices by providing a vessel for information and ideas, a vessel through which we communicate with each other. In order for the media to fulfil this function, it must guarantee its objectivity; the journalist should always be a neutral observer, unengaged with events but faithfully recording them. The following information will outline the key requisites necessary for a robust and balanced media industry and highlight some of the issues that are facing working journalists today.

THE RIGHT TO FREEDOM OF EXPRESSION

The starting point of any structural stability for the media is a law guaranteeing freedom of expression. The basis for any such law is clearly set out in a range of international standards.

Article 19 of the Universal Declaration on Human Rights (UDHR), guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a declaration, was not intended to be binding on States. However, it is widely regarded as having acquired legal force since its adoption in 1948, as customary international law.

The International Covenant on Civil and Political Rights (ICCPR), a treaty, ratified by over 145 States, imposes formal legal obligations on States Parties to respect a number of the human rights set out in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found at Article 19 of the UDHR. Guarantees of freedom of expression are also found in all three major regional human rights systems, at Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and Peoples' Rights.

Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in underpinning democracy. In its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated, "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated." The European Court of Human Rights has stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.

These international standards provide the basis upon which laws guaranteeing freedom of expression can be drafted. Such laws are not just valuable in themselves – societies that are based upon the rule of law, in which the security of citizens is paramount, need to spell out the rights of the citizens in clear and unambiguous terms. Such laws have the advantage of making it clear to people what their rights are, and what the obligations of public administrators are in respect of those rights. It helps the watchdog function of the media – and of civil society – immensely by providing benchmarks to measure progress.

OTHER INTERNATIONAL COVENANTS AND CONVENTIONS MENTIONING ARTICLE 19

The right is enshrined in Articles 19 and 20 of the *International Covenant on Civil and Political Rights*:

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

It is contained in Articles 12 and 13 in the *Convention on the Rights of the Child*:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

It is also contained in Article 13 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*:

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputation of others;
 - b. For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;
 - c. For the purpose of preventing any propaganda for war;
 - d. For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The Convention on the Rights of Persons with Disabilities contains this right in **Article 21**:

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

The right is also contained in Article 9 of the *African Charter on Human and Peoples' Rights*:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

CHALLENGES TO FREEDOM OF EXPRESS (FOE) IN PRESENT DAY INFORMATION SOCIETY

- New Opportunities, but also new limitations of FOE
- Internet Security and Data Protection
- (Hidden) Censorship of the Internet, filtering of harmful or political content
- Illicit and harmful content: child pornography, hate speech, racism, Nazi propaganda, defamation, incitement to terrorism etc.
- Protection of privacy, of minors, of society
- Brave new digital world?

Chronology

- 1948 Universal Declaration of Human Rights
- 1966 International Covenant on Civil and Political Rights
- 1966 International Covenant on Economic, Social and Cultural Rights

- 1978 UNESCO Declaration of Fundamental Principles concerning the contribution of the media to strengthening peace and international understanding, to the promotion of human rights and to countering racism, apartheid and incitement to war
- 1983 General Comment N° 20 on Article 19 ICCPR
- 1993 UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression
- 1994 Resolution of the Commission on Human Rights on Freedom of Opinion and Expression
- 2003 World Summit on the Information Society I, Geneva
- 2005 World Summit on the Information Society II, Tunis

LESSON 23**EVOLUTION OF PRESS LAWS WITH SPECIAL REFERENCES TO SUB-CONTINENT AND PAKISTAN****THE PRE - PARTITION PRESS – A PROLOGUE**

The press had the status of non-conformist and was inimical in nature in its relations with the foreign rulers before the partition. The relations with the British regime were not like that appeared after the partition; rather the press performed more sacred duties of acting as an agent for freedom. However, after the partition in 1947, the crusading nature of press-government relations changed to adversarial.

In most of the cases, the editors were also the owners of the newspapers and were deeply involved in politics. Examples include Sir Syed Ahmad Khan who owned and edited many newspapers over the years, Moulana Zafar Ali Khan edited and owned daily *Zamindar* and daily *Comrade*, Moulana Muhammad Ali Johar, Moulana Abdul Kalam Azad, Hasrat Mohani and many others edited and owned newspapers, which played a pivotal role in the fight for freedom of Muslims in the sub-continent.

The journalists at that time were deeply involved in politics and were engaged in constant war with the British rulers. Politics was their passion, slogan and song. For them, the life and politics were synonymous and the pen was supposed to be used as a crusader for freedom and not as means for creating literary artefacts.

In 1937, there were only 32 English dailies and the same number of weeklies, which increased to 51 dailies and 258 weeklies before the eve of partition in 1947. Such a drastic increase happened in the circumstances, when the creation of a separate homeland for the Muslims appeared to be quite inevitable. The obvious reason for this increase was the effective role of the press that it played in the creation of Pakistan. Nonetheless, it was the time when the press was more volatile due to oppressive actions of the foreign rulers.

This nature of press-government relations developed after the war of independence in 1857. The colonialists started a reign of terror after the war, which resulted in change of nature of press-government relations. Earlier the press was in an embryonic phase and was fighting for the right of free expression. The Charter of Freedom of the Press that was presented by Ram Mohan Roy in 1823 against the government regulation restricting the freedom of the press clearly indicated this nature.

However, the British rulers taking the press as the main instrument of stirring the normalcy introduced stringent regulations to control this fierce social force. As a result of these steps, only 12 Urdu newspapers could survive out of total of 35 before the war. And, only one newspaper was edited by a Muslim journalist.

Although Hindu newspapers also waged a full-scale war against the rulers; however, the Muslim newspapers were regarded as the fomenters of revolt and its chief beneficiaries. But this suffrage could not change the press. Rather, it became more object-oriented and violent. Daily *Institute Gazette* of Syed Ahmad Khan carried the motto which read, "To permit the liberty of the press is the part of the Government, to preserve it is the part of the free people".

When the press's criticism of the foreign ruler mounted by end of the first decade of 20th century, the British rule introduced the Press Act 1910 to gag the press. Sir Herbert Risely while introducing the Act said, "the press proclaimed openly and by suggestions or allusion, that the only cure for the ills of India is independence". The printing houses were directed to obtain fresh declarations under this Act and securities were also required to be deposited. Moreover, the Magistrates were given discretionary powers to exempt any printing house from depositing security.

The Press Act played havoc with the press in the Indian sub-continent. Action was taken against more than 1990 newspapers, out of which 286 were issued warning to mend their behaviour towards the government, security of 705 newspapers was forfeited, and declaration of all new printing houses was cancelled.

All India Muslim League declared the Press Act as “the most objectionable piece of legislation – a slur on Government”. The press as a whole faced all the odds boldly with the assistance of people. The journalists were sentenced to imprisonment for different reasons for over years and the newspapers had to pay heavy financial costs for their daring stance against the government.

To add ferocity to the Press Act 1910, the government promulgated the Public Safety Ordinance and the Press Ordinance in 1930. These ordinances struck the press hard; consequently it faced the toughest of the times. The atrocities of the press did not end here. Defence of India Act, Central Publicity Board, The Press Act 1922, Press Emergency Powers Act 1931, Criminal Law Amendment Act 1932 and many other minor laws were introduced / promulgated to bring the press to its knees.

After the Pakistan Resolution in 1940, there had been many newspapers that played a significant role to oust the alien rulers from the Indian sub-continent. They did not agree to any compromise with the British rulers and never bowed their heads even under hard-pressed circumstances.

From the war of independence in 1857 to the partition in 1947, the government applied all means to gag and control the press. During this time, the press-government relations had not been friendly and pleasant due to their positions on extreme ends on a continuum. The press as a whole went all out to cultivate opinion against the British rulers and it supported all those movements that were meant to oust the foreign rulers from the sub-continent. Although Hindu press equally suffered the reign of terror by the British government; however, the Muslim newspapers were the main targets of the regime. The Muslim press sacrificed their freedom for the cause of larger freedom of the country from the despotic rule of British government.

Analysing the situation of journalism in the Indian sub-continent, it can be said that the press survived even under extreme odds. The press had negligible support from private sector to boost its economy and face the antagonist government. What appear more logical to comment on are two factors. Firstly, the press had ideological backing. And an ideology provides power. The professional standards of the press were dictated by its ideology on the basis of which it fought with the despotic rulers and survived. The profession of journalism was taken as a mission and not a business to earn money. That earned the press a high degree of respect from the masses.

Secondly, the people and the press had one and the same objective for which they had been fighting since long. That was freedom from the alien rule. The press played up rather functioned for the peoples’ objectives. It was the prime reason that daily *Zamindar* was managed to pay Rs.56,500.00 on eleven different occasions as security deposits.

JINNAH AND THE PRESS

Pakistan Muslim League (N) tributes Mr. Mohammad Ali Jinnah in the following words: (www.pmln.org.pk/quaideazam.php , retrieved on Sept 20, 2012)

“Father of the Nation Quaid-i-Azam Mohammad Ali Jinnah's achievement as the founder of Pakistan, dominates everything else he did in his long and crowded public life spanning some 42 years. Yet, by any standard, his was an eventful life, his personality multidimensional and his achievements in other fields were many, if not equally great. Indeed, several were the roles he had played with distinction: at one time or another, he was one of the greatest legal luminaries India had produced during the first half of the century, an ‘ambassador of Hindu-Muslim unity’, a great constitutionalist, a distinguished parliamentarian, a top-notch politician, an indefatigable freedom-fighter, a dynamic Muslim leader, a political strategist and, above all one of the great nation-builders of modern times. What, however, makes him so remarkable is the fact that while similar other leaders assumed the leadership of traditionally well-defined nations and espoused their cause, or led them to freedom, he created a nation out of an inchoate and down-trodden minority and established a cultural and national home for it. And all that within a decade.

For over three decades before the successful culmination in 1947, of the Muslim struggle for freedom in the South-Asian subcontinent, Jinnah had provided political leadership to the Indian Muslims: initially as one of the leaders, but later, since 1947, as the only prominent leader - the Quaid-i-Azam. For over thirty years, he had guided their affairs; he had given expression, coherence and direction to their legitimate aspirations and cherished dreams; he had formulated these into concrete demands; and, above all, he had striven all the while to get them conceded by both the ruling British and the numerous Hindus the dominant

segment of India's population. And for over thirty years he had fought, relentlessly and inexorably, for the inherent rights of the Muslims for a honourable existence in the subcontinent."

Stanley Wolpert tributes Muhammad Ali Jinnah in the following words:

"Few individuals significantly alter the course of history. Fewer still modify the map of the world. Hardly anyone can be credited with creating a nation-state. Mohammad Ali Jinnah did all three."

Primarily, Muhammad Ali Jinnah was a lawyer and a constitutionalist. He had a very clear perception of individual's rights and freedom and especially the freedom of the press. He advocated many cases for preserving the press freedom even without any invitation. He always welcome the criticism and disagreement to his point of view and considered it an education. Jinnah backed his view on individual liberties in the following rights:

"I do maintain, and I have drunk deep at the fountains of constitutional law, that a liberty of a man is the dearest thing in the law of any country and it should not be taken away in this fashion".

His ideas regarding the press freedom and responsibility of the press were highly commendable. He expressed his ideas on many occasions. On one of the occasions when he was addressing the Imperial Legislative Council in 1913, he said:

"I believe in criticizing government freely and frankly, but at the same time that it is the duty of every educated man to support the government when the government is right".

Jinnah vehemently criticized the Press Act 1910. He condemned other laws as well which were introduced to curtail the freedom of press. He regarded the parliamentarian as clergymen having no right to investigate the activities of the journalists.

When Pakistan came into being, the press was not quite developed. Lahore was the centre of journalistic activities. Besides, some newspapers were being published from Sialkot, Gujaranwala and Karachi. In East Pakistan, Dhahka and Chittagong were the main centres of journalism. The main newspapers were *Pakistan Times*, *Civil and Military Gazette*, *Zamindar*, *Inqalab*, *Ehsan*, *Shahbaz*, *Dawn*, *Nawa-e-Waqt*, *Unjam*, *Morning News* and *Jang* after the independence.

The journalists had idea of their power and responsibilities which was realised by Jinnah just before the independence. He said to the Muslim journalists' gathering in March 1947:

"You have great power. You can guide or misguide people. You can make or mar the biggest personalities. The power of the press is really great, but you must remember that this power which you are wielding is a trust. Look upon it as a trust and remember that you are guiding honestly and sincerely the progress and welfare of your nation. At the same time I expect you to be completely fearless, if I go wrong or for that matter, the League goes wrong in any direction of its policy or programme, I want you to criticize it honestly as its friend, in fact, as one whose heart is beating with the Muslim nation".

Jinnah took interest in the development of the Muslim press in the Indian sub-continent. Daily *Dawn* and *Manshoor* were published under his supervision. However, he never interfered in the internal affairs of the newspapers, and the fact was admitted by the editors too.

In his short life as the Governor General of the newborn country, he never deviated from his principles of fair play and free expression. Whenever any newspaper vomited poisonous thoughts through the articles or editorials, he left it on the other newspapers to make the press accountable for its deeds by portraying the true picture (Daily Hurriat, Karachi, December 25, 1982).

He was against the laws imposing restrictions on the fundamental human rights and liberties of the individual and the press. His remarkable stand on the subject becomes evident when we read his statement about the law presented before him for signature curtailing the press freedom: (Daily Sindh Observer, Karachi, March 11, 1948)

"All my life I have been fighting against these black laws, now you expect me to sign it. No, I will put my foot down on it".

LESSON 24**CONSTITUTIONAL PROVISIONS ON FREEDOM OF EXPRESSION IN PAKISTAN****INTRODUCTION**

Historically, restriction of the press has occurred in two ways. The first may be either censorship or mandatory licensing by the government in advance of publication; the second is punishment for printed material, especially that considered by the government to be seditious libel.

Freedom of the press is an extremely problematic problem/concept for most non-democratic systems of government since, in the modern age, strict control of access to information is critical to the existence of most non-democratic governments and their associated control systems and security apparatus.

Journalists are suppressed (often very brutally, through the use of police, military, or intelligence agencies) if any significant attempt is made by the media or individual journalists to challenge the approved "government line" on contentious issues.

DATA AGAINST JOURNALISTS

In such countries, journalists operating on the fringes of what is deemed to be acceptable will very often find themselves the subject of considerable intimidation by agents of the state. This can range from simple threats to their professional careers (firing, professional blacklisting) to death threats kidnapping, torture and assassination.

'Reporters Without Borders' reports that, in 2003, 42 journalists lost their lives pursuing their profession and that, in the same year, at least 130 journalists were in prison as a result of their occupational activities. In 2005, 63 journalists and 5 media assistants were killed worldwide. It means that there was 50% increase in the death rate of journalists worldwide

RIGHTS INCLUDED IN FOP**1. The Right To Freedom of Expression & Opinion:**

- a. It included that all media have the right to express their views and opinion freely.
- b. It has essential role in democracy and public participation in political life.
- c. Limiting the FoE&O means violating the basic human rights.
- d. Some critics says that before exercising the FoEP the element of hate speeches should be considered.
- e. The Journalist's right to seek, receive and impart information and ideas often comes under attack in verity of ways.
- f. The threats to journalists is the most significant factor which may be an informal censorship.
- g. It ranges from telephone calls, physical attacks- design to prevent or punish the publication of critical matter.
- h. They also harm the right to prevent the source of information.

2. Privacy Laws:

- a. These laws impede investigative reporting aimed at exposing corrupt and illegal practices.
- b. Privacy laws are mostly used to deny discussion of matters of public concern.

3. Free to report in War and Conflict Zones:

- a. the media should be free to report on conflicts and public scrutiny.
- b. It is not only for free reporting about the war and conflict but also spotlighting on humanitarian and human rights abuses.
- c. The experience of the Vietnam War led the U.S. government to restrict the access of reporters in combat areas in subsequent military encounters.
- d. This practice, used during the 1983 invasion of Grenada and the 1991 Persian Gulf War, was bitterly resented by many reporters.
- e. In domestic affairs, although a number of states have passed shield laws, which permit journalists to refuse to disclose confidential information and sources to law-enforcement bodies, the U.S. Supreme Court has recognized no unrestricted right of press confidentiality.

- f. During the better part of 2004 military operations were carried out in South Waziristan, a part of the tribal area, ostensibly to flush out terrorists, many of them believed to be foreigners, who had entrenched themselves in the area.
- g. Again access was denied to all those who wanted to assess the situation.
- h. Media persons were barred from entering the area and so were lawyers belonging to Frontier organizations.
- i. More recently the military appeared in and around Dera Bugti and Sui in Balochistan ostensibly to guard gas fields and frustrate the attempts of armed militants to spread panic and damage precious installations.
- j. The same regime of denial of access to the affected area and the people concerned has been in evidence.

The figures:

28 journalists were murdered in 17 countries last year, bringing to more than 500 the deaths of journalists on duty in the past ten years; at least 117 journalists are currently imprisoned in 25 countries; no less than 119 nations do not have a fully free press.

- The Abdul Hameed Hayatan, a young Baloch journalist who was kidnapped in the southwestern port city of Gwadar on 25 October (<http://en.rsfo.org/pakistan-a-report...>), was found beside the River Sami in Turbat, 40 km to the east, on 18 November.
- The “missing” journalist from the tribal areas, Hayatullah Khan Dawar, has been murdered.
- His body was found on Friday, seven months after his kidnapping from the mountains about six kilometres south of the town of Mir Ali in North Waziristan Agency.
- Mr Dawar is the third journalist to be assassinated in the tribal areas since the operation began there, the earlier two having been killed in Wana in February 2005. 18-6-2006.
- Mansoor Hassan Hashmi is a journalist from Pakistan who wrote for a local magazine, Crime.
- His investigations into honour killings, tainted pesticides, narcotic gangs and unsolved murders led him to be beaten up, poisoned and even rammed with a tractor.
- He fled Pakistan for the UK in 2002,

LEGAL PROVISIONS - BASES

Structural restriction on Press included Press laws and Licensing which negates the mythology that media should be free from governmental control. In Pakistan, following Laws governed licensing and media matters.

First, the British period enactment, the Press and Registration of Books Act, was narrowly interpreted to curtail the right to publish newspapers. The Act only required the printer and publisher of a newspaper to file a declaration with a District Magistrate so that the authorities could determine who was responsible for publishing the newspaper.

The Act was replaced with the West Pakistan Press and Publication Ordinance 1960, which made authentication of declaration much more difficult than before. District Magistrate could refuse on the basis of defence, external affairs, security of country, inadequate financial resources, editor's educational qualification. These conditions were retained when the Ordinance was revised in 1963 and remained in force till 1988, when some of the clauses of the ordinance were struck down by the judiciary.

The law that replaced the Ordinance was called Registration of Printing Presses and Publications Ordinance (RPPPO). This Ordinance held the field intermittently till a new law, Press, Newspapers, News Agencies and Book Registration Ordinance, was issued in October 2002.

LAWS AGAINST FREEDOM OF PRESS

During 1947-1960 the government also relied on the **Press (Emergency) Powers Act 1931** which had been enforced in British India in order to control nationalist activity. The enactment was meant to be a short-term law but the Government of Pakistan retained it on the statute book till 1960 when it was merged with the Registration of Books Act into the Press and Publications Ordinance. Under the Act action could be taken against publications on a number of grounds and it was

frequently used to suppress dissent, especially the demands by federating units for adequate share in power.

The economic measures by the government to control information included preferential allocation of government advertising government control over printing distribution networks, and the selective use of taxes.

SECRECY AND SECURITY

Access to information held by the public authority also used as a hindrance in freedom of Press. Contrary to the facts that Public Bodies under obligation to publish key information, maximum disclosure, appeal against the refusal of disclose of information by public servant. But there are several laws which are governing under secrecy and security. The State equipped itself with several laws that increase its power to control and punish the press.

An **Official Secrets Act** had been adopted in 1926 and it was used against journalists by holding their disclosures to be contrary to the security interests of the State.

In 1952 came the **Security of Pakistan Act**. This law gives the Federal Government powers to ask an editor, publisher, or printer to disclose the source and to prohibit the publication, sale or distribution of a document and to forfeit the same if it is of the opinion that the document contains matter likely to endanger the defense, external affairs or security of Pakistan. The law also empowers the federal and provincial governments to impose pre-censorship.

The **Maintenance of Public Order Ordinance**, issued in 1960, includes the many harsh provisions. Authorities can prohibit the publication of any material, require a publisher to publish material supplied by government within the time and in the manner prescribed by it, impose pre-censorship, close down a publication or a press for a specified period and force a journalist to disclose his confidential sources. It also empowers the government to detain people including journalists.

SECRECY AS A RULE

Authority in Pakistan as a rule wishes to operate largely in secrecy, allowing the public information only about its decisions or orders. The citizens are not supposed to be entitled to know reasons and the process leading to a particular decision. The incidents/reasons of war of Kashmir 1947-48, the war of 1965, 1971 are still in dark.

A large-scale military operation was launched in Balochistan in the middle of seventies; the people were never taken into confidence about the details of the operation and the cost borne by the civilians. Similarly, media persons were denied access in Kargil war not only to the place of conflict but also the territory around it.

CRIMINAL & PENAL AUTHORITY AGAINST MEDIA

In the pretext of public order the media is widely be restricted not to perform its function as per standard rules. They are brought under criminal justice if they insist to carry on their function. The most prominent are as under:

In addition the Penal Code contains several provisions that have often been used to restrict freedom of expression and flow of information.

A novel provision, **Section 123 A**, describes as an offence anything which is prejudicial to the safety or the ideology of Pakistan or which amounts to “abuse” of Pakistan.

The provision that covers sedition (**Section 124 A**) also is extremely broadly worded. It has been invoked to punish criticism of government and has been applied to journalists on many occasions.

Section 153 B deals with incitement of students or others to take part in political activity that disturbs or is likely to disturb public order.

Section 295 C, known as the principal blasphemy provision, also threatens the right to freedom of expression.

This section reads as follows:

Use of derogatory remarks etc. in respect of the Holy Prophet: Whoever by words either spoken or written or visible representation, or any imputation, innuendo, or insinuation directly or indirectly defiles the sacred name of the Holy Prophet Muhammad (Peace be upon him) shall be punished with death.

Several provisions of the Penal Code impose restrictions only on Ahmedis who were declared by the State to be outside the pale of Islam while they claimed themselves to be Muslims.

Section 99 A of the **Criminal Procedure Code** also allows the executive extraordinary powers to proscribe publications.

It authorizes provincial governments to seize any publication which appears to contain “any treasonable or seditious matter or any matter which is prejudicial to national integration or any matter that promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Pakistan or which is deliberately and maliciously intended to outrage the religious feelings of any such class, or insulting the religions or religious beliefs of that class”.

Action Against Journalists and Press

Five eveningers published from Karachi were banned for 30 days and the printing presses sealed on the ground that they had been publishing obscene photographs, under **section 295 of PPC**

On August 31, 2004, a week before the Urdu daily Islamabad Times was scheduled to be launched banned, its printer Abdul Aziz, his son and two employees were arrested by the Police, closed the press and seized the equipment.

Because its editor Masood Malik asked an unwelcome question to the then Chief executive General Pervaz Musharraf in a news conference

A monthly ‘Kargil International’, published from Skardu, Gilgit Baldastan, was banned by the home department and all copies of the magazine confiscated on September 8, 2004, its publisher Ghulam Shehzad Agha, was arrested.

An FIR was registered, on November 3, 2004, which labeled charges that the magazine designed to instigate the public against Pakistan President, General Pervez Musharraf in its July-August 2000.

Journalist and film - maker Khawar Mehdi, who had crisis- crossed Afghanistan a number of times during the resistance to the Soviet forces and made many films, was arrested, along with two French journalists, in December 2003.

The Frenchmen were accused of traveling to Quetta without permission. They were soon afterwards put on trial and each was sentenced to imprisonment for a year and to pay Rs. 100,000 in fine.

On appeal their sentence was changed to payment of Rs. 200,000 each as fine and they were allowed to return home. Khawar Mehdi was treated differently.

Sarwar Mujahid, a correspondent working for a leading Urdu daily. Nawa-i-Waqt, was arrested and ordered to be detained for three months. He was punished for reporting excesses committed by a paramilitary force called Rangers on tenants settled on military farms in District Okara.

Rasheed Azam, a journalist based at Khuzdar, in Balochistan province was arrested on charges of sedition on the ground that he had been distributing posters in which the army had been maligned. For several months his bail applications were spurned arbitrarily.

DEFAMATION & LIBEL

Media is supposed to report on every matter. But media is mostly suppressed through the laws of Libel and defamation. All those persons whose corruptions and illegal activities are exposed by the media take the shelter of Defamation and Libel laws.

Apart from these laws, the statutory laws such as Contempt of court is also supposed a restriction against Freedom of Press and Expression

PAKISTANI CONTEXT

Relations between government and the press started becoming bitter soon after independence as a result of the conflict between the central leadership, that wished to concentrate powers in its hands,

and the units of the federation, that demanded respect for pre-independence pledges that the constituent units of the federation would be autonomous.

The press freedom report for South Asia issued by International Federation of Journalists noted that journalists had been charged with some of the most serious crimes possible, including blasphemy and sedition, and that torture, arrest, murder, and imprisonment were some of the measures used against.

The Council of Pakistan Newspapers Editors (CPNE) complained last year that the government had threatened action against some newspapers after accusing them of publishing material that projected terrorists in a favourable light. The CPNE also condemn government efforts to control media through the practice of issuing press advice. The CPNE alleged that release of government advertisements to newspapers that did not abide by the press advice had been suspended. Sometimes action against journalists is not taken under media-related laws but other regulations. A recent incident was the maneuver to disrupt the functioning of FM radio 103 which among other things used to broadcast BBC news bulletins.

Pakistan got the legacy Press Persecution that was left by the British colonial government in India. The early laws in Pakistan were very hard and unfriendly for media. It was not an easy work to start a newspaper. Moreover the continuity of publication was more difficult task. General Ayub Khan in 1962 promulgated Press & Publication Ordinance in Pakistan.

This ordinance remained in forced till 1988. the than government cancelled the PPO and promulgated RPPO. It was more or less to the former Press Law. The Musharaf government in 2000 promulgated three major laws about Media they included Press Registration Act, Freedom of Information Act and PEMRA act 2002

Actions Against Press

Most of the actions taken against press are under following covers:

The Freedom Of Press is mostly attacked under the pretext of “sovereignty and integrity, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt, court, defamation, or incitement to an offense”.

Laws such as the **Official Secret Act and Prevention of Terrorist Activities, Public Order National Interest**, etc have been used to limit press freedom.

Concluding Remarks

To ensure media freedom following steps are essential: 

- Media should be free to publish news and Ideas without govt. control
- Media should have freedom to move without any restrictions
- Government should not have the authority to prevent the media from publishing things that it thinks against politically instability
- Media should publish matter that comes to its desk across the globe including those from enemy.
- Media freedom is essential for establishing for a democratic government, transparency, accountability and individual dignity.
- Media freedom is associated with free flow of information
- Remember media liberties are only ensured through democracy, Rule of Law and tolerance

LESSON 25**DEFAMATION LAW(S)****WHAT IS DEFAMATION?**

“Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation.”

DEFAMATION ORDINANCE 2002

The definition above applies to person(s) either defamed or who may have attempted to defame others. It is all encompassing in the sense that it generally holds for everyone residing in the country. The media commits a defamatory act by propagating false statement(s) to a wider audience. The offence may take any form irrespective of whether the defamatory words have been published or broadcast. This means that even an act or unpublished statement can prompt a defamatory suit. Only a court can then decide on its merits.

Defamation can take two forms in legal sense, namely slander and libel.

Slander is a false oral statement or representation that may not have been published. In case the same is published both the publisher and reporter can be accused of libel. By definition, libel a false written statement amounting to defamation of another person. It also includes documentary or visual statement or representation made either by ordinary means or expression or by electronic or other modern means or devices that amounts to defamation. The libel therefore can be a statement printed, broadcast or telecast. The person who made the statement may be charged for committing slander.

1. ANY ACTION

Conversation of a journalist before his colleagues, or any of his act or actions, which have bearing on the reputation of another person all may constitute defamation. This may also include certain questions in a press conference not phrased in a temperate language or any physical act or gesture that may bring disrepute to another person.

2. FALSE STATEMENT

The condition of being wrongful is a basic one. You have to be factually as well as legally incorrect to be wrongful. Once the defamation suit is filed the court of law determines the truthfulness of a statement. At times false statements published in a section of the press go unnoticed for many reasons. Some statements cause the party in question to react with different facts and figures and prove that the statement made or published is a false one. To cater such a possibility journalists must get their information verified through different sources. For instance, while writing an article he should be sure about the authenticity of the facts and figures he is producing to substantiate his view on a subject. This can be done either by acquiring relevant documents or cross checking the data through other sources. Another example illustrates a press conference where a politician levels allegation against his political rival. Now the allegation may be a false one. The beat reporters thus have to cross check and verify the claims made by the politicians before they report the event.

Mere attribution in such a case will not work, especially if the event was aired or published for wider consumption. Doing so would bring responsibility to the broadcaster or publisher and even the reporter. A reporter therefore should always double check the authenticity of his report before it goes into printing.

3. FALSE REPRESENTATION

Unpublished conversation can be an example of representation. This may include a representation by a subordinate before a higher authority against another of his superiors. This again is an issue of representing the facts. False representation may also include a journalist introducing himself with false or wrong identity, like claiming to be representing someone with

intentions to in fact bring a bad name to that someone through certain actions. Again a false representation of facts against another person will not be reported, published or broadcast unless the media organization accepts the partial responsibility of propagating the same at a wider scale.

4. VERBAL

The person accused of making defamatory statement is described in law as the author. 'Author' means the originator of the statement, who might have made the statement verbally or in writing through a press release or a journalist reporting the same.

There may be times when there is no written or recorded proof of a defamatory statement made. The defamation suit can still be filed against any person, including journalist. Journalists normally think that it is just what they publish which matters. This is not so because even the words they utter in a private company carry legal consequences. As stated earlier the defamation laws even though media focused are basically applicable to all citizens, particularly those who are fond of leveling unsubstantiated allegations in public and even in private. So a verbal statement made can also invite defamation suit on the basis of a witness who can tell the court that the same statement had been made by one person against the other. Therefore, journalists have to be very careful not just about what they write but also about what they say in the company of others. This is important not just to avoid legal prosecution but also to retain a degree of credibility and impartiality in the eyes of public. The same holds good both for the print and broadcast media people, the print as well as the broadcast journalists.

5. IN WRITING

This is the most important type of defamatory communication relating to anything in written or published form. The published form includes even the broadcast that has gone on air, a record of which is every radio station bound to keep. Once again, besides the published newspaper reports written statements, on paper or now on e-mail too, can also become primary evidence in a defamation suit.

In newspapers or even the broadcast news the choice of words that convey the crux of a story as a headline or introduce a story as an intro becomes crucial and sometimes a determining factor in a defamation case. For example to headline a corruption arrest by saying "Mr-A has been arrested for corruption" and to say, "Mr-A has been arrested for alleged corruption" are two different things. The first proposition, if headlined, can invite a defamation suit, particularly if later on it is found by a court that Mr-A was innocent. So the second proposition of saying "Mr-A has been arrested for alleged corruption," is a safe game to play. Similar approach should be followed in the main body of the story as well.

In such a case, however, it is not just the reporter, who will be questioned as a respondent but also the desk editor and even the editor who approves the headlines. Similar care should be taken even while quoting allegations of, let's say, one politician against the other and then the judgments of the court in such corruption cases. The corruption cases before the court even when decided by a lower court, are considered to be a matter "pending before court" or a subjudice matter, wherein the accused shall be allowed to exhaust all forums of appeal up to the supreme court, and the review options, before he can be reported by the media as someone "convicted for corruption." Before that happens the person will remain "an accused" for the purpose of reporting however the fact of his being convicted by the lower court and that he has the right to appeal can be mentioned. Therefore, while reporting on such court cases due care has to be taken to avoid a defamation suit being filed by the persons who are accused in corruption cases.

6. VISUAL

Visual medium is the most powerful of all in its impact and influence on the minds of people and therefore, its potential of doing a greater damage to a defamed person if due care is not taken in the choice of images. This relates to both television and print where visuals or still photographs form an integral part of news reports and articles. The

caricatures and cartoons of individuals also say a thousand words, which at times, even a lengthy and most well written article cannot do.

A camera does not lie, but at times it only shows you a part of the whole picture, and sometimes just one side of the whole story. Indeed, photographers crave for rare scenes but when such scenes are published or telecast out of context, they may become misleading and defamatory. That is where the words take over from images to tell the people the complete story, the context, before they go away with a wrong impression about the people who are subjects of the visuals. It is here that the caption of a photograph becomes important, as it must eliminate the possibility of a picture carrying a misleading impression.

The reporter should also be careful about the type of activities of the people being filmed. For instance showing a film wherein a protestor is carrying abusive slogans against a person or making derogatory signs with hands for a particular person, all this will be considered defamatory and the film producer may become a respondent in a suit. Similarly, any sound, funny or otherwise that will quickly remind people of a person being ridiculed or insulted and therefore defamed, is also a subject of the defamation proceedings. These sounds may be of electronic devices, like distorting the sound of a person to ridicule him. For instance to turn a male sound into a female one or vice versa, through technical means, and the person who has been ridiculed considers it derogatory, a suit may lie.

Similarly, the caricatures of important personalities, conveying a political satire, should not cross the limits of decency and ensure that their physical and personal disabilities do not become a matter of ridicule in public. This however does not mean that prominent political personalities cannot be portrayed in a lighter vein reflecting the existing political controversies. As a matter of fact the cartoons and caricatures are only effective when their subjects are prominent public faces and personalities, other than the caricatures of ordinary faces representing common people, which we call as "Awaam."

NECESSARY PARTIES TO DEFAMATION SUIT

Journalist should also know as to who all are the people/players in a defamation suit so that they ensure that all sides express their views for a just conclusion to be reached by a court of law. The necessary parties to a defamation suit are as follows:

- Plaintiff, who moves the court claiming to have been defamed
- Defendants, which may include following people
- The person who makes the disputed statement
- The reporter who reports the same
- The editor, who is alleged to have either approved or ignored it
- The publisher or the licensee of a radio station

Starting with the plaintiff, a court cannot take suo moto notice of a defamatory statement unless the person defamed moves the court against it. Similarly, no person can file a defamation suit on behalf of the person originally defamed, who can however authorize anyone to do so. As regards the defendants, they are severally as well as jointly responsible for the defamatory statement. For example a politician who makes a speech filled with allegations against his political rival has a responsibility as well as the reporter who reports the same without verifying the allegations, and the editor who approves the story for publication and ultimately the publisher or the radio licensee who employs them.

In the absence of the above parties the defamation case is not maintainable. At times it is up to the plaintiff to decide if he wants to make one of or all of the above defendants as party but then the court can summon anyone which it deems as a necessary party to the suit.

As per the defamation ordinance 2002 the Federal Government was supposed to issue a notification in the official Gazette laying down rules and procedures to for the enforcement of this ordinance. This however has not yet happened and therefore the procedure explained in the following chapters is as per the existing Civil Procedure Code (CPC) under which the defamation cases had been heard since the British rule.

LESSON 26**PROVISIONS IN THE MAJOR LAWS: LIBEL****DEFINING LIBEL**

Libel is “any printed communication—words or pictures—which tends to expose one to public hatred, shame, contempt or disgrace or damage one’s reputation in the community or injure the person.” Libel is considered much more serious than slander (a spoken falsehood), because it is more permanent and can have long-lasting effects. This law has been designed to protect the people from uncalled for attacks, or careless errors by members of the media. It can also be said that libel is the defamation of a person’s character.

Libel is a form of defamation, others include calumny, vilification, traducement, slander (for transitory statements), and libel (for written, broadcast, or otherwise published words). Libel is the communication of a statement that makes a claim, expressly stated or implied to be factual, that may give an individual, business, product, group, government, religion, or nation a negative or inferior image. This can be also any disparaging statement made by one person about another, which is communicated or published, whether true or false, depending on legal state. In Common Law it is usually a requirement that this claim be false and that the publication is communicated to someone other than the person defamed.

In common law jurisdictions, slander refers to a malicious, false, defamatory spoken statement or report, while libel refers to any other form of communication such as written words or images. Most jurisdictions allow legal actions, civil and/or criminal, to deter various kinds of defamation and retaliate against groundless criticism. Related to defamation is public disclosure of private facts, which arises where one person reveals information that is not of public concern and the release of which would offend a reasonable person. "Unlike [with] libel, truth is not a defense for invasion of privacy.

False light laws are "intended primarily to protect the plaintiff's mental or emotional well-being. If a publication of information is false, then a tort of defamation might have occurred. If that communication is not technically false but is still misleading, then a tort of false light might have occurred.

In some civil law jurisdictions, defamation is dealt with as a crime rather than a civil wrong (termed a delict in civil-law systems). The United Nations Commission on Human Rights ruled in 2012 that the criminalization of libel violates Freedom of expression and is inconsistent with Article 19 of the International Covenant on Civil and Political Rights.

A person who harms another's reputation may be referred to as a "famicide", "defamer", or "slanderer". The Latin phrase famous libellus means a libelous writing.

DEFAMATION IN PAKISTAN

THE growth of Pakistan’s media industry has led to many benefits. The level of information available to the public has increased and the nature of it has improved. While over the years we have seen sporadic moves to control the flow of information, the country has fortunately been able to ward off most direct attempts to limit the right to free speech. Yet where the media’s rights are eminently worthy of being defended, so are those of the rest of the citizenry. It is for this reason that in demanding the repeal of the Defamation Act of 2002, the Press Council of Pakistan may be acting in haste. The PCP comprises representatives of crucial professional forums including the All Pakistan Newspapers Society and the Pakistan Federal Union of Journalists as well as government officials and legislators. At a meeting in Islamabad on Friday, the PCP adopted a resolution demanding the repeal of the 2002 legislation and amendments to Section 500 of the Pakistan Penal Code and Section 502-A of the Criminal Procedure Code, which also relate to libel and slander.

The demand is worthy of remark because in all civilized societies, guarantees of media freedoms are balanced with legal mechanisms that allow individuals the right to approach the justice system if they believe they have been wronged. Particularly for people who are not in the public light, or in cases where the release of information cannot be justified under the principle of overarching public interest, there must be laws that can be invoked in the event of wilful or even inadvertent abuse by the media of people’s privacy rights. It is true that Pakistan’s defamation laws are coercive in their

current form, particularly in terms of penalties and the presence of, for example, a Zia-era amendment to the PPC that refuses to recognize veracity or public interest as justifications. It is also true that the media, because of their particular task, are often conduits for allegations, not accusers in themselves. Yet the answer does not lie in removing the citizenry's access to legal recourse; it lies in amending and improving the existing framework of laws.

UNDERSTANDING LIBEL

Following is the gist:

Who can sue for libel? Only living people, and small groups.

Who is it that gets sued under libel law? Usually, the publication.

How do I defend myself? Only through truth, privilege (if any) and under fair comment and criticism regimes.

PURPOSE OF LIBEL LAW

The basic purposes of enacting libel law are:

- to protect reputation.
- to protect the good name is precious property.
- to have public redress of their complaints by peaceful means.

INVASION OF PRIVACY

Invasion of privacy refers to intrusion into a person's physical solitude. The media has the right to pursue people in public places, but not in such places as your home, hospitals, or private businesses. Public disclosure of embarrassing facts – the facts that are not public information, may invite libel suits.

Placing a person in a false light - a story that puts a person in the position of embarrassment and is untrue, may also be regarded as libel.

Commercial exploitation - photographs and names can be used in news stories without permission, but not in ads or commercial endeavors, may also amount to libel.

A LESSON ON LIBEL DEFENSE

The burden of proof in a libel case is on the person bringing the suit. The plaintiff must prove five things in order to win.

- 1) publication
- 2) identification (must prove the content referred to them)
- 3) defamation (damage was done to their reputation)
- 4) falsity
- 5) some element of fault (the reporter or publication acted with negligence or reckless disregard for the truth)

CYBERBULLYING

Online bullying, called Cyberbullying, happens when teens use the internet, cell phones, or other devices to send or post text or images intended to hurt or embarrass another person. Cyberbullying is a problem that affects the teens heavily. Cyberbullying is when a child, preteen or teen is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another child, preteen or teen using the internet, interactive and digital technologies or mobile phones. It has to have a minor on both sides, or at least have been instigated by a minor against another minor. Once adults become involved, it is plain and simple cyber-harassment or cyberstalking. Adult cyber-harassment or cyberstalking is NEVER called cyberbullying.

But Cyberbullying is covered by other means to legal recourse: libel, invasion of privacy and other lawsuits. As it affects scholastic and collegiate media, it is really a matter of control and jumping on

the bandwagon. However, the issue is not going away and could have a devastating impact on scholastic and collegiate media.

LESSON 27, 28**MASS MEDIA LAWS IN PAKISTAN: AN ANALYSIS IN RETROSPECT****INTRODUCTION**

No constraints free media system exists in the world. Exception to quite a few countries, the states of the world invest energies, enact laws and frame regulations to keep the media performing its most desired functions, particularly the watchdog role. Governments – whether popular or with weak public support, more often feel vulnerable to media criticisms which results in hatching plans to hoodwink the watchdogs or strap it to avoid perils. Hardly any isolated example can be quoted from the civilized world which talks about the protection and perpetuation of the media freedom in a country, despite having tall claims in their constitutions.

Pakistan stands no exception. Rather the picture is relatively grim. Since its inception in August 1947, either the martial law regimes or poor democracies have been capturing the political scene of the country. Quite expectedly, the martial law regimes outlawed the media as an institution to keep surveillance on the activities of the former with an intrinsic capacity of making them (the governments) accountable for their deeds. Parallel to that were the weak and poor democratic governments in the country which wasted precious public resources on their efforts of survival. For them too, liberal and free media were no less than a threat, consequently media had to lose its freedom in the hands of governments. Contrary to the generality of media curbs in different political systems; however, identical means of control were observed in Pakistan by the despotic and democratic governments in terms of introducing a combination of direct and indirect means of media control.

Studying the mass media system in Pakistan with special focus on why laws or regulations were drafted to muffle the voice of media necessitates the adoption of a scientific method of analysis. No more than Structural-functional approach can do it better. This approach advocates that all institutions of a society are interdependent and no activity should be explained and studied in isolation, but as a unit of a larger system. Following the institutional or system approach, it is essential to evaluate the state of mass media within the context of Pakistani society rather than simply a mechanistic approach that attempts to isolate and measure the impact of a particular action on or by the mass media. Hence, the mass media in Pakistan is studied in a symbiotic relationship with its environment, especially polity and economy, as most of the communication scholars stressed.

Mass media in this part of the globe have more often been enjoying adversarial relations with the governments. The strained relations were partly due to the potential threat by the mass media as being critical to the wrong doings of the governments. Nevertheless, poor economy of the mass media, weak potential of the private sector, low literacy, poor professionalism of media men and absence of mass media appearance as a social institution have been some of the other reasons which provided logical grounds to the governments to introduce control measures for the mass media through direct and indirect laws and regulations.

Notwithstanding other reasons, polity and economy play vital role in paving the ways for regulations to take place, as Weaver and Boyd-Barrett believe that stronger the media are economically, less likely the government is to control it. The story of introduction of media laws in Pakistan is greatly affected by these two factors; thus, are placed significantly while analyzing the phenomenon in question.

MASS MEDIA LAWS IN RETROSPECT – A PROLOGUE

The mass media, exclusively the press as broadcast media did not appear on the scene, had the status of non-conformist and was inimical in nature in its relations with the foreign rulers before the partition (August 1947). The relations with the British regime were not like that appeared after the partition; rather the press performed more sacred duties of acting as an agent for freedom. However, after the partition in 1947, the crusading nature of press changed to adversarial with the governments.

The journalists at that time were deeply involved in politics and were in constant war with the British rulers. Politics was their passion, slogan and song. For them, the life and politics were

synonymous and the pen was supposed to be used as a crusader for freedom and not as means for creating literary artefacts. When the press's criticism of the foreign ruler mounted by end of the first decade of 20th century, the British rule introduced the Press Act 1910 to gag the press. The Act played havoc with the press in the Indian sub-continent. Actions were taken against more than 1990 newspapers, out of which 286 were issued warning to mend their behaviour towards the government, security of 705 newspapers was forfeited, and declaration of all new printing houses was cancelled. All India Muslim League, the most popular political party of Muslims, declared the Press Act as "the most objectionable piece of legislation – a slur on Government".

To add ferocity to the Press Act 1910, the government promulgated the Public Safety Ordinance and the Press Ordinance in 1930. These ordinances struck the press hard; consequently it faced the toughest of the times. The atrocities of the press did not end here. Defence of India Act, Central Publicity Board, The Press Act 1922, Press Emergency Powers Act 1931, Criminal Law Amendment Act 1932 and many other minor laws were introduced / promulgated to bring the press to its knees.

Analysing the situation of media in the Indian sub-continent, it can be said that the press survived even under extreme odds. The press had negligible support from private sector to boost its economy and face the antagonist government. What appear more logical to comment on are two factors. Firstly, the press had ideological backing. And ideology provides power. The professional standards of the press were dictated by its ideology on the basis of which it fought with the despotic rulers and survived. The profession of journalism was taken as a mission and not a business to earn money. That earned the press a high degree of respect from the masses.

Secondly, the people and the press had one and the same objective for which they had been fighting since long. That was freedom from the alien rule. The press played up rather functioned for the peoples' objectives. It was the prime reason that daily *Zamindar* was managed to pay Rs.56,500.00 on eleven different occasions as security deposits with the support of masses.

CHANGING REALITIES AND HORIZONS

Media found strong support for the continuation of its objectives and rudimentary functions after the partition in August 1947. The father of nation, Mr. Muhammad Ali Jinnah, was a strong supporter of freedom of speech and expression. He, as a lawyer, solicited many cases for preserving the press freedom even without any invitation (Tilak, 1965, p.286) and always welcome criticism and disagreement to his point of view and considered it an education (Beg, 1977, p.82). During his short tenure, the media in the country did not face any restriction instead he spoke in the following words when the law curtailing the press freedom was presented before him for signature (Daily Sindh Observer, Karachi, March 11, 1948):

"All my life I have been fighting against these black laws, now you expect me to sign it. No, I will put my foot down on it".

However, Khawaja Nazim-ud-Din who replaced the founder as Governor General after his death in September 1948 signed the said ordinance which was rejected by Mr. Jinnah, and appeared as Public Safety Ordinance in October 1948. He also introduced Central Special Powers Act to lower the tone of media and daily *Zamindar* of Moulana Zafar Ali Khan became its first victim.

Ghulam Muhammad filled the slot of prime minister after Liaqat Ali Khan who shot dead on October 16, 1951 in Rawalpindi. It was one of the most vulnerable times of political crisis in the country. Being cognizant to the power of media, PM Ghulam Muhammad reactivated the Public Safety Ordinance 1948; imposed Pakistan Security Act 1952 and Official Secrets Act 1923 again which were used to be the tools of control by the alien despotic rulers.

These Acts were used time and again against the newspapers that did not follow the official line of action. However, a segment of the press took strict notice of these threatening calls from the government and declared it as usurpation of fundamental rights. Almost all the newspapers had to suffer the atrocities inflicted by the government using these laws, with an exception of a few newspapers, which were used to be the official spokesmen. The most deplorable aspect of this regime was corrupting the press as an institution. Some of the newspapers were bribed and awarded financial assistance for mumming their words against the government.

Palace intrigues further deteriorated the political horizon. Mr. Iskandar Mirza and General Ayub Khan forced Ghulam Muhammad to depart from the slot of Governor General in October 1955.

The regime of Iskandar Mirza was not much different from his predecessors. He used the same tactics of muzzling the press. Repressive measures to control the sharp edges of the sword were taken, besides controlling the economic conditions of the press through official advertisements, security forfeitures and newsprint control.

Dozens of newspapers were closed down for various span of time. The court of law, on a few occasions, proved these steps of the government as illegal and acquitted the victimized newspapers from fine and editors from imprisonment.

The reaction of the press against the illegal and oppressive actions of the governments from 1947 to 1958 was no less than a surprise. The most significant reason for this surprise was its earlier response to the illegal and regressive actions of the colonial rulers. The press knew well how to respond to the illegal acts of the government. Same powerful journalists and proprietors had suffered all odds with no remarkable qualm of their conscience.

Pakistan Newspapers Editors Conference (PNEC) and Council of Newspapers Editors (CNE) were the main organs of the editors and proprietors. Similarly, the main journalists' body was the Pakistan Federal Union of Journalists (PFUJ). However, it was dismaying that PNEC and CNE had different objectives to follow and were fallible to the governments. Both the bodies "never commanded the allegiance of more than a few editors" and most of their energies were wasted in "dominating and asserting its superiority over the other".

Economic impasses unfold other side of the picture after the political imbroglios. The situation of Pakistan was graver as it was hit by enormous problems due to the partition. While, strong economy is the main predictor of media stability, media growth, and freedom from government control besides it matters in giving the media a direction.

Realizing the significance of economy as a factor for growth, a Press Commission was established in September 1954 to look into the affairs of the press, especially the economy. The Commission disclosed the weak areas of the press, which were exploited in future course of work by the successive governments. *Daily Dawn*, *Evening Star*, *Pakistan Economist*, *Mirror* and *Variety* were a few exclusive examples which happened to be the victims of closure of official advertisements (*Daily Pakistan Times*, Lahore, November 22, 1953).

On October 7, 1958, President Iskander Mirza abrogated the Constitution and declared martial law in the country (Bukhari, 1994, p.192). This was the first of many martial law regimes which followed in the history of Pakistan. With this step the Constitution of 1956 was abrogated, ministers were dismissed, Central and Provincial Assemblies were dissolved and all sort of political activities were banned. General Muhammad Ayub Khan, the then Commander-in-Chief of the Armed Forces became the Chief Martial Law Administrator (CMLA). Thus, the parliamentary system in Pakistan came to an end. Within three weeks of assuming charge on October 27, 1958, Iskander Mirza was ousted by General Ayub Khan, who declared himself as the President.

MEDIA AND THE MILITARY

By all accounts there was some freedom of the press from the initial period after independence in 1947 up to the first Martial Law imposed in 1958. By this, it is referred mainly to newspapers and news agencies since radio has been continuously under government control since independence. Nevertheless, this time, the press had a different kind of adversary. It faced foreign rulers, civilian antagonists, but not the one in an outfit (military uniform) that it valued much in the past and considered it an emblem of integrity and respect. However, the people by and large accepted this change with great pleasure. General Ayub Khan had the opinion that the democracy had no match but it required educated masses. So, he decided to continue with the Martial Law by taking superpowers into confidence (*Daily Jang*, January 22, 2003).

The weak political system invites military intervention. The military rule being un-elected and in the government through despotic means tries to avoid criticism. It has been seen that encroachment upon the fundamental rights of the individuals and of the watchdogs of the society is the starting point of a military dictatorship. This has been true with the Ayub Khan's regime too.

He took different measures to curb freedom of the press. And in 1963, he attempted to institutionalize the press control system to prolong his stay in power. The Martial Law was lifted in June 1962, hence leaving no scope for the issuance of Martial Law Regulations, which were earlier used as tools to control the functioning of the free press. But, General Ayub Khan had something more piquant in his mind. And that appeared in the shape of Press and Publications Ordinance (PPC), which was introduced on September 08, 1963.

PPC accommodated all the laws and regulations that had since long been used to control and contain the media. This ordinance had many significant aspects affecting the media functions. Glimpses of the ordinance are as under:

- To get declaration certificate from the government was made mandatory before launching a newspaper. It was prerogative of the government to issue declaration certificate or deny it without showing any reason.
- The government reserved the rights to cancel declaration of any newspaper whenever it is displeased with the functioning of any newspaper organization. In that condition, the newspaper ceased to exist anymore.
- Sufficient economic means were essentially shown before the district magistrate for getting declaration certificate for the newspaper. This was an attack from economic front on the press either to stop going against the government or stop living without being financially viable.
- In certain circumstances, judicial and assembly proceedings were not allowed to be made public under the PPC.
- PPC did not allow the aggrieved party to consult the court of law for justice against its closure, fine or any other punishment.
- PPC allowed the government to suspend publication of any newspaper for indefinite period or confiscate any printing press for some period.

The above-mentioned aspects of the PPC reflect that it is less to regulate the activities of the press in the country but more to protect the government from its criticism. The ordinance focused less on the aspect to raise the press as an institution that should be a self-regulatory body and should be able to work for the development of the country. Nonetheless, the most significant of all is that the military government took the press as its enemy and the PPC had been used as a shield to protect the government from the severe attacks of this enemy.

Similarly, the press advice system was also introduced during war with India in 1965. Such advice system had since long been used when the nation was engaged in war to avoid the publication of prejudicial reports for the benefits of enemies. Primarily, these steps were taken to avoid any untoward events by the press. And the press in Pakistan has more often been considered as irresponsible, hence enhancing the chances of controlling its activities through advice systems.

The press advice system, during war with India in 1965, was taken gladly by the press as a national duty. However, it was taken as a permanent practice by the military government even after the war, which reduced the chances of objective and investigative reporting.

The Pakistan Penal Code also accommodates a section that restricts the media freedom and gags its lips by labeling its words as libel and defamation. Section 499 of the Pakistan Penal Code, 1860 provides that "whoever by words either spoken or intended to be read... or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, to defame that person".

The "cases hereinafter excepted" are actually 10 exceptions. The most notable exceptions provide that "it is not defamation to impute anything which is true... if it be for public good...", also it is "not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct".

These exceptions have been given wide recognition in the modest case law developed in Pakistan. In an altercation between a governor and a journalist, the case of Mushtaq Ahmed Gurmani (former Governor of West Pakistan) versus Z.A. Suleri, Justice Shabbir Ahmed of the Lahore High Court wrote that "If an allegation is true its publication will not be defamation in spite of the fact that it intended to harm the reputation of the person against whom the imputation is made provided the publication is for public good" (PLD, 1977, p.218).

Furthermore, Justice Shabbir Ahmed wrote that even "If the imputation is not true but is believed in good faith to be true and its publication is for public good, Section 79 of the PPC read with the first exception to Section 499 will come to the rescue of the accused" (Ibid, p.219). The reliance on Section 79 is instructive, for this section provides that "Nothing is an offence which is done by any person who... by reason of a mistake of fact... believes himself to be justified by law, in doing it".

If the alleged defamer cannot convince the court that they fall within a particular exception and are found guilty of defamation, the penalty is quite serious. Section 500 of the PPC provides that "whoever defamed another shall be punished with rigorous imprisonment for a term which may extend to two years, or with fine or with both".

It has been generally recognized that when unconstitutional rule attempts to prolong its stay in power and (in Pakistan's case the military junta) starts setting new destinations, the media institutions have either been gagged to avoid dissent voices or taken into confidence for support. The later notion has hardly been seen in practice. Nevertheless, the former happened to be the case in this regime too as General Ayub Khan decided to remain in power for a longer time. Naturally, the press had to face the music.

The first victim was Progressive Papers Limited (PPL). This company had majority of the shares with Mian Iftikharuddin and had three newspapers, namely daily *Pakistan Times*, daily *Imrooz*, which was being published simultaneously from Lahore and Karachi, and one weekly *Lailo Nahar*. The editor of these newspapers were harassed and arrested by the government under Safety Act and Pakistan Security Act, however, the newspapers did not change their tone.

The sequel was the takeover of PPL by the government on April 18, 1959. A slight change in the Section 2 of Pakistan Security Act brought this mega event of takeover of the group of newspapers with one stroke of pen. The editors of all the four newspapers resigned. The handout and press note read that this act was taken on the charges that these newspapers were busy in publishing the anti-social, anti-national and mind-poisoning material.

Considering the weak political economy of the press and meek market economy, this regime in its very initial days reactivated The Press Commission, which was established in 1954. The Commission was reorganized in September 1958 with one chairman and five members, while only one of the members was a working journalist. The recommendations of the commission were as under:

- Grant of Declaration for publishing a newspaper may not be taken as a matter of right;
- Editor of the newspaper should possess at least a diploma or university degree in journalism or with five years of journalistic experience;
- Working Journalist Ordinance may be introduced to ameliorate the conditions of working journalists;
- The economic conditions of the publisher should be viable according to the following schedule:
 - e. Daily English newspaper with minimum outlay of Rs.100,000.00
 - f. Daily Urdu newspaper with minimum outlay of Rs.50,000.00
 - g. Weekly English newspaper / magazine with minimum outlay of Rs.20,000.00
 - h. Weekly Urdu newspaper / magazine with minimum outlay of Rs.10,000.00

Taking over the Progressive Papers Limited, introduction of Press and Publication Ordinance 1963, reorganization of the Press Commission, amendment in Section 499 of Pakistan Penal Code, the

series of acts introduced to tame the press did not end here. Yet, there was something else in the bag for the press – the idea of establishing National Press Trust.

National Press Trust was established in April 1964. This step was taken ‘to raise the standard of journalism and editorial policy’. The Trust Deed represented 39 individuals who had strong economic background and were mustering sufficient economic resources of the country. The Trust appeared to be a newspaper empire with 12 distinct newspapers with vast circulation throughout the country.

With the inception of Trust, the press was hardly left a few newspapers that could perform the role of guiding the government and function as watchdogs of the society. Veteran journalist Zamir Niazi commented in the following words on this issue:

“Right from the start, all the Trust papers assumed the role of official spokesmen and toed the official line without any qualm. Sycophancy and servility became the watchwords, and the watchdogs of yesteryears turned into lapdogs of the establishment.”

The initial outlay of the Trust papers was more than US\$ 5.25 millions, while all the newspapers were acquired in Rs.5.00 millions only. Only three national newspapers were left from being in the ring of the government; namely, *Daily Jang*, *Daily Dawn*, and *Daily Nawa-e-Waqt*. It was expedient for these newspapers to soften their tone while criticizing the government as their closure could result in complete death of the watchdog.

In a bid to depress the press on ethical grounds, the Press Court of Honour was established on March 28, 1966 under an agreement between the government and Council of Pakistan Newspapers Editors (CPNE) (*Daily Dawn*, March 29, 1966). It was agreed upon that whenever there would be any complaint against any newspaper or journalist, the Press Court of Honour would decide the matter. In the later course of events, however, the acts of the government against the journalists and the press under PPC, PPO and MPO proved the existence of the Court unproductive and meaningless.

MEDIA IN THE TIME OF CRISIS

General Yahya Khan took over charge of the government when General Ayub Khan relinquished on March 24, 1969. The social and political situation in the country was highly precarious. One military ruler was replacing the other. There did not seem to have any change in the system of restrictions for the media, rather more stringent and repressive measures were expected due to rapidly declining social and political circumstances.

To everyone’s surprise, the new government under the command of General Yahya Khan did not introduce any new control for the mass media rather lifted all the prevailing restrictions. A military ruler granted freedom of expression and media that was unlike the past.

General Yahya Khan lifted all the bans and restrictions on the media to let it decide its future by itself. The press advice system and pre-censorship was abolished immediately after General Yahya Khan took charge of the government. The press enjoyed an unprecedented freedom and unrestrained. At that point in time, the electronic media as being under the complete government control could not dare to unchain itself. While, television just entered in the media market which was primarily taken as an instrument of entertainment without having any responsibility to educate, inform and politically socialize the masses.

The media being unaccustomed to such an environment could not take advantage of the situation. The journalists, editors and owners’ bodies did not utilize this opportunity to evolve a collective strategy to fight off problems in the media once for all. It acted again in shape of separate units with individual goals. A few media organizations worked quite professionally while others were engaged in mustering political support for the various political parties in the country.

In early December 1970, when political turmoil surfaced in East Pakistan, the media could not realize the fragility of the situation. It acted to aggravate the already worsening political trauma. Those newspapers acted for the promotion of the political slogans of specific political parties provided incentive to the government to proceed against the media. Lack of professionalism in the mediamen resulted in the government curbs on their functioning again after a short interval of freedom of expression.

The government took punitive steps against the media when it felt that it had not felt the precarious situation in the country. A few of the journalists were put behind the bar after in-camera summary trial in the military courts. Moreover, a few newspapers were closed down as a result of flame producing articles in their contents. However, the decision of declaring the articles right or wrong was vested with the government and the media did not step forward to involve the judiciary to intervene into the matter. It is established in the long fight of press freedom in the world that the judiciary had an effective role to play in the game. In Pakistan, unfortunately the judiciary had hardly been called upon to rescue the sufferers. And this continued in this regime too.

MEDIA IN THE MURKY DAWN OF DEMOCRACY

A new Pakistan traumatised by defeat, shorn of its East wing in December 1971, desperate to offer a new faith in its remaining part, shocked and grieving at the loss came under the leadership of Mr. Zulfikar Ali Bhutto. Earlier the country's affairs were run by the martial law regulations in the absence of a constitution. In such extra-ordinary circumstances, he assumed the role of a civil Martial Law administrator. The use of Martial Law was unavoidable since it provided with the "crucially needed initial stability and strength for a government inheriting a shattered country and charged with the task of setting Pakistan to a new direction of destiny".

Press and Publication Ordinance 1963 could not provide sufficient grounds for punishing the feeble press, which was considered to be the 'blackest of the black laws'. The changes were proposed in the existing press laws not in terms of protecting the state from the danger of written words, but the changes related to false and defamatory anti-government propaganda. In this connection, a high level meeting was convened on November 6, 1975 to examine the problem of "seditious, defamatory and inflammatory articles and news items intended to malign the government and to promote the feelings of provincialism and parochialism".

After a long nightmare of Martial law regulations, the Constitution of Pakistan was promulgated in 1973 and was subsequently amended a number of times by the legislature and executive order. Article 19 of the Constitution protects the freedom of expression and narrates the exceptions of restrictions unequivocally.

Democracy and media freedom correlate and cannot subsist without each other. Mass media freedom in a country is one of the major factors to strengthen the institution of democracy. It works as bridge between government and the governed and plays a pivotal role to keep people abreast as to how their fate is being shaped as a result of overall policies of government of the day. That is why it goes without saying that the media and nation rise and fall together and the former being fourth pillar of the state plays as a catalyst role to ensure transparent governance.

Following the traced line of action, the democratic government of Mr. Zulfikar Ali Bhutto formed a special cell in the Ministry of Law in order to make adequate and speedy use of existing legal provisions to curb "the anti-national and illegal activities of certain newspapers and periodicals". This cell proved to be a watchdog for the watchdogs and prohibited any deviance from the line set for the media by the government.

Mr. Bhutto, when informed by the cell that monthly *Urdu Digest* and *Sahafat* were going untoward, observed that "both have crossed all limits" and ordered "action and results". As a result of the orders, the Punjab government under the Defence of Pakistan Rules, and not under the PPO banned *Urdu Digest*. Though, the Lahore High Court set aside the orders of the government on January 19, 1976, however, there did not appear to have any collective reaction of the press against this action of the government.

The regime of Zulfikar Ali Bhutto inherited enormous turmoil of serious nature. One of them was the country just faced severe shock of fall of Dacca. Mr. Bhutto, keeping in view the precarious political situation inside and the growing threat of isolation outside the country, made some tremendous decisions, which could truly be regarded triumph on his part. He, at that epoch of the history, felt it appropriate to minimize the opposing forces, because he was convinced that in a state of serious crisis, opposition should be stopped.

In this scenario, he did not allow the media to function as an institution of surveillance, which appeared to be quite contrary to the promises he made during the election campaigns. The media, which took a sigh of respite as a result of the end of long military rule in the country, tried to

assume its basic role of watchdog and protector of civil liberties. However, Mr. Bhutto who never tolerated opposing views about him or his policies took serious notice and started punishing those whom he considered delinquent.

He adopted all those measures of silence that were previously utilized by the military rulers only. Economic controls were more excessively used against the dissent newspapers; resultantly there had been least chances for the development of media. The owners regardless of the fact whether they were proprietors or professional did not provide the journalists sufficient autonomy to function according to the fundamental principles of journalism. They were scared of the consequences of any opposition to the regime. Precedents of closure of newspaper organizations due to no or meager newsprint quota and no or scarcely official advertisements were available in abundance.

The most crucial aspect on part of the journalists and owners' representative bodies was the course of action against the repressive actions of the government. Only a few resolutions from these bodies were adopted which were meek in nature. Hardly a few cases of closure of newspapers were put up before the courts of law for justice. There did not seem to be a collective effort on part of the media to react to whatever the government did against it.

There might have been many other reasons for such slacked opposition by the media. As it had long been facing military governments with no or little breathing space; hence, it had hardly any experience of fighting against the odds, had never responded collectively against the repression rather the response was in tandem. In short, it did not develop institutional approach to protecting itself from the individual actions having collective ramifications.

The media as a whole succumbed to resist against the odds it faced in the regime due to negligible financial assistance from the private sector. Additionally, due to overall low literacy in the country it was unable to muster support from the masses. Consequently, many of the media organizations fought against the repressive actions on individual basis and a few newspapers also joined the government camp by setting aside the basic responsibility of being a watchdog on it. The journalists were also divided into pro-government, anti-government and neutral groups rather than being objective and professional in the dispensation of their sacred duties. Because of all these reasons, its appearance was tarnished and the process of institutionalization of media was hampered.

In a nutshell, it can be said that Mr. Bhutto instead of treating the media as an institution quite essential for the perpetuation of democracy in the country remained inimical towards the media. He took it more opposing than his opposition in the parliament. A man with democratic outlook and overwhelmed on being a mass leader went quite contrary to its spirit. He used the government media, primarily the broadcast, for the promotion of his personality cult. He used the media for the promotion of his ideas and built his stature to an extent of the leader of not only this country but of the Third World.

MEDIA AND THE MLRS

Media giants and communication experts believe that the media systems are closely related to the kinds of government in which they operate and are enslaved-tied to the philosophies of governments. Structural-functionalist approach also stresses the same that the media as a subsystem of the overall political system of a country either suffers or prospers with the larger unit. Proclamation of third Martial Law by General Zia ul Haq as a result of political upheavals had impacted the media in similar fashion in the country as media gurus predicted.

As the time passed, the authoritarian government developed an antagonist attitude towards the media and took it as an enemy to the subsistence of military government. Considering it as incompetent to deal with the delicate matters of national solidarity and an immature to take care of social order, the military government introduced press advice system on October 18, 1977. Declaring it a 'blessing in disguise' and assisting the press to avoid coming into direct conflict with government, the press advice system was taken as an 'institution' that can help it save from the mischief of Press laws and Martial Law Regulations. (NB: Here, it seems pertinent to mention again that the broadcast media was completely owned by the state even in this period of time).

Taking another instance to furthering the curbs on freedom of the press and hindering its institutionalization process, and as a result strengthening hold on the reins of power, the military

government of General Muhammad Zia-ul-Haq imposed pre-censorship on the media on October 17, 1979. This action was taken under Martial Law Regulation (MLR) 49. It was the time, when the government second time postponed the elections as per requirement of the constitution. Imposing pre-censorship, the government in power attacked the media professionalism by claiming that this action has been taken as a 'pre-requisite for Shariah, democracy and stability' (Dawn, Karachi, October 18, 1979). It ratifies the claim of the military governments throughout the world that only the Government knows and respects people's best interests.

In another effort to tame the media institution, amendments in the section 499 and 500 of the Pakistan Penal Code were introduced on December 18, 1979. The amended sections read, "exceptions of publication of report of court proceedings, publication of defamatory matter against any person, even if it is true and in public interest would constitute a cognizable and compoundable offence with five years rigorous punishment or fine, or with both" (Dawn, Karachi, December 19, 1979). This action had been taken to protect the 'responsible citizens from the irresponsible journalists'; the military government justified the amendments in the sections 499 and 500 of PPC (Dawn, Karachi, December 24, 1979).

The military government introduced MLR 4 to let the journalists learn what they should not publish. It prohibited the publication of any matter that may 'promote feeling of enmity or hatred between different provinces, classes or religious sects'.

In a similar attempt to teach the journalists impartiality and objectivity, the MLR 15 was introduced that made the 'attempts to incite public or a section of public to seek the territorial or administrative dismemberment of Pakistan' as a punishable offence.

Although both the MLRs were formulated in the purview of national interest but issuance of these particular regulations appears to be unnecessary in the presence of Section 24 of PPC that covers the areas of national security with same vigour.

The MLR 48 prohibited the publication of political news. The Provincial Government of Sindh also introduced an ordinance prohibiting the publication of news pertaining to economics and politics. Such a situation paralyzed the entire media institution and left it with no option except to look for what the government wants to get into the contents of tomorrow newspaper. The art of editing was reduced to 'editing a newspaper by arithmetic'.

A series of closure of newspapers, arrests of journalists and forfeiture of security of newspaper organizations followed the introduction of above MLRs. These actions of the government further vanished the integrity of the institution, which only exist in shape of journalists' union and owners' council. The lamentable state of the media institution becomes obvious when we evaluate the response of the institution against the draconian actions of the government. This is another aspect clearly indicating that the media institution lacked professionalism and institutional integrity.

MEDIA SAVOURING DEMOCRACY

Longest ever Martial Law of General Muhammad Zia ul Haq ended on August 17, 1988 when he died in a plane crash along with his front line military leadership. During the interim setup, Shariat Court in its 24-page long verdict declared the Press and Publication Ordinance (PPO) of 1963 as un-Islamic. The government introduced Registration of Printing Press and Publication Ordinance (RPPPO) on September 17, 1988 under the advice of Shariat Court.

The country under the premiership of Ms Benazir Bhutto during 1988 to 1990 was fraught with political turmoil and instability. In her first speech after assuming the office of the Prime Minister of Pakistan in November 1988, Benazir Bhutto promised that all the media laws curtailing its freedom would be abolished. She promised to dissolve the National Press Trust (NPT) and the press advice system would also be brought to an end. She further said, "we cannot establish a fair society if the people were afraid to speak truth" (Daily *Dawn*, Karachi, December 03, 1988).

Earlier, it is mentioned that interim government introduced RPPPO (Registration of Printing Press and Publication Ordinance) in 1988 under the verdict of Shariat Court when it ordered the repeal of

PPO. No further steps were taken for formal legislation of the ordinance in the National Assembly, which depicts the worth it (the media) has in the affairs of the government.

Despite the fact that the editors and journalists did not accept RPPPO, no talks or discussions were held between the government and the journalists' representative bodies. Instead, it was reintroduced in January 1989, then again in November 1990 without incorporating any amendment in the ordinance. It is also pertinent to note that Supreme Court declared the re-introduction of an ordinance without any amendment unconstitutional.

In June 1990, the Sindh government announced the establishment of a press council to cater to the changing needs of the print media. Justice Darab Patel was the Chairman of the council. However, it was regarded against the prevalent media laws in the country by the president of Council of the Third World Newspapers, Mr. H.B. Khokhar (Daily *Dawn*, Karachi, July 02, 1990).

During the democratic regime of Benazir Bhutto, major decision of abolishing of newsprint quota system was taken. On April 20, 1990, Prime Minister said that the system had been used as a tool to curb the freedom of the press hence it was abolished (Daily *Nawa-e-Waqf*, Lahore, April 21, 1990).

The decision apparently seems to be a goodwill gesture to the print media. But it must be borne in mind that during her tenure, Benazir Bhutto's government also raised import duties for printing press machinery and the prices for the newsprint. Moreover, a proposal for sales tax on the printing press industry was also forwarded on the same day, i.e. April 20, 1990. Hence the decision had little to do with granting freedom to the press, as other economic pressures had already been introduced. However, the decision had its positive aspects and implications in the long run.

On April 18, 1993, President Ghulam Ishaq Khan dissolved the assemblies using article 58(B) of the Constitution of Pakistan. Supreme Court, later on, declared the decision of the president unlawful and restored the National Assembly. However, a working relationship could not develop between the president and prime minister, which resulted in dissolution of the assemblies again but this time on request of the prime minister.

Successive governments more or less used similar methods of control on the functioning of press. However, the media being weaker than the governments could not evolve a collective and substantial consensus as how to deal with the problems inflicted by the governments.

The period of Prime Minister Nawaz Sharif has not been somewhat dissimilar to other regimes. His government was also weak and instable with a strong opposition. Strained relations with the opposition developed a confrontational culture in the politics of this country that attempted to drag the media into it. Though it could not involve in the confrontation of politics but the confronting groups have abused it. The media as an institution of society with feeble grounds could not react to the problems posed by the politics in a way that could help it function in ideal or close to ideal circumstances.

CONTEMPORARY MASS MEDIA LAWS – AN ANALYSIS

The contemporary state of mass media is a mix of controls and allures. The most prominent feature of present day mass media scene is the emergence of state of the art communication technologies ushering new horizons for the familiar mass media from across the frontiers. Broadcast media, which was solely state owned in the past, introduced new avenues of expressions in the present time. Technological developments have altogether altered the shape of media, both print and broadcast, and opened up new means of expression, consequently loosening the government controls on the mass media. However, the government also followed off-the-beaten tracks of control and suppression to avoid media criticism which is increasing in size, reach and serration. Following lines sketch those regulations and laws which are either enshrined in the Constitution of the country, Pakistan Penal Codes or the present government adopted to eschew the media criticism and perpetuate its rule.

The Constitution of the Islamic Republic of Pakistan protects the fundamental rights of an individual and the media in its Article 19 in the following words:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the

integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offense.”

The Article 19 guarantees the freedom of expression and freedom of the media, subject to "reasonable restrictions". Nevertheless, it is the judiciary to determine the scope and parameters of the permissible freedoms and the extent of the restrictions placed by the constitution. Of course, the judiciary has to be free and independent to decide about these freedoms and controls. Usually, the controls on judiciary are placed in the form of executive's authority of appointment, transfer, and tenure of judges. This fact can be observed when President General Musharraf required all judges to take an oath of loyalty to his regime. The Supreme Court Justice and five colleagues refused and were dismissed.

Nevertheless, this constitutional guarantee ceased to be functional after the proclamation of Provisional Constitutional Order No.1 of 1999, introduced on October 14, 1999, immediately after the military de coup headed by General Musharraf. This state of emergency continued till the restoration of so-called democracy in 1992. Even the democracy is restored and constitution has been made functional, this constitutional guarantee fails to protect the right to freedom of expression as it is subjected to "any reasonable restrictions imposed by law". It stands contrary to the international guarantee which requires any restriction to be 'necessary' rather than merely 'reasonable'. Furthermore, some of the grounds for restricting freedom of expression under the Constitution, such as friendly relations with other States, are not permitted under international law (www.article19.org/pdfs/analysis/pakistan.prs.02.pdf).

Long bureaucratic practices and militarization in the country has produced about 56 constitutional provisions, ordinances and laws which restrict the media freedom (<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN011668.pdf>). Some special laws like PEMRA, Pakistan Television Act, Pakistan Broadcasting Corporation Act, Electronic Crime Ordinance etc., of which magnitude is more than a dozen, particularly deal with the broadcast media in Pakistan. Sections 499 and 500 of Pakistan Penal Codes 1860, amended in the General Zia ul Haq regime, also dent the freedom of mass media and have been excessively used in various points in time in the history of Pakistan.

Besides some of the laws, regulations, ordinances and acts discussed in the earlier episodes of this chapter, some of the prominent ordinances which have recently been introduced are analyzed in the following lines.

PRESS COUNCIL OF PAKISTAN ORDINANCE 2002

Press Council is an old idea that has been floated again by the President General Musharraf to give a legal cover to the constitution of a Press Council. It aims at safeguarding the freedom of press and conduct investigations against the newspapers or journalists on public complaints in case the Code of Conduct / Ethics is violated. The Code which deals with the issues of morality, plagiarism, fairness, accuracy, privacy, sensationalism, confidentiality and privilege will be observed and will allow journalists to operate in accordance with the canons of decency, principles of professional conduct and precepts of freedom and responsibility.

The Council will be an independent corporate body. It would have its own staff, secretariat and budget in the shape of government grant-in-aid and other donations and fees which it will levy on the registration of new newspapers and wire service agencies.

The Council will be comprised of 19 members. The detail of members is as follow:

Chairman	1	To be nominated by the President among retired Supreme Judges or persons qualified to be a Judge of the SC
All Pakistan Newspapers Society (APNS)	3	Nominees, but he must not be an officer-bearer in the APNS nor will take up any office till the time he is in the Council
Council of Pakistan Newspaper Editors (CPNE)	3	Nominees, but he must not be an officer-bearer in the CPNE nor will take up any office till the time he is in the Council

Journalist Associations	3	Nominees, but he must not be an officer-bearer nor will take up any office till the time he is in the Council
Pakistan Bar Council	1	Nominee
Educationists	4	One from each province nominated by the Governor
Nominated by Leader of the House in National Assembly	1	Nominee
Nominated by the Leader of Opposition in National Assembly	1	Nominee
Renowned Human Rights Activist	1	With atleast ten years of working in any human rights organization
Nominated by National Commission on the Status of Women in Pakistan	1	Nominee

Source: Press Information Department, Ministry of Information and Media Development, Government of Pakistan

The Council will entertain complaints and constitute a court of inquiry to probe into matters. It will also be empowered to probe into the alleged interference of the government, a political party or any other organization or individual in the freedom of the press.

The recent government-judicial crisis has necessitated the existence of press council as declared by Federal Minister of Information Mr. Muhammad Ali Durrani. The severe criticism on the government stance against the judiciary by the media all over the country including the foreign experts and civil society organizations has been perceived by the ruling leaders as 'indecent portrayal of national institutions' by the media, particularly broadcast media (Daily The Nation, June 02, 2007).

With all for and contra arguments, the idea of Council is taken with great resentment by the journalist bodies. For them it is barter between the government and the media owners to slave the journalists.

FREEDOM OF INFORMATION ORDINANCE 2002

Freedom of Information Ordinance is considered to be a step in line with the Universal Declaration of Human Rights which stresses on right to expression, with great focus on the right to receive and seek information unlike other laws and declarations.

Although the Ordinance acknowledges the right of citizens to know, but it still seems to be in a formative phase as it restricts the disclosure of certain records which mars its true spirit. Its Article 3 defines the public record covered by disclosure regime includes some of the items like 'studies' which are covered. It may be considered that the government can hide certain types of document having public value and the principles of transparency and freedom demand its disclosure.

Similarly, Article 4 of the Ordinance restricts making public a number of records including minute sheets, notings on the files, interim orders, classified documents, private documents and certain financial information. These are declared exclusions and no provision has been provided to disclose them. While, no exclusions are defined to scrutiny of these documents by law enforcement, public safety and national security.

Article 4(e) excludes any record which is made classified from being open to public scrutiny. This amounts to declaring public scrutiny inferior to any privacy regime thus undermining the significance of the Ordinance.

Article 7 levies tax or asks for payment (fee) as may be prescribed for disclosure of any record from the government offices. Usually, it is the practice universally acceptable; however, its cost should be well prescribed as to avoid it becoming so high to deter the potential applicants to ask for information.

Article 19 provides right to the applicant to appeal to Ombudsman in case he is denied access to declared public record. However, the right of appeal to Ombudsman is only valid when it is not made for the disclosure of classified record.

In a nutshell, the Ordinance is a welcome step towards the freedom of information in Pakistan. Although it inherits many flaws, but it is all because its being on the infancy stage. Successive developments will make it worth comparing with international standards.

THE PRESS, NEWSPAPERS AND NEWS AGENCIES REGISTRATION ORDINANCE 2002

PNNARO 2002 repeals Press and Publication Ordinance 1963 and Registration of Printing Press Ordinance 1988. Earlier two laws vested enormous powers with the government to the closure of a press, forfeiting the security and punishing the journalists. However, this law introduces code of conduct to provide the press a mechanism of self-governance.

It happened first time in the history of press laws in Pakistan that affairs of news agencies are being brought under some regulations. Unlike the establishment of a press, anyone could have initiated a news agency with a fax and e-mail service to several newspapers without any consent from any government quarters in the past.

Under this law, the government may impose certain minor penalties for violation of any precepts but it cannot ban the publishing of any newspaper. The minor penalties include explanations or clarification or warning for any alleged irresponsible reporting of the newspaper.

Conspicuous enough is the registration of an individual as 'Page-in-charge' who will, 'in the supervision and superintendence of editor be responsible for checking the contents of the pages and ensure due satisfaction of the material sent to the printer and publisher for publication'. It is hard to understand what this legal requirement caters for. Is it merely making the journalists responsible at each and every step of their business, or an attempt to freedom of job and expression?

As claimed by the government that introduction of new laws will protect the freedom of the press in Pakistan, it is yet to be seen as how it tames or tightens the press when it attempts to be an adversary. In the past, it has been seen that less the laws controlled the press, more were the intimidations through other coercive means.

PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY (PEMRA)

Dawn of 21st century ushered a new era for media development in the country. Dozens of television and FM radio stations took birth in the last less than one decade. Present government showed resilience towards opening up of new information and entertainment channels as this development supported its soft and liberal look to the world. Moreover, technological development also contributed to push the country into a new arena. Thus, Pakistan could not remain indifferent to the InfoTech developments taking place in other corners of the world. Nevertheless, these developments were supposed to be monitored under some legal cover, and then the PEMRA took birth.

The Government introduced PEMRA on March 1, 2002 to regulate and develop broadcast media in Pakistan. Under this law, an autonomous body has been established being an attached department of the Ministry of Information and Broadcasting.

PEMRA will grant licenses for the establishment of any radio or TV station and will ensure and facilitate open and fair competition. It will also ensure the undue concentration of media ownership in any area under its jurisdiction. However, Pakistan Television Corporation (PTV) and Pakistan Broadcasting Corporation (PBC) will remain beyond its control as being independent and government functionaries.

PEMRA law has proved to be the draconian law for the electronic media in the wake of present day government-judicial crisis. Live coverage of dysfunctional Chief Justice of Pakistan has shaken the

government which resulted in closure of some TV channels and banning of live coverage. Analyzing the media coverage of events taking place in the realm of judicial crisis, there does not seem to have sarcastic portrayal of the government and its actions against judiciary, but the media have been banned as the government has significantly lost the popularity among the masses. The assumption that weak and unpopular governments control the media using laws and regulations seems quite relevant in this regard.

Not only PEMRA law, but the government functionaries also seemed furious on the rapidly declining graph of the popularity and the media have been taken as the main cause of this traumatic situation. So much so that the founder of Pakistan Muslim League (Q), the ruling party leader, announced “shoot to death” in a public meeting if any journalist, lawyer and anyone else pronounced anything against the military (Daily The News, June 03, 2007). Moreover, one of the famous TV column on Geo TV “Meray Mutabaq” has been ordered to be closed being anti-state and the anchor person has been threatened to death if he had not lowered his tone (Daily The News, June 04, 2007).

Postscript: President General Pervaiz Musharraf imposed fresh curbs on the electronic media in the second such move within three days, sparking protests from journalists, lawyers and politicians. He issued fresh ordinance of PEMRA (Amendment) 2007 empowering the concerned authorities to take action on its own against television channels which violated the rules. This move authorizes the PEMRA to confiscate the equipment and seal the property of broadcasters without consulting the council of complaints. Moreover, the fine for violators has been increased from Rs. 1.0 million to Rs.10.0 millions (Daily The News, June 05, 2007). These amendments are introduced in 10 Sections of the PEMRA including the Sections 29, Sub-Section 6 of the same section, 30(4) etc. (Daily Dawn, June 05, 2007). Interestingly, the government has also taken assistance from the Cable Operators Association of Pakistan (COAP) to take action against those who play negative roles in the name of freedom of media and malign the national institutions. COAP representatives warned the media to avoid negative propaganda against the government in a press conference which is unprecedented (Daily Jang, June 05, 2007).

DEFAMATION ORDINANCE 2002

In these series of development on media laws, yet another change was introduced in the Defamation Law through an ordinance. Main focus of the change was on penalties for a proven guilty from Rs.50,000 to Rs.100,000 and prison term from three months to five years.

This ordinance advocates the Press Council to look into the complaints by the people for defamation or libel who claim to have been defamed by any print or electronic media. Moreover, it also suggests having a code of ethics for the journalists and media organizations to avoid the chances of defamation and any other irregularities by the media or mediamen.

Looking deep into the Ordinance, it becomes evident that the aim behind seems to be to unduly restrict the scope of the watchdog functions of the media in relation to the acts, omissions and irregularities by officials and institutions in dealing with matters of public interest (<http://www.dawn.com/2004/08/21/ed.htm>). Moreover, the ordinance does not clearly distinguish between ‘defamation’ and ‘actionable defamation’, of which favour may go to the wrongdoer.

In a further move, the government introduced amendment in the bill in August 2004 and increased the penalty for defamatory utterances and publication to Rs.300,000, and publication of an apology or retraction does not diminish the aggrieved party's right to demand compensation (Daily Dawn, April 15, 2007). It means that, even if an apology has been published, the plaintiff reserves the right to demand damages. Furthermore, the plaintiff can also proceed against the defamer both under the civil and criminal law.

Other than media organizations and journalist representative bodies, the Supreme Court Bar Association also raised its voice against the amended ordinance by terming it another attempt by the government to contain the freedom of expression and information. Earlier, Mr. Hamid Haroon, a member of the All Pakistan Newspaper Society (APNS), said that the government had included “tough clauses” in the draft bill of defamation, which were “against the freedom of the press,

democracy and human rights” (http://www.dailytimes.com.pk/default.asp?page=story_3-8-2004_pg7_27).

As such there does not seem to have any need of defamation law as Sections 499 and 500 of the Pakistan Penal Code deal with it. It defines comprehensively and is in use since decades in the country. Primarily, the purpose of introducing the ordinance does not seem to be anything else except to push the dissidents to the flock of followers. The ordinance may bring into its ambit the charges politicians level against each other. Once a reporter reports it in a newspaper, he may be brought into the books under this law, hence, making it difficult for the journalists to report the utterances.

MEDIA AND THE JUDICIARY

To quote Justice (Rtd) Dorab Patel on the Press and Publication Ordinance 1963 (Niazi, 1987, pp.253-254):

“.....successive governments have harassed newspapers through this law. I have, however, not been able to understand why the press was so bewitched by this ordinance that it did not attempt to challenge orders passed under it for a decade and a half.....But the real question was whether the ordinance empowered the governments to silence its critics.....why did not the press challenge the many illegal orders.....the reason might be the hazards and expenses of litigation.....if newspapers do not take advantage of the restoration of fundamental rights in order to challenge the unreasonable provisions contained in the PPO, they will share the responsibility for the fetters imposed upon them by the government”.

The media are ‘entitled to criticize the government’ (PLD, 1974, p.283). This establishes its right to pursue its basic responsibility of surveillance. However, the cognizance of this right is vital prior to its exercise. But, it has been lamentable to see that the media could not recognize its right to consult judiciary when an action was taken against it under PPO or RPPPO, even when they got expired. An ordinance has a normal life of only 120 days, and expires if it does not get extension or enacted as a normal law by the legislation.

Justice (Rtd) Dorab Patel appears to be justified to blame the media for being ignorant of its responsibility to consult judiciary when an action was taken on mischievous grounds. A few cases witnessed that the media had been sheltered by the judiciary when it contacted against the repressive actions of the government.

PPO 1963, MLRs, RPPPO and Sections 499 and 500 of the PPC were used extensively and ruthlessly by the General Ayub, General Yahya Khan, Mr. Zulfikar Ali Bhutto, General Zia ul Haq and present day democratic leaders; viz, Mr. Nawaz Sharif and Ms Benazir Bhutto. Quite strange has been the response of the media and journalist representative bodies as they are hardly found fighting legal war against the repressive actions of the governments. Without denting the professionalism of media and mediapersons, it may be taken as a fault on part of the judiciary that failed to deliver fast, timely and inexpensive justice to the aggrieved, which had badly shaken their belief in the judicial system (Daily Dawn, Lahore, February 28, 1998).

Poor economy of the media might have contributed to discourage the media to seek justice as being expensive and long activity to go for. But, the precedents have been quite supportive as the judiciary always favoured the media in its fight against the repressive actions of the governments. The historic verdict of judiciary did not prove to be an asset for the media which said (Niazi, 1987, pp.73-74)?

“The very concept of fundamental rights is that it being a right guaranteed by the constitution, cannot be taken away by the law.....and..... that it is a fraud on the citizen for the makers of a constitution to say that a right is fundamental but it may be taken away by law”.

PEEPING INTO THE FUTURE

The media in Pakistan have passed through various critical phases during the last six decades. Despite strict government control and resource crunch at times, it has not only survived but also made incredible progress. In a country where polity has more often been in crisis, the economy in dismay, the literacy rate dismally low and small per capita income as compared to developed

countries, still the media have shown significant resilience to act as a catalyst for development and political socialization.

It has been assumed that the media laws were developed/enacted/promulgated whenever the governments lacked popular support of the masses or held power through despotic means or it realized its position weak in the social setup. For instance, when Jinnah came in power, no restrictions were imposed. After the war with India in 1965 the press had complete freedom, when Yahya Khan took control as a result of the peoples' disappointment towards Ayub Khan no control on the press was exercised, when Bhutto successfully introduced the Constitution of 1973 he avoided the press to be controlled, Zia ul Haq released the press free when he managed to return democracy in the country in 1985 and instead him Prime Minister Mohammad Khan Junejo faced the masses as a political leader. In rest of the times, the direct means of control were applied on the press freedom.

In democratic regimes like that of Nawaz Sharif and Benazir Bhutto, indirect means of control were applied to control the media. In these regimes, the media were maneuvered rather than controlled. Because, these governments came as a result of the democratic process in the country and they had public support in their initial times. However, when they lost public support, they turned to impose direct restrictions on the media.

General Pervaiz Musharraf also vowed not to introduce any restriction on media when assumed the role of Chief Executive of the country. Due to growing threats on Pakistan's borders and on going war in Afghanistan and then 'war on terror', he did not feel any threat to his regime. Hence, no direct law was introduced rather the country witnessed mushroom growth of community and national broadcast media and enjoyed unprecedented freedom. But, this wave did not continue longer. While these lines are being written, the government has become too frail to stand fast to tackle the present judicial crisis. Under these circumstances, similar to the lines of history of the country, the media are supposed to face restrictions as presumed and predicted by Weaver, Curran, and Olien. Interestingly, the nature of restrictions is direct and piercing that has almost paralyzed the media activities, especially broadcast media.

In some cases, the weak political and military regimes opted for indirect means of controlling the media. The most significant method of indirect control was the bifurcation of the media as an institution into various segments with different objectives. This method controlled the media effectively as the masses could see diversity of views on issues of institutional concerns in the newspapers' contents. Even control measures for media were applauded in certain quarters. However, it has been proved to be extremely hazardous for the media as an institution. This technique socialized (emphasis added) the newspapers and individual journalists with corruption, political ideologies instead professional ideologies and made them amenable to the government(s) of the time and to come. The most lamentable aspect of this method is the late return of the media to its original position. Direct controls were released when the military or despotic government stepped down and the media was in a state to return to its original position instantly. While, the corrupted media will take a long time to get back to its original state where it was prior to the inception of the government that corrupted it.

For media to develop as an institution having inbuilt self-regulatory system, established culture and norms, common objectives / destinations, and professionalism as the highest point of concern, it has to fight long, to be united, evolve strategy for survival against the repressive laws by the state. States and governments are ruthless and myopic. For them, their survival is supreme; hence, media barons should not expect any mercy. As explained in the structural-functional approach pronounced by Menzies – a sociologist, media will suffer due to polity. Its dependent role needs to be interpreted opposite or some firewalls may be raised to avoid the effects of inherited problems in the polity. No government, no state laws, nor the masses, but the media itself has to develop a shield against the harmful ramifications of other institutions in the society, particularly t

LESSON 29**PEMRA ORDINANCE: AN INTRODUCTION**

PEMRA Authority was established under PEMRA Ordinance on March 01, 2002. The establishment of PEMRA was initiated in 2000 through the formation of the Regulatory Authority for Media Broadcast Organizations (RAMBO). Amendments were introduced in 2007 to make it more stringent in the wake of political uncertainty in the country during General Musharraf regime.

OBJECTIVES OF PEMRA ORDINANCE (A-3)

Following are some of the main objectives of PEMRA:

- To improve the standards of information, education and entertainment;
- To enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;
- To facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level; and
- To ensure accountability, transparency and good governance by optimizing the free flow of information

FUNCTIONS OF THE AUTHORITY (ART 4)

Following are three main functions of the Authority as explained in the Article 4 of the ordinance:

- (1) The Authority shall be responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.
- (2) The Authority shall regulate the distribution of foreign and local TV and radio channels in Pakistan;
- (3) The Authority may, by notification in the official Gazette, make regulations and also issue determinations for carrying out the purposes of this Ordinance.

MEMBERS OF PEMRA (A-6)

According to Article 6 of the Ordinance, following would constitute the executive body of PEMRA:

- (1) The Authority shall consist of a Chairman and twelve (12) members to be appointed by the President of Pakistan.
- (2) The Chairman of the Authority shall be an eminent professional of known integrity and competence having substantial experience in media, business, management, finance, economics or law.

Out of twelve members one shall be appointed by the Federal Government on full time basis

- **five** shall be eminent citizens chosen to ensure representation of all provinces with expertise in one or more of the following fields: media, law, human rights, and social service.
- Of the **five** members from the general public, **two** members shall be women.
- Secretary, Ministry of Information and Broadcasting,
- Secretary, Interior Division,
- Chairman, Pakistan Telecommunication Authority and
- Chairman, Central Board of Revenue shall be the ex officio members.

As per Article 4A, the remaining **two** members shall be appointed by the Federal Government on need basis on the recommendation of the Chairman. On important provision, a member, other than an ex officio member, shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Authority without the leave of the Authority. The tenure of service, except the ex-officio members, shall be 4 years.

CATEGORIES OF LICENSES (A-18) GRANTED BY THE PEMRA

The Authority shall issue licenses for broadcast media and distribution service in the following categories, namely:-

- International and National scale stations;
- Provincial scale broadcast;
- Local Area or Community Radio and TV;
- Specific and specialized subjects;
- Distribution services; and
- Uplinking facilities including teleporting and DSNG.

TERMS AND CONDITIONS OF LICENSE (A-20)

A person who is issued a license under this Ordinance shall-

- (a) ensure preservation of the sovereignty, security and integrity of the Islamic Republic of Pakistan;
- (b) ensure preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan;
- (c) ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency;
- (d) comply with rules made under this Ordinance;
- (e) broadcast, if permissible under the terms of its license, programmes in the public interest specified by the Federal Government or the Authority in the manner indicated by the Government or, as the case may be, the Authority, provided that the duration of such mandatory programmes do not exceed ten per cent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast such content for a longer duration;
- (f) comply with the codes of programmes and advertisements approved by the Authority appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Code;
- (g) not broadcast or distribute any programme or advertisement in violation of copyright or other property right;
- (h) obtain NOC from Authority before import any transmitting apparatus for broadcasting, distribution or teleporting operation; and
- (i) not sell, transfer or assign any of the rights conferred by the license without prior written permission of the Authority.

EXCLUSION OF MONOPOLIES (A-23)

To control monopoly in electronic media, PEMRA makes it binding that:

- (1) No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.

(2) In granting a license, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole:

Provided that if a licensee owns, controls or operates more than one media enterprise, he shall not indulge in any practice which may impede fair competition and provision of level playing field.

PERSONS NOT BE GRANTED LICENSE (A-25)

A license shall not be granted to—

- (a) a person who is not a citizen of Pakistan or resident in Pakistan;
- (b) a foreign company organized under the laws of any foreign government;
- (c) a company the majority of whose shares are owned or controlled by foreign nationals or companies whose management or control is vested in foreign nationals or companies; or
- (d) any person funded or sponsored by a foreign government or organization.

PROHIBITION OF BROADCAST MEDIA OR DISTRIBUTION SERVICE OPERATION (A-27)

The Authority shall by order in writing, giving reasons therefore, prohibit any broadcast media or distribution service operator from:

- 1) broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement
 - is against the ideology of Pakistan
 - or is likely to create hatred among the people
 - or is prejudicial to the maintenance of law and order
 - or is likely to disturb public peace and tranquility
 - or endangers national security
 - or is pornographic, obscene or vulgar
 - or is offensive to the commonly accepted standards of decency; or
- (b) engaging in any practice or act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or willfully causing damage to any other person.

POWER TO VARY CONDITIONS, SUSPEND OR REVOKE THE LICENSE (A-30)

(1) The Authority may revoke or suspend the license of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely:-

- (a) the licensee has failed to pay the license fee, annual renewal fee or any other charges including fine, if any;
- (b) the licensee has contravened any provision of this Ordinance or rules or regulations made there under:

Provided that in the case of revocation of a license of a broadcast media an opinion to this effect shall also be obtained from the Council of Complaints;

- (c) the licensee has failed to comply with any condition of the license; and
- (d) where the licensee is a company, and its shareholders have transferred a majority of the shares in the issued or paid up capital of the company or if control of the company is otherwise transferred to persons not being the original shareholders of the company at the time of grant of license, without written permission of the Authority.

(2) The Authority may vary any of the terms and conditions of the license where it deems that such variation is in the public interest.

(3) Except for reason of necessity in the public interest a license shall not be varied, suspended or revoked under sub-section (1) or (2) unless the licensee has been given reasonable notice to show cause and a personal hearing.

OFFENCES AND PENALTIES (A-33)

Offences and Penalties are explained in Article 33 of the Ordinance, which are provided as under:

(1) Any broadcast media or distribution service operator or person who violates or abets the violation of any of the provisions of the ordinance shall be guilty of an offence punishable with a fine which may extend to **ten million rupees**.

(2) Where such broadcast media or distribution service operator or person repeats the violation or abetment, such person shall be guilty of an offence punishable with **imprisonment** for a term which may extend to **three years, or with fine, or with both**.

(3) Where the violation, or abetment of the violation of any provision of this Ordinance is made by a person who does not hold a license, such violation shall be punishable with **imprisonment** for a term which may extend to **four years, or with fine, or with both**, in addition to the **confiscation of the equipment** used in the commission of the act.

(4) Whosoever damages, removes, tampers with or commits theft of any equipment of a broadcast media or distribution service station licensed by the Authority, including transmitting or broadcasting apparatus, receivers, boosters, converters, distributors, antennae, wires, decoders, set-top boxes or multiplexers shall be guilty of an offence punishable with **imprisonment** which may extend to **three years, or with fine, or both**.

WARRANTS FOR SEARCH (A-33B)

(1) Where on information furnished by the Authority, the Court has reason to believe that any unlicensed broadcast media or distribution service is being owned, controlled or operated or its equipment is being kept or concealed, it may issue a search warrant and the person to whom search warrant is directed, may enter the premises where such unlicensed broadcast media or distribution service is being owned, controlled, operated or provided or its equipment is being kept or concealed, or carry out search and inspection thereof and seize all or any equipment therein.

(2) Any equipment of a broadcast media station seized under sub-section (1) having no ostensible owner shall vest in the Authority.

LESSON 30**PEMRA: PROVISIONS ON ETHICS**

Pakistan Electronic Media Regulatory Authority (Content) Regulations 2012 contains the relevant provisions on ethics. These provisions are presented under separate heads in the following lines.

LOCAL MEDIA INDUSTRY PROTECTION

(1) Licensee shall ensure that the foreign content aired by the licensee in a calendar day does not exceed a maximum of ten percent of the whole content.

(2) Licensee shall ensure that no program is aired in violation of the intellectual property rights.

Religious content.- No content shall be aired that contains derogatory remarks about any religion or sect or community or uses visuals or words contemptuous of religious sects and ethnic groups or which promotes communal or sectarian hatred or disharmony.

Ethical & social values.- Licensee shall show deference to the ethical and social values of the country and ensure that:

a) any content that maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country is not broadcast or distributed;

b) content does not make careless references to any class or group of persons as being inherently inferior or in any way discriminate against any section of the community on account of religion, gender, age, disability or occupational status.

c) content is not obscene or indecent;

Explanation: For the purposes of these regulations content shall be deemed to be obscene if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

d) offensive or derogatory jokes, words, gestures, dialogues and subtitles are not broadcast or distributed;

e) behaviour such as smoking and drug abuse is not presented as glamorous or desirable;

f) alcoholic beverages, tobacco products or any other narcotics shall not be shown;

g) content does not contain anything that denigrates men or women through the depiction in any manner of the figure, in such a way as to have the effect of being indecent or derogatory;

h) content does not contain an abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race or caste, national, ethnic or linguistic origin, colour or religion or sect, sex, sexual orientation, age or mental or physical disability;

i) no content is aired that is offensive to commonly accepted standards of decency or is defamatory;

COVERAGE OF INCIDENTS OF ACCIDENTS, VIOLENCE AND CRIME

(1) Coverage of incidents of violence and crime shall not incite, glamorize or in any way promote violence or anti-social behaviour.

(2) Appropriate warning shall be given upfront for content which may be potentially disturbing or upsetting so as to enable viewers to make an informed choice.

(3) Scenes with excessive violence or suffering such as close-up shots of persons being brutally tortured and killed shall not be shown.

(4) It shall be ensured that reporting of incidents of crime, accident, natural disaster or violence does not create hurdles in dispensation of the duties of rescue agencies, hospitals and doctors.

(5) Extreme caution shall be exercised in handling themes, plots or scenes that depict sex and violence, including rape and other sexual assaults.

(6) Identity of any victim of rape or sexual abuse or such victim's family shall not be revealed without prior written permission of the victim or victim's guardian where victim is a minor.

(7) Content shall not glamorize or in any way promote persons groups or organizations who use or advocate the use of violence or engage in any criminal activity within Pakistan.

(8) A licensee shall not broadcast video footage of suicide bombers, terrorists, and bodies of victims of terrorism, statements and pronouncements of proscribed organizations, militants and extremist elements and any other act which may, in any way, promote, aid or abet terrorist or terrorism.

PRIVACY AND PERSONAL DATA PROTECTION

(1) Any personal information of any individual shall not be revealed unless prior written permission has been obtained from such person or such person's guardian, as the case may be.

(2) Licensee shall not obtain or seek information, audio, pictures or any agreement through misrepresentation or deception.

Programming for children.- (1) Programs and advertisements meant for children shall not:

a) be presented in a manner which may be disturbing or distressing to children or which may in any way adversely affect their general well-being;

b) be frightening, or contain violence;

c) be deceptive or misleading;

(2) Horror and supernatural content which may be frightening to children shall be broadcast in timeslots that are less accessible to children.

(3) The licensee shall include appropriate warning before airing any content that may not be suitable for children.

Language- (1) Content shall maintain high standards of language and abusive language shall be strictly avoided in all programming categories specially in dramas and talk shows.

(2) Standard urdu, regional and foreign languages which are grammatically correct, shall be used for programs such as news, current affairs, info-educational programs and programs meant for children.

NEWS AND CURRENT AFFAIRS PROGRAMS

(1) News, current affairs or documentary programs shall present information in an objective, accurate and balanced manner without being sensationalized.

(2) All news-bulletins shall be prepared and edited by the licensee at through its own editorial board.

(3) Any political or analytical program whether in the form of a talk show or otherwise, shall be conducted in an objective manner ensuring representation of the concerned parties and the guests shall be treated with due respect.

(4) The licensee shall ensure that the news do not contain anything factually incorrect. (5) In the event any factually incorrect program, news or assertion is made by the licensee, the correct factual position shall be broadcast as soon as it comes to the knowledge of the licensee along with an apology.

(6) Programs on *sub judice* matters may be aired in informative manner and shall be handled objectively and no conclusive remarks shall be aired until the decision is announced by the court

(7) News shall be clearly distinguished from commentary, opinion and analysis.

(8) Gloomy, sensational, or alarming details not essential to factual reporting shall not be aired as a part of news-bulletin.

- (9) Footages of gory scenes including bloodshed and dead bodies shall not be aired.
- (10) News shall not be aired in a manner that creates public panic.
- (11) While reporting the proceedings of the Parliament or the Provincial Assemblies, such portion of the proceedings as the Chairman or the Speaker may have ordered to be expunged, shall not be broadcast or distributed and every effort shall be made to release a fair account of the proceedings of the Parliament or the Provincial Assemblies.
- (12) The evidence on which a dramatic reenactment is based shall be tested with the same rigor required of a factual program.
- (13) Sequences that are based on extracts of court proceedings, from police records, and other sources must be fair. Where the creative realization of some elements (such as characterization, dialogue or atmosphere) may introduce a fictional dimension, this shall not be allowed to distort the known facts.
- (14) Footage or re-enactment of executions or other scenes in which people are clearly seen being killed or about to die shall not be shown.
- (15) In talk shows or other similar programs, the licensee shall ensure that:
- the topic of program is clearly highlighted and discussion remains within the ambit of the topic;
 - information being provided is accurate and is not false, distorted, inappropriate or misleading;
 - the program is conducted in an objective and unbiased manner;
 - material is not presented in a manner that creates public panic;
 - exploitation that is appearing to purposefully debase or abuse a person, or group of persons is avoided;
 - the expression of comment and conjecture is not made as fact;
 - the truth is not distorted or suppressed for commercial, institutional or other special interests;
 - undue advantage of information gained in the course of licensee's or any of its employee's professional duties for private gain previously is not taken;
 - intrusion into private life, grief or distress of individuals is avoided;
 - the programs are hosted in a balanced and impartial manner;

PROGRAMMING MIX AND LIVE COVERAGE

- (1) A licensee shall show content as per its license category and percentage wise content set out in the terms and conditions of the license.
- (2) A licensee may broadcast live programs if it is permitted under the terms and conditions of the license and an effective delaying mechanism has been put in place in order to ensure effective monitoring and editorial control.
- (3) The selection criteria of the members of in-house monitoring committee to be appointed by the licensee as required under section 20 (f) of the Ordinance shall be provided to the Authority before grant of the license.

GENERAL STANDARDS

- (1) Licensee shall exercise judgment through decision making of senior editorial staff before airing details of identity or number of hostages or victims of any incident of terrorism and as a general policy, the same shall only be disclosed after the same has been warranted by the security agency in-charge of the situation and family members of the affected persons have been notified.
- (2) Licensee shall ensure that all proscribed organizations, militant groups or individuals who are notified by the Government as terrorists shall clearly be so identified and statements of such militant groups or individuals shall not be aired.

(3) Licensee shall ensure that there is no live coverage which discloses the tactical measures adopted by law enforcement agencies against terrorists during ongoing security operations.

(4) Footage that can cause depression or fear in the minds of public shall be properly edited before airing to minimize such effect and shall not be repeated excessively:

Provided that whenever such footage is shown, advance guiding notes shall be aired for exercise of viewer's discretion.

Explanation: For the purposes of sub-section (6) footage shall be deemed to have been excessively repeated if it is aired for more than once in a transmission of one hour.

(5) While debating on the matters related to financial institutions and stock market, utmost care shall be exercised and it shall be ensure that only professionally qualified persons take part in the discussion.

(6) Licensee shall ensure that no content is aired that:

a) brings into contempt Pakistan or its people or tends to undermine its integrity or solidarity as an independent and sovereign country;

b) undermines public security or contains anything against maintenance of law and order or which promotes anti-national or anti-state attitudes;

c) presents information or events in a manner likely to mislead or cause alarm to the public;

d) contains propagandist and ideological messages on behalf of any foreign country, group or organization;

e) contains extremist or anarchic messages, including the incitement of violence for political ends or other purposes;

f) sensationalizes the treatment of any issue whether local, nationalistic or foreign in nature; or

g) contains aspersions against or ridicules the organs of the State;

(7) Licensee shall ensure that due impartiality is observed while airing news and programs dealing with matters of public policy or controversial issues of public importance in Pakistan and ensure that the programs are factually accurate and duly supported by evidence.

Explanation: Impartiality here means that opinion and views expressed by the licensee shall be based on proper reasoning and facts and shall not be influenced by personal bias, prejudice or other commercial interests of the licensee or persons working for the licensee.

COVERAGE OF ELECTIONS

Licensee shall comply with the guidelines or code issued by the Election Commission of Pakistan for coverage of elections and airing of related programs.

ADVERTISING

(1) Advertisements shall conform to the requirements of the laws of the country including the laws pertaining to protection of the consumer rights and Prohibition of Indecent Advertisements Act, 1963.

(2) Advertisements meant for children shall not directly ask the children to buy the product.

(3) Advertisements shall not promote violence or other activities harmful to human health or property.

(4) Advertisements of any alcoholic beverages, tobacco products, illegal drugs or narcotics shall not be aired.

(5) Any health related advertisement shall not be aired without prior permission of the Federal Government as required under the relevant applicable laws.

(6) Promotion of any kind of lotteries, gambling or betting shall be prohibited.

(7) A licensee shall ensure that its service is not used to advertise or otherwise promote:-

- a) Astrology;
- b) Geomancy;
- c) Palmistry;
- d) Any sort of spiritualism magic or black magic; or
- e) Any other type of fortune-telling.

(9) Advertisement shall not exploit nationalistic behavior and use of national symbols and anthem purely for the purposes of promotion of a product or any quality in such product shall be prohibited.

(10) Advertisements shall be readily recognizable as such and kept separate from programs.

(11) Advertisements in the form of subtitles, logos or sliding texts on TV shall not exceed a maximum of one tenth of the whole screen.

(12) Advertisements relating to telemarketing, tele-shopping or other offers to make phone calls shall clearly identify the applicable charges inclusive of all taxes.

(13) During a regular program a continuous break for advertising shall not exceed three minutes and duration between two such successive breaks shall not be less than fifteen minutes:

Provided that duration of advertisement in one hour shall not exceed a maximum of twelve minutes.

Responsibility for advertising.- Licensee shall be held liable for distribution of illegal or prohibited advertisements.

Programs and advertisements to comply with the local laws etc.- (1) All the licensee shall ensure that programs and advertisements comply with the Ordinance, rules, regulations, code of conduct and do not violate any laws of the country.

(2) Where prior permission for airing of any advertisement or program is required to be obtained under any law, such advertisement or program shall not be aired unless requisite prior permission has been obtained.

Errors and corrigendum.- (1) In the event any false news or information is aired, the licensee shall acknowledge and correct the same on the same medium without any delay in the same manner and magnitude as that of the false news or information was aired.

(2) Any person aggrieved from any aspect of the program or advertisements may file a complaint before the council as provided in Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules 2010.

Distribution of TV channels: A distribution service operator shall relay only those TV channels that are licensed by the Authority.

Interpretation: In case of a dispute or controversy over interpretation, purported meanings or effect of any particular content, the decision of the Authority shall be final and binding on all the concerned parties.

LESSON 31**PEMRA: LEGAL PROVISIONS / ISSUES**

Liberalizing airwaves and relinquishing existing state-owned monopolies in the media have repeatedly been identified as major steps towards building an enabling environment for free media. Introducing regulatory regimes and issuance licenses to the private sector is essential for a competitive market and therefore a prerequisite for independent and free media. Although there is a strong realization that the press/media should be free from state control, the regulation of the broadcast sector can be justified for many reasons.

Airwaves are a 'public good' and governments have a role in safeguarding the public good. Moreover, 'wireless communication' necessitates governments' authority over allocation and licensing of broadcasting frequencies.

Technological reasons and issue of public goods, media ownership is another core rationale for regulations, as society has a legitimate interest in placing limits on private broadcasting by preventing concentration in the media sector.

PEMRA

The introduction of PEMRA was a unique venture for a developing country like Pakistan as no country in the region had similar regulatory arrangements to regulate broadcast media. The objectives of PEMRA include improving standards of information, education, and entertainment; enlarging the choice of people for news, current affairs, and music; improving access of people to mass media at the local and community level; and ensuring accountability, transparency and good governance by optimizing the free flow of information.

PEMRA is authorized to:

- i) issue licenses for broadcast media - radio and television;
- ii) issue licenses for distribution systems - Cable TV, MMDS/LMDS, and Direct to Home (DTH) and
- iii) regulate the establishment and operation of the licensees.

Since its establishment in 2002; PEMRA has issued more than 100 FM radio station, 71 satellite television channels, and six MMDS licenses. PEMRA has granted landing rights to 28 international satellite channels to reach audiences in Pakistan. Moreover, two licenses for each IPTV and mobile TV have also been issued.

The regulatory regime, in the beginning, was not in favour of cross media ownership; however, it was allowed in 2007 through an amendment in the PEMRA law. Besides, PEMRA does not have any jurisdiction to regulate Radio Pakistan and PTV - the state-run media.

In spite of the above, PEMRA is still struggling for its legitimacy, authority, and effectiveness. A variety of issues have been affecting the promotion of an enabling regulatory regime in the country.

These issues include, but are not limited to,

- autonomy and independence of the regulatory authority; structure of the legal and regulatory framework;
- regulatory deficit - particularly with regards to media ownership and technological convergence;
- weaker and traditional enforcement mechanism;
- trust deficit between the licensees and PEMRA;
- ambiguity in government policies towards the regulator; and a lack of comprehensive research to develop a proactive approach in regulating the sector.

REGULATORY ISSUES IN BROADCAST SECTOR

A thorough observation of the regulatory regime reveals that the issues have intensively and extensively hampered the capacity of the regulator to efficiently work out and effectively implement its plans. Critics

(particularly Adnan Rehman and Matiullah Jan) have alleged that the space for media has grown; however, media freedom has shrunk for its practitioners. PEMRA itself has acknowledged the gravity of the situation in various documents including its second annual report.

AUTONOMY & INDEPENDENCE OF PEMRA

PEMRA needs to be an independent and autonomous regulator without any control by the executive branch of government. However, independence and autonomy of the body is questionable as the PEMRA law authorizes the Federal Government to issue policy directives to PEMRA. Unlike other utility regulatory authorities, which are mostly linked with the Cabinet division, the Government has linked PEMRA with the Ministry of Information and Broadcasting in 2007. Federal Secretary of Information is also a PEMRA board member.

This situation puts PEMRA under the complete control of MOI and its independence and autonomy remain subject to the directions of the government.

STRUCTURE OF LEGAL AND REGULATORY FRAMEWORK

The regulatory and legal framework governing broadcast media is based on traditional and old practices of 'policing' rather than 'persuading' the media to abide by the regulations. A recent example of such policing was the disappearance of private media due to the imposition of a state of emergency by General Musharraf on November 03, 2007. As a result of this action, almost all private television and radio channels went off the air leaving the 160 million Pakistanis only with state-run PTV and Radio Pakistan for information and entertainment. Similar practices of policing the media are still being used to curb media freedom. The situation has led to a trust deficit between the licensees and PEMRA, and media operators have occasionally disregarded the orders of PEMRA.

TECHNOLOGICAL CONVERGENCE AND INADEQUATE MEDIA REGULATIONS

Technological advancement has made it possible to use telecommunication networks for broadcasting and broadcasting networks to provide telecommunication services. 'The world is in your hands' as one can access internet, television, and telephone calls through the same handset. Moreover, the same gadget can be used for broadcasting and up-streaming audio and video at the same time. However, PEMRA does not seem to be ready to deal with emerging technological issues and challenges. The issue emerged as a serious one recently, when one cellular phone operator announced the launching of mobile TV.

Ultimately, that company had to apply to PEMRA separately for such a license, despite the fact that the PEMRA Ordinance did not have specific provisions to grant such a license. In the future, the convergence of technology can pose similar regulatory problems which the current PEMRA law cannot adequately deal with.

MEDIA OWNERSHIP AND REGULATORY DEFICIT

The government has lifted the ban on cross media ownership through the PEMRA (Amendment) Act, 2007. This has allowed print media tycoons to own electronic media outlets. As a result, the market is becoming an oligopoly. Due to mounting media ownership consolidation and concentration, diversity is in decline and new entrants are finding it difficult to compete with big market players. Though the combination of resources of print and electronic media may increase quality in news and current affairs programmes, there is a fear that the permission can 'result in a few large firms controlling the majority of information Pakistanis receive'. This can also make it easy for the government to control the media through banning or adding advertising quotas to a 'few operators' in a small media market.

Waning diversity of media ownership, consequently, will lead to fading pluralism and result in the control of a few players over the sources of people's information. The situation is alarming for the semi-literate and illiterate public which mostly depends on electronic media for diversity of information. It is pertinent to mention here that PEMRA has yet to formulate new rules/regulations to monitor and regulate cross media ownership.

THE ENFORCEMENT OF REGULATIONS AGAINST ILLEGAL OPERATIONS

The lack of enforcing the PEMRA law against illegal radio stations is another serious issue for the broadcast sector. In tribal areas, these illegal FM radio stations are in abundance and they have been used to incite hatred and violence. Such illegal radio stations played havoc with the instability in the Swat region. Due to a variety of factors, including the absence of governmental writ in the areas, PEMRA is not able to enforce its powers to stop such operation. An effort is made by the provincial government of KPK to bring illegal operations within the ambit of the law through entering into a peace deal with miscreants who illegally operate such radio stations.

PEMRA as an autonomous, independent, efficient, and effective organization is highly pivotal for the promotion of independent and free media in the country. Such issues and challenges affect the capacity of the Authority to independently and effectively monitor and regulate the media. Therefore, it is important to explore the solution for such issues and develop an enabling environment for the media in Pakistan that ultimately helps building and strengthening democracy and democratic processes in the country.

NEED FOR AN ENABLING REGULATORY REGIME

The framework for an enabling environment as devised by Monroe Price and Peter Krug (2002) attempts to answer the questions relating to such issues which are being faced by media and its governing regulatory regime in Pakistan. The framework mainly focuses on the structure of media and the media market, the rule of law, the legal environment for news media activity, the role of civil society, and education about rights. The regulatory and legal environment relating to news and current affairs media is the main focus of the framework.

With regards to the structure of the media, Price's and Krug's framework provides three principal media forms. The first is state monopoly in ownership and control. The second is related to a public or public service monopoly. The third is private ownership, usually accompanied by some degree of state regulation. However, the framework requires a balanced approach between private and public service/sector media.

A competitive market is seen as a requisite for an enabling environment. The framework acknowledges that restrictions on foreign ownership of media are necessary; however, it considers foreign voices as extremely important for transition countries and countries where there is a government monopoly or a narrow range of domestic points of view in the media. The framework perceives dominance of a single broadcaster/owner as a threat to minority voices and to opposition views within society. Moreover, it supports equal opportunities to all the voices in the media. Furthermore, the framework necessitates a favourable legal environment for news media operation.

MEDIA EDUCATION AND RESEARCH

With the expansion of the media sector in the country, the need for skilled human resources has emerged as a serious concern. Undoubtedly, a skilled and well-qualified workforce plays a pivotal role in building a free and independent media.

Unfortunately, the many universities and colleges providing education in mass communication are only teaching print media courses.

LESSON 32' 33**PRESS COUNCIL OF PAKISTAN: HISTORY, INTRODUCTION, CONSTITUTION AND ISSUES****PRESS COUNCIL - HISTORY**

The concept of press council is based on the Social Responsibility of the Press which emerged after the publication of Hutchins Commission Report as Free and Responsible Press in 1947. (The Hutchins Commission (whose official name was the Commission on Freedom of the Press) was formed during World War II, when Henry Luce (publisher of Time and Life magazines) asked Robert Hutchins (president of the University of Chicago) to recruit a commission to inquire into the proper function of the media in a modern democracy. After deliberating for four years, the Commission came to this conclusion in 1947: the press plays an important role in the development and stability of modern society and, as such, it is imperative that a commitment of social responsibility be imposed on mass media)

The Press Council was a British voluntary press organization founded under threat of statutory regulation as the General Council in 1953, with a non-binding regulatory framework. Through most of its history the Council was funded by newspaper proprietors, with the stated aim of maintaining high standards of ethics in journalism. The General Council was reformed as the Press Council in 1962, with 20 per cent lay members. In 1980 the National Union of Journalists withdrew from membership. In 1991, the Press Council was replaced by the Press Complaints Commission.

ORIGINS: 1947-1962

The first Royal Commission on the Press recommended in 1949 that a General Council of the Press should be formed to govern the behaviour of the print media. In response to a threat of statutory regulation, the General Council of the Press was formed in 1953, membership restricted to newspaper editors, funded by newspaper proprietors. By the time of the Second Royal Commission on the Press in 1962, the General Council had been subject to considerable criticism. The Commission's report demanded improvement, particularly the inclusion of members who were not employed by print media.

SECOND ERA: 1962-1980

In 1962, the Press Council was formed. Twenty percent of the membership was required to be lay members, not employed by a newspaper. The Press Council published a series of guidance booklets on the contempt of court, privacy and defamation etc.

However, the Press Council was criticized extensively in the Younger report on Privacy in 1973 and in the report of the Third Royal Commission on the Press, in 1977. The third Commission urged the development of a written Code of Practice. The Press Council rejected this proposal, and in 1980, the NUJ withdrew from membership on the grounds that the Council was incapable of reform.^[3]

THIRD ERA: 1980-1991

The Press Council had lost the confidence of many in the media,^[4] and the 1980s saw what people labelled as some of the worst excesses of unethical journalism and intrusions into privacy by the tabloid press. In response to two Private Members' Bills promoting privacy laws, the government set up a committee chaired by David Calcutta QC to investigate in 1989. At the same time, under the chairmanship of Louis Blom-Cooper, the Press Council transferred its funding to the Press Standards Board of Finance and began work

on the development of a written Code of Practice. The 1990 Calcutta report recommended the setting up of a new Press Complaints Commission to replace the Press Council.

HOW CONCEPT OF PRESS COUNCIL WAS EMERGED?

FOUNDATION OF AUTHORITARIANISM

To see the idea of the press council in a clear perspective, one must look at the social systems in which the press functions. According to authoritarian philosophers, man could attain his full potentialities only as a member of society. As an individual, his sphere of activity was extremely limited, but as a member of society or of an organized community his ability to achieve his goals was immeasurably increased. Under this assumption, the group took on an importance greater than that of the individual since only through the group could an individual accomplish his purposes.

A common thread runs through all authoritarian theories of governments from Plato (428-347 B.C), Thomas Hobbes (1588-1679 A.D), George Hegel (1770-1831), and Friedrich Nietzsche (1844-1900) to Adolf Hitler (1889-1945) but not all of these philosophies were based on the greed for power or for personal aggrandizement. Many were sincere efforts to grapple with the abstruse problems of the nature of the state, the relation of man to the state and the nature of truth. Regardless of intellectual method or motivation, the result was a system for organizing society under which mass media were assigned a specific role and were subjected to controls in order not to interfere with the achievement of ultimate ends through the state. Licensing, censorship & persecution were the main instruments to control the press under authoritarian system. Another indirect method of control which was popular in 18 th & 19 th centuries was a system of special taxes designed to limit both the circulation and the profit in printed matter, especially newspapers seeking a mass audience.

TRANSFER OF THE MASS MEDIA FROM AUTHORITARIAN TO LIBERTARIAN PRINCIPLES

The transfer of the mass media from authoritarian to libertarian principles in England and America was not accomplished overnight but over several centuries. There were two main struggles in the 18 th century to establish libertarian principles as they affected the press. One was concerned with seditious libel; the other dealt with the right of the press to publish the proceedings of government.

LIBERTARIANISM TO SOCIAL RESPONSIBILITY THEORY OF THE PRESS

The 20th century, however, brought a gradual shift away from pure libertarianism, and in its place began to emerge the social responsibility theory of the press. The theme of which is that freedom carries concomitant obligations; and the press, which enjoys a privileged position, is obliged to be responsible to society for carrying out certain essential functions of mass communication in contemporary society. To the extent that the press recognizes its responsibilities and makes them the basis of operational policies, the libertarian system will satisfy the needs of society. To the extent that press does not assume its responsibilities, some other agency must see that the essential functions of mass communication are carried out.

Social responsibility theory has grown out of the ideas of many persons and grafting of new ideas onto traditional libertarian theory. However, the Commission on Freedom of the Press was a great deal toward making social responsibility a new integrated theory. In 1942, Henry Luce (1898-1967), who was cofounder of the magazine Time (1923), suggested that there was a need to study the freedom of the press in the United States. He talked to Robert Maynard Hutchins (1899-1977), the president (1929-45) and Chancellor (1945-51) of the University of Chicago. Hutchins selected 12 scholars to serve on a Commission with him, of these 9 were associational with a college or university. Luce donated \$ 200,000 for the study. The Commission worked from 1944 to 1946 and its final report titled a Free and Responsible Press was published in 1947.

Even member of the Commission were no in unanimous accord, however all members and assent to the joint report and to a brief summary of principles.

The social responsibility was an Anglo-American concept. About the time that the Commission issued its report in 1947, a Royal Commission on the press, formed at the instigation of the National Union of Journalists, started to study concentration in the press in Britain. On the recommendation of the Royal Commission, a General Council of the press had been formed to encourage a sense of public responsibility and public service in the press. Its main function has been to condemn and publicize questionable practices on the part of the press, to investigate complaints, to seek redress if the complaints are justified, and to reply to them if they are not.

The Commission said that a free press is free from all compulsions and free for achieving the goals defined by its ethical sense and by society's needs; and to attain this end, it must have technical facilities, financial strength, access to information, and so forth. But the Commission is concerned not just about freedom of those who own the media; it is also concerned about citizens who possess a merely negative freedom of expression. Freedom of press is a somewhat empty right for the person who lacks access to the mass media. On the other hand freedom of expression under social responsibility theory is not an absolute right, though it was a marvelous fighting principle against arbitrary governments but in the context of an achieved political freedom the need of limitation becomes evident.

The Commission thinks it questionable that press performance can be left to unregulated initiative alone. The citizen has a moral right to information and an urgent need for it. If the press does not of its volition fill his requirements, then both the community and the government should protect his interests.

The social responsibility theory of the press was born of several things. One was the technological and industrial revolution which changed the face of the nation and American way of living and which affected the nature of the press itself. Another was the sharp voice of criticism, which spoke often as the media grew in size and importance, and which sometimes carried the tacit threat of government regulation. Governmental and private commissions, investigating press performance in various nations, had voiced a need for regulation to guard against abuses not covered by press laws. The American Commission on the freedom of the press (1945-47), the Royal Commission on the Press in England (1947-49), the Indian press commission (1952-54) and the South African press commission (1951-62) provided but a few examples in which voluntary regulation was suggested to correct press abuses. Voluntary regulation was prescribed in light of the fact that governmental intervention in press affairs would violate press-freedom guarantees. Generally press councils were created by and for the press; journalists and publishers cooperated with them to ensure a proper relationship between the press on the one hand and the state and the society on the other. The councils could be likened to medical or bar associations, which enforced professional ethics, except that press-council decisions were generally non-binding.

DETAILS OF PRESS COUNCIL OF SOME OTHER COUNTRIES

The concept of the press council was not new. It began in 1916 when the first Scandinavian press council was established in Sweden to serve as an intermediary between news media and the public. Since then 17 other nations had established press councils, the British press council stood out as quite successful. In early 1980 the press councils of Sri Lanka and the Philippines were under state control. The Turkish press council, established in 1960, was dissolved in 1968. The press council of India, founded in 1965 under the press council act of that year, was abolished in 1976.

Most of the press councils were established voluntarily by the publishers and journalists, or jointly by both. In Great Britain, Israel, and South Africa, governmental criticism of the press paved the way for the creation of the councils. The councils of the South Korea and Taiwan were established by newspaper organizations to circumvent laws providing for press regulation in these countries. It could be said that press councils were established more readily in those countries that do not had the legal institution of the right to reply, for which they tried to offer a substitute.

This is made evident by the fact that the primary objective of every press council was to make the press responsive to the readers' complaints and, where justified, publicize their rebuttals. There was a wide variation in the size of press councils. For example the press council of New Zealand had four members while in that of Israel, the size was so. The press council itself examined complaints against the press or a specialized committee was set up by it. The main functions of the press councils were the preservation of freedom of the press and the maintenance of professional standards. The Austrian press council had the task of ascertaining and seeking to eliminate abuses in journalism, particularly with regard to crime and sex reporting, as well as cases of invasion of privacy for the sole purpose of sensationalism. The Scandinavian Press Councils were primarily concerned with protecting individual privacy and the rights of persons under trial for criminal offenses.

THE HISTORY OF PRESS REGULATION IN PAKISTAN

In Pakistan many self-regulatory efforts were made and different bodies constituted in Pakistan during different regimes but these bodies were under the influence of respective Governments therefore these could not function properly due to Governments intention to use these bodies against the newspapers, critical to the ruling elite.

Any measure on the part of the Government to regulate the Press would be deemed as curbs on the freedom of the Press and the Press would win the sympathies of the general public. If the Government wanted the Press to perform its functions with responsibility, the Government itself would have to fulfill its responsibilities in social services to the people. Bad Press was not the problem of the people rather bad policies of the Government were. Massive illiteracy is the major obstruction inculcating the awareness among the people. If majority of the people become aware they themselves would check the responsibilities of the Press, and the public at large would be able to watch the watchdog.

PRESS COUNCIL OF PAKISTAN ACT-2002

The first Press Commission of Pakistan was set up in 1954. The Commission consisting of 13 members was headed by a retired Judge of the High Court, namely Mr. Justice (R) Attaullah Sajjad. Out of 13 members, 9 were editors belonging to All Pakistan Newspapers Society and Council of Pakistan Newspaper Editors. Due to differences among the stakeholders, no significance progress in the Press Commission could be made. The Press Commission was reconstituted with the Chairman and 5 members in September 1958. Due to the Marshal Law it could not become functional.

Idea behind the establishment of Press Council or institution of Ombudsman was continuously discussed during different eras but due to one reason or the other it could not be finalized. After consultation with the relevant stakeholders, the Press Council of Pakistan Ordinance 2002 was promulgated on 26th October, 2002.

Under the Ordinance 2002, Justice Ijaz Yusuf Chaudhry was appointed first Chairman of Press Council, who served the Council from 3rd March, 2007 to 6th November, 2007. Justice (R) Javaid Iqbal served as the Chairman of Press Council of Pakistan from 15-11-2007 to 15-11-2009. Council could not become functional or operational due to certain political reasons, i.e. imposition of emergency in the country as well as non-nomination of the members by the organizations.

Feeling the need of establishment of national institution for the internal governance of the print media independently in a democratic culture, Raja Mohammad Shafqat Khan Abbasi, Advocate, Supreme Court, former Judge of Lahore High Court, was appointed as a Chairman, Press Council of Pakistan by the President of Pakistan, on the advice of the Prime Minister, on 7th September, 2011. In order to make the Press Council functional and operational, the first ever meeting was held in Islamabad Secretariat on 1st November, 2011.

COMPOSITION OF THE COUNCIL

Press Council of Pakistan consists of 19 members, including a Chairman. As per Section 6 of the Ordinance, the Chairman has to be appointed by the President of Pakistan. The qualification for the Chairman is either a

retired judge of the Supreme Court or a person qualified to be judge of the Supreme Court. The other members are to be nominated by the different organizations as follows:

- (a) Four members by the All Pakistan Newspapers Society
- (b) Four members by the Council of Pakistan Newspaper Editors
- (c) Four members by the professional bodies of journalists
- (d) Vice Chairman, Pakistan Bar Council
- (e) Chairperson or nominee of the Higher Education Commission
- (f) One member by the Leader of the House in the National Assembly
- (g) One member by the Leader of the Opposition in the National Assembly
- (h) One mass media educationist to be nominated by the Council
- (i) One woman member to be nominated by the National Commission on the Status of Women in Pakistan

Under the law, media organizations i.e. APNS, CPNE, PFUJ or professional bodies of journalists cannot nominate any such person who is their office bearer. Term of members: Nomination of the Chairman or the members is for a period of three years from the date of notification. Seventeen (17) members of the Press Council were duly notified by the, M/o Information & Broadcasting on 18-10-2011.

FUNCTIONS OF THE COUNCIL

The Press Council of Pakistan is an autonomous and independent apex body which issue and monitor good standards of media practice for Pakistani newspapers, magazines, periodicals, news agencies and their websites. The main ambits of the Council are:

- (i) to keep under review any development likely to restrict the dissemination of news of public interest and importance.
- (ii) To receive complaints about the violation of Ethical Code of Practice relating to newspapers, news agencies, editors and journalists
- (iii) to revise, update, enforce and implement the Ethical Code of Practice for the newspapers, news agencies, editors, journalists and publishers as laid down in the Schedule to this Ordinance
- (iv) to appoint Enquiry Commission to decide complaints at the head office, all provincial sub-offices and regions, as the case may be necessary for its proper functioning
- (v) to manage the funds and properties of the Council
- (vi) levy and collection of fees as may be prescribed
- (vii) to undertake all research relating to the newspapers, including the studies of foreign newspapers, their circulation and impact
- (viii) the Council will act as shield to the freedom of the press. It may receive a complaint by a newspaper, a journalist or any institution or individual concerned with a newspaper against Federal or Provincial Governments or any organization, including political parties for interference in the free functioning of the press.

STANDARDS OF GOOD MEDIA

The standards of good media practice are contained in the Schedule of the Ordinance, 2002, known as Ethical Code of Practice. The Council has to enforce and implement these Ethical Codes of Practice. The Council can also undertake research and convene conferences, seminars, workshops on the issues relating to the media practice.

ETHICAL CODE OF PRACTICE

Due to rapid growth of the media, journalism has become a full-fledged industry. Journalism has expended its role and activities. Ethical Code of Practice was formulated after thorough consultations with the other stakeholders. Ethical Code of Practice, which consists of 17 clauses are mainly based on the following principles:

- (a) Accurate, fair and balanced reporting
- (b) Correctness of inaccuracy
- (c) Right of privacy and sensibility
- (d) Honest and fair investigation of the matter/news
- (e) Transparent and fair presentation
- (f) Act of terrorism and violence not to be published / glorified
- (g) Rumors and unconfirmed reports have to be avoided
- (h) Press shall avoid publishing any material which encourages discrimination or hatred on grounds of race, religion, caste, sect, nationality, ethnicity, gender, disability, illness, or age, of an individual or group
- (i) Press shall not publish advertisement having tendency to malign or hatred the religious sentiments of other communities.
- (j) Press shall avoid expression of comments and conjecture as established facts, distorting, misrepresenting or suppressing of real facts. Comments by the press should be based on honest expression of opinion without malice or motive.
- (k) Press shall avoid publication of slanderous and libelous material.
- (l) Press shall avoid disseminating any material which tends to undermine sovereignty, integrity or bring into contempt of Pakistan or its people.
- (m) Press shall not publish any material against the interest of glory of Islam, defence of Pakistan, friendly relations with foreign countries, in terms of the Article 19 of the Constitution of the Islamic Republic of Pakistan.
- (n) Press shall avoid in creating sensationalism which cause baseless fear or false hope.
- (o) Care must be taken while reporting on medical issues, sensationalism of violence and brutalities shall be avoided.
- (p) Court proceedings should be reported with accuracy and accused person should not be presented as guilty before judgment pronounced. (q) Names and photographs of the children/juvenile and women involved in sexual offenses or heinous crimes shall not be published.
- (r) Non disclosure of source and confidentiality must be observed.
- (s) Any kind of privilege or inducement whether financial or otherwise, which can influence performance of professional duties, must be avoided. Complaint may relate to news, article, editorial, cartoon and image and other publicity material. The Council also considers complains about the website of the newspapers, magazines and news agencies. The complaint submitted to the Council is an alternative to the legal proceedings. However, if legal proceedings have been commenced, the matter cannot be dealt with.

WHO CAN COMPLAIN/PROCEDURE FOR THE COMPLAINT

Before filing a complaint to the Council, the complainant has to give notice to the concerned editor or publisher within 15 days of the publication. If the concerned editor or publisher does not take any action or the complainant is not satisfied with the response of the concerned editor, then the complainant may file complain within 15 days of the expiry of the first notice mentioned above, before the Council along with

necessary evidence. The complainant shall have to state in the complaint as to how the publication or the material is objectionable and in violative of the Ethical Code of Practice.

COMPLAINT AGAINST GOVERNMENT ORGANIZATION ETC:

The Council may receive a complaint by any person who is aggrieved of publication of any material. One of the functions of the Press Council is to act as a shield to the freedom of press. It can receive a complaint from any person, newspaper or journalist or any institution or individual concerned with the newspapers against the Federal or Provincial Governments or any organization, including political parties for interference in the free functioning of the press.

Period/Time Limit:

The complaint has to be filed within 15 days of expiry of the notice given to the concerned newspaper.

Appeal before the Council:

The aggrieved party may prefer an appeal to the Council within 30 days from the decision of the Commission, in terms of Section 11 of the Ordinance.

No one can be a judge of his own Cause: No member of the Council, Committee or sub-committee shall take part in the proceedings of any complaint under consideration of the Council, Commission, Committee or Sub Committee if he is personally interested directly or indirectly in its decision.

Inquiry Commission:

Under Section 9 of the Ordinance, the Council shall constitute Inquiry Commissions or Committees for deciding the complaints. Such Commissions or Committees shall consist of three members:

- (a) One retired High Court Judge or a person qualified to be the judge of the High Court as Chairman
- (b) One nominated member by APNS
- (c) One nominated member by CPNE

Power of the Council Censure:

Under Section 15 and 19 of the Ordinance, the Press Council is empowered to ask the concerned person to rectify the news item or publish apology. It can issue warning, admonishing or censuring the newspapers or news agency etc.

ACTION IN CASE OF VIOLATION OF DIRECTIONS OF THE COMMISSION OR COUNCIL

Whoever publishes or circulates any matter in contravention of the Ethical Code of Practice or directions of the Commission or Council may:

- a) Require him to publish an apology promptly on the page specified by the Commission or the Council, as the case may be;
- b) Issue him a warning to be carried or circulated by the newspaper or news agency concerned promptly and prominently; and
- c) Ask other newspapers to publish or news agencies to circulate the decision, in case of non-compliance of the decision by concerned newspaper or news agency and recommend to the competent authority to suspend the publication for a specific period not exceeding seven issues or recommend cancellation of the declaration in the event of persistent noncompliance.

Source of information is to be protected:

It has been provided in Sub-Section 3 of Section 14 of the Ordinance that the Council or Commission shall not compel publisher, editor or journalist to reveal the source of information.

ETHICAL CODE OF PRACTICE

An Ethical Code of Practice is formulated as under for the press for the purpose of its functioning in accordance with the canons of decency, principles of professional conduct and precepts of freedom and responsibility to serve the public interest by ensuring an unobstructed flow of news and views to the people envisaging that honesty, accuracy, objectivity and fairness shall be the guidelines for the press while serving the public interest in any form of publication such as news items, articles, editorials, features, cartoons, illustrations, photographs and advertisements; etc –

1. The press shall strive to uphold standards of morality and must avoid plagiarism and publication of slanderous or libelous material.
2. The Press shall strive to publish and disclose all essential and relevant facts and ensure that information it disseminates is fair and accurate.
3. The press shall avoid biased reporting or publication of unverified material, and avoid the expression of comments and conjecture as established fact. Generalization based on the behaviour of an individual or a small number of individuals will be termed unethical.
4. The Press shall respect the privacy of individuals and shall do nothing which tantamount to an intrusion into private, family life and home
5. Rumours and unconfirmed reports shall be avoided and if at all published shall be identified as such.
6. The information, including picture, disseminated shall be true and accurate.
7. The Press shall avoid originating, printing, publishing and disseminating any material, which encourages or incites discrimination or hatred on grounds of race, religion, caste, sect, nationality, ethnicity, gender, disability, illness, or age, of an individual or group.
8. The press shall not lend itself to the projection of crime as heroic and the criminals as heroes.
9. The press shall avoid printing, publishing or disseminating any material, which may bring into contempt Pakistan or its people or tends to undermine its sovereignty or integrity as an independent country.
10. The press shall not publish or disseminate any material or expression, which is violative of article 19 of the Constitution of the Islamic Republic of Pakistan.
11. The press shall rectify promptly any harmful inaccuracies, ensure that corrections and apologies receive due prominence and afford the right of reply to persons criticized or commented upon when the issue is of sufficient importance.
12. While reporting on medical issues, care must be taken to avoid sensationalism, which could arouse baseless fears or false hopes in the readers. Early research finding should not be presented as though they were conclusive or almost conclusive.
13. Sensationalism of violence and brutalities shall be avoided. All reporting shall be accurate, particularly when court proceedings are covered and an accused person must not be presented as guilty before judgment has been pronounced.
14. In the case of sexual offences and heinous crime against children, juveniles and women, names and identifying photographs shall not be published.
15. Confidentiality agreed upon at briefings and background interviews must be observed.
16. The press while publishing findings of opinion polls and surveys shall indicate the number of people, geographical area on which the polls and surveys were conducted, and the identity of the poll-sponsor.

17. Any kind of privilege or inducement, financial or otherwise, which is likely to create conflict of interest and any inducement offered to influence the performance of professional duties and is not compatible with the concept of a reputable, independent and responsible press, must be avoided.

Discussions

Beyond the above mentioned details, we also had some interviews including the Chairman Press Council of Pakistan, discussing the variety of issues concerning the application of press code of ethics in Pakistan. The balance has been made out by including interviews from some of the media practitioners.

LESSON 34**PRESS COUNCIL OF PAKISTAN: HOW DOES IT ADDRESS THE ETHICAL ISSUES?**

Following text has been taken from the ordinance dealing with the subject issues.

WHO CAN COMPLAIN/PROCEDURE FOR THE COMPLAINT

Before filing a complaint to the Council, the complainant has to give notice to the concerned editor or publisher within 15 days of the publication. If the concerned editor or publisher does not take any action or the complainant is not satisfied with the response of the concerned editor, then the complainant may file complain within 15 days of the expiry of the first notice mentioned above, before the Council along with necessary evidence. The complainant shall have to state in the complaint as to how the publication or the material is objectionable and in violation of the Ethical Code of Practice.

FEE OF THE COMPLAINT

The complainant, in case of individual, shall deposit a fee of rupees one thousand, and in case of an institution, rupee five thousand by way of a bank draft, in the name of “Press Council of Pakistan”.

COMPLAINT AGAINST GOVERNMENT ORGANIZATION ETC.

The Council may receive a complaint by any person who is aggrieved of publication of any material. One of the functions of the Press Council is to act as a shield to the freedom of press.

It can receive a complaint from any person, newspaper or journalist or any institution or individual concerned with the newspapers against the Federal or Provincial Governments or any organization, including political parties for interference in the free functioning of the press.

PERIOD/TIME LIMIT

The complaint has to be filed within 15 days of expiry of the notice given to the concerned newspaper.

APPEAL BEFORE THE COUNCIL

The aggrieved party may prefer an appeal to the Council within 30 days from the decision of the Commission, in terms of Section 11 of the Ordinance.

NO ONE CAN BE A JUDGE OF HIS OWN CAUSE

No member of the Council, Committee or sub-committee shall take part in the proceedings of any complaint under consideration of the Council, Commission, Committee or Sub Committee if he is personally interested directly or indirectly in its decision.

PROCEEDING PENDING BEFORE COURT

Matter pending in any court of law will not be entertained by the Council. The complainant has to furnish an affidavit to the extent that no proceeding is pending in any Court of law, in terms of Section 12 of the Ordinance.

HOW COMPLAINT CAN BE MADE

A complaint should be made by completing the Council Complaint Form. The Complaint Form may be submitted either through post or fax or online by a copy of published material to which the complaint relates.

INQUIRY COMMISSION

Under Section 9 of the Ordinance, the Council shall constitute Inquiry Commissions or Committees for deciding the complaints. Such Commissions or Committees shall consist of three members:

- (a) One retired High Court Judge or a person qualified to be the judge of the High Court as Chairman
- (b) One nominated member by APNS

(c) One nominated member by CPNE

POWER OF THE COUNCIL CENSURE

Under Section 15 and 19 of the Ordinance, the Press Council is empowered to ask the concerned person to rectify the news item or publish apology.

It can issue warning, admonishing or censuring the newspapers or news agency etc.

SOURCE OF INFORMATION IS TO BE PROTECTED

It has been provided in Sub-Section 3 of Section 14 of the Ordinance that the Council or Commission shall not compel publisher, editor or journalist to reveal the source of information.

PROCEDURE FOR FILLING COMPLAINT (S-13)

- (1) Every complaint made to the Council shall contain a statement in a concise form of the material on which the complainant relies and all contents shall be divided into paragraphs, numbered consecutively, and dates sums and numbers shall be expressed in the figures.
- (2) In all cases in which a complainant relies on any misrepresentation or blackmailing or fraud, the same shall be stated in the complaint, with dates and items, if necessary.
- (3) Whoever alleges dishonest, fraudulent, mischievous or malicious intention or falsification by distortion, seduction or misrepresentation the same shall be stated in the complaint?
- (4) No complainant shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous complaint of the complainant.
- (5) Every complaint shall be signed by the complainant, provided that where a party by reason of absence or for other good cause is unable to sign the complaint, it may be signed by any person duly authorized in writing by him in this behalf.
- (6) The Commission or the Council may at any stage of the proceeding pass an order to strike off or amend any matter in any complaint which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the disposal of a complaint.
- (7) The Commission or Council may at any stage of the proceedings allow either party to alter or amend his complaint in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the question in controversy between the parties.
- (8) Where a complainant fails to comply with the procedure, the Registrar may return the complaint directing the complainant to bring it in conformity with such requirement and re-submit it within such time as he may specify.
- (9) The Commission, as the case may be, shall dispose off a complaint referred to it within thirty days. If an appeal against the decision of the Commission is preferred to the Council, the Council shall decide the same within sixty days.

POWERS OF THE COUNCIL AND THE COMMISSION (S-14)

- (1) For the purpose of the proceedings under his Ordinance, the Council and the Commission may;
 - a) enforce the attendance of any person;
 - b) receive evidence; and
 - c) issue summons for the examination of witnesses.
- (2) The Council or the Commission shall not compel a publisher, an editor or a journalist to reveal the source of information.

Action in case of violation of directions of the Commission or Council (S-15)

Whoever publishes or circulates any matter in contravention of the Ethical Code of Practice or directions of the Commission or Council may;

- (a) require him to publish an apology promptly on the page specified by the Commission or the Council, as the case may be;
- (b) issue him a warning to be carried or circulated by the newspaper or news agency concerned promptly and prominently; and
- (c) ask other newspapers to publish or news agencies to circulate the decision, in case of non-compliance of the decision by concerned newspaper or news agency and recommend to the competent authority to suspend the publication for a specific period not exceeding seven issues or recommend cancellation of the declaration in the event of persistent non-compliance.

POWER OF THE COUNCIL CENSURE

- (1) where the Council has reason to believe that a newspaper or news agency has offended against any provision of the Ethical Code of Practice, the Council may, after giving the newspaper, or news agency, the publisher, editor or journalist concerned, an opportunity of being heard, hold an inquiry in the matter and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the publisher, editor or the journalist or disapprove their conduct.
- (2) If the Council is of the opinion that it is necessary or expedient in the public interest to do so; it may require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to any inquiry under this section against a newspaper or news agency, a publisher, editor or a journalist working therein, including the name of such newspapers, news agency, publisher, editor or journalist.
- (3) Nothing in sub-section (1) shall be deemed to empower the Council to hold an inquiry into any matter in respect of which any proceeding is pending in a court of law.

LESSON 35**IN THE PUBLIC INTEREST!!!****DEFINITION OF PUBLIC INTEREST**

The public interest refers to the "common well-being" or "general welfare". The public interest is central to policy debates, politics, democracy and the nature of government itself. While nearly everyone claims that aiding the common well-being or general welfare is positive, there is little, if any, consensus on what exactly constitutes the public interest, or whether the concept itself is a coherent one.

Dictionary meanings of public interest are, "1. the welfare or well-being of the general public; commonwealth. 2. appeal or relevance to the general populace: a news story of public interest."

Economists argue that the public interest must be assessed impartially and, therefore, defines the public interest as the "ex ante welfare of the representative individual." Under a thought experiment, by assuming that there is an equal chance for one to be anyone in society and, thus, could benefit or suffer from a change, the public interest is by definition enhanced whenever that change is preferred to the status quo ex ante. This approach is "ex ante", in the sense that the change is not evaluated after the fact but assessed before the fact without knowing whether one would actually benefit or suffer from it.

This approach follows the "veil of ignorance" approach, which was first proposed by John Harsanyi but popularized by John Rawls in his 1971 "Theory of Justice. Historically, however, the approach can be traced to John Stuart Mill, who, in his letter to George Grote, explained that "human happiness, even one's own, is in general more successfully pursued by acting on general rules, than by measuring the consequences of each act; and this is still more the case with the general happiness, since any other plan would not only leave everybody uncertain what to expect, but would involve perpetual quarrelling.

Succinctly, the public interest includes

- Detecting or exposing crime and serious impropriety
- Protecting public health and safety
- Preventing the public from being misled by an action or statement of an individual or organization.

In broadcasting, the public interest is an old but dynamic concept which has changed in meaning overtime and has different dimensions. As a result, it is a crucial but yet ill-defined concept. 

What constitutes working for or promoting the general welfare and/or common well-being (public interest) in a society cannot always be presumed. Different stakeholders in each society have different objectives and competing interests have to be reconciled. The public interest motives of actors could be examined from a community, national or international perspective.

PUBLIC INTEREST: ANALYTICAL POINTS***Public interest in development***

The role of media in sectors such as education and culture and as a driver of economic growth and an instrument for promoting social cohesion would refer to be the public interest in development perspective.

Public interest in responsible journalism

This perspective frames set of obligations and constraints on journalists as well as the need for public participation in media policy-making and regulation.

Public interest in efficient use of spectrum

This would mean public interest as a limited public resource, which requires to be utilized efficiently.

Public interest in governance and accountability

Under this perspective, the promotion of democracy & human rights; corporate governance including in the media industry are considered vital. 

PUBLIC SPACE AND PRIVATE SPACE

A **public space** is a social space that is generally open and accessible to people. Roads (including the pavement), public squares, parks etc. are typically considered public space. Government buildings which are open to the public, such as public libraries are public space.

There is a very thin line between private and public space most of the people consider it as a grey area. Sometimes, it is justified to intrude in someone's privacy. For instance, people want media to intrude in their privacy, e.g. celebrities

PUBLIC INTEREST AND CURIOSITY

Public interest should not be violated in the name of freedom of information and public right to know everything. At times, we do certain things under curiosity but label it we are doing it in the public interest.

THE PUBLIC INTEREST AND NEWS VALUES

Most of the time media persons compromise on news values in the name of public interest, e.g. breaking news regarding celebrities, accuracy, objectivity.

PUBLIC INTEREST AND MORALS

While anything which is in the public interest, public, societal & moral values should be kept in mind, e.g. sex change case in Pakistan.

JOURNALISM ETHICS IN PAKISTAN

The right of individual to protection of his/her reputation and integrity must be respected and any comments on the private lives of the individuals must be avoided, unless this is imperative in the public interest.

PAPARAZZI

Paparazzi, an Italian term, is a freelance photographer who aggressively pursues celebrities for the purpose of taking candid photographs. Paparazzi changes the whole concept of privacy and they do every bit of thing and justify them in the name of public interest.

The word "paparazzi" is an eponym originating in the 1960 film *La Dolce Vita* directed by Federico Fellini. One of the characters in the film is a news photographer named Paparazzo (played by Walter Santesso). In his book *Word and Phrase Origins*, Robert Hendrickson writes that Fellini took the name from an Italian dialect word that describes a particularly annoying noise, that of a buzzing mosquito. As Fellini said in his interview to *Time* magazine, "Paparazzo... suggests to me a buzzing insect, hovering, darting, stinging." There is a similarity with the Italian word "pappataci" a name for a small mosquito. Those versions of the word's origin are nevertheless contested.

The English usage of the word paparazzi is traced to Italian poet Margherita Guidacci, in her translation of George Gissing's travel book *By the Ionian Sea* (1901), in which a restaurant owner is called Coriolano Paparazzo. The name was supplied by the screenwriter of Federico Fellini's *La Dolce Vita*, Ennio Flaiano, who in turn got it from Margherita Guidacci's *Sulla riva dello Jonio* (1957). By the late 1960s the word, usually in the Italian plural form paparazzi, had entered English as a generic term for intrusive photographers. A person who has been photographed by the Paparazzi is said to have been "Papped". In an interview with Fellini's screenwriter Ennio Flaiano, he said the name came from the Italian translation based on a 1901 southern Italy travel narrative by Victorian writer George Gissing, *By the Ionian Sea*. He further states that either Fellini or Flaiano opened the book at random, saw the name, and decided to use it for the photographer. This story is further documented by a variety of Gissing scholars and in the book *A Sweet and Glorious Land: Revisiting the Ionian Sea* by John Keahey, and Pierre Coustillas.

PUBLIC INTEREST LITIGATION

Public interest Litigation means litigation filed in a court of law, for the protection of "Public Interest". Public Interest Litigation can be filed in numerous circumstances; e.g. violation of basic human rights of the poor or the vulnerable groups; content or conduct of government policy; compel public authorities to perform a public duty; and violation of basic /fundamental rights.

Taking Advantages in the Name of Public Interest

Most of the people use the word public interest to take advantage for themselves, e.g. political parties are fond of using media to their advantage.

Public Interest or Media's Interest

Many a times media also justifies its own acts in the name of public interest, e.g. media uses public interest, in order to increase their ratings, e.g. Veena Malik episode.

Need for Privacy

Louis Hodges (1983) has given emphasis on the need of privacy. He states that without some degree of privacy, civilized life is not possible at all; by this we understand that without an extreme need we should not intrude in privacy in the name of public interest.

Right to Know

It is a fundamental right of journalists and public to know about the things which fall in public domain. Citizens may have a legal right to have a lot of information but not to all.

Need to Know

Need to know is the best argument that media personal use to give information to public and assuring them that it is in the public interest and they need to know it.

Want to Know

It is least ethical reasoning for accruing information. This is a desire of a journalist to search for spicy private news about celebrities and other public figures. Disclosure of private life in the name of public interest is highly unethical.

LESSON 36**COPY RIGHTS: ISSUES AND CHALLENGES**

Copyright refers to laws that regulate the use of the work of a creator, such as an artist or author. This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright.

For a copyright to apply to a work, it must be an original idea that is put to use. The idea alone cannot be protected by copyright. It is the physical use of that idea, such as an illustration or a written novel that is covered under copyright law.

According to The Copyright Ordinance, 1962, the copyright is defined as the exclusive right:

- to reproduce the work in any material form
- to publish the work
- to perform the work in public
- to produce, reproduce, perform or publish any translation of the work
- to broadcast the work
- to make any adaptation of the work

INTERNATIONAL TREATIES/CONVENTIONS ON COPYRIGHT

Following are the most important international copyright laws: 

- Berne Convention, 1886 (Signatory)
- Universal Copyright Convention, 1952 (Signatory)
- TRIPS Agreement, 1994 (Signatory)
- Rome Convention, 1961
- WCT, 2002
- WPPT, 2002

THE BERNE CONVENTION

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886.

The Berne Convention requires its signatories to recognize the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way as it recognizes the copyright of its own nationals. For example, French copyright law applies to anything published or performed in France, regardless of where it was originally created.

In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyright law.

Copyright under the Berne Convention must be automatic; it is prohibited to require formal registration (note however that when the United States joined the Convention in 1988, it continued to make statutory damages and attorney's fees only available for registered works).

The salient features of the Convention are:

- National treatment
- Preclusion of formalities
- Minimum terms of protection
- Minimum exclusive rights

UNIVERSAL COPYRIGHT CONVENTION

The **Universal Copyright Convention** (or **UCC**), adopted at Geneva in 1952, is one of the two principal international conventions protecting copyright; the other is the Berne Convention.

The UCC was developed by United Nations Educational, Scientific and Cultural Organization as an alternative to the Berne Convention for those states which disagreed with aspects of the Berne Convention, but still wished to participate in some form of multilateral copyright protection. These states included developing countries and the then Soviet Union, which thought that the strong copyright protections granted by the Berne Convention overly benefited Western developed copyright-exporting nations, and the United States and most of Latin America. The United States and Latin America were already members of a Pan-American copyright convention, which was weaker than the Berne Convention. The Berne Convention states also became party to the UCC, so that their copyrights would exist in non-Berne convention states.

The United States only provided copyright protection for a fixed, renewable term, and required that in order for a work to be copyrighted it must contain a copyright notice and be registered at the Copyright Office. The Berne Convention, on the other hand, provided for copyright protection for a single term based on the life of the author, and did not require registration or the inclusion of a copyright notice for copyright to exist. Thus the United States would have to make several major modifications to its copyright law in order to become a party to it. At the time the United States was unwilling to do so. The UCC thus permits those states which had a system of protection similar to the United States for fixed terms at the time of signature to retain them. Eventually the United States became willing to participate in the Berne convention, and change its national copyright law as required. In 1989 it became a party to the Berne Convention as a result of the Berne Convention Implementation Act of 1988.

Under the Second Protocol of the Universal Copyright Convention (Paris text), protection under U.S. Copyright Law is expressly required for works published by the United Nations, by U.N. specialized agencies and by the Organization of American States.^[1] The same requirement applies to other contracting states as well.

Berne Convention states were concerned that the existence of the UCC would encourage parties to the Berne Convention to leave that convention and adopt the UCC instead. So the UCC included a clause stating that parties which were also Berne Convention parties need not apply the provisions of the Convention to any former Berne Convention state which renounced the Berne Convention after 1951. Thus any state which adopts the Berne Convention is penalised if it then decides to renounce it and use the UCC protections instead, since its copyrights might no longer exist in Berne Convention states.

Since almost all countries are either members or aspiring members of the World Trade Organization, and are thus conforming to the Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement, the UCC has lost significance.

Main features:

- No more favorable copyright treatment for domestic authors than the authors of other countries
- A formal copyright notice on all copies of a work
- Minimum term of copyright is the life of the author plus 25 years
- Right of translation for a seven-year period

TRIPS AGREEMENT, 1994

The **Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)** is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members.^[2] It was

negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS contains requirements that nations' laws must meet for copyright rights, including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

THE ROME CONVENTION 1961

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was accepted by members of BIRPI, the predecessor to the modern World Intellectual Property Organization, on October 26, 1961. The agreement extended copyright protection for the first time from the author of a work to the creators and owners of particular, physical manifestations of intellectual property, such as audiocassettes or DVDs.

Nations drew up the Convention in response to new technologies like tape recorders that made the reproduction of sounds and images easier and cheaper than ever before. Whereas earlier copyright law, including international agreements like the 1886 Berne Convention, had been written to regulate the circulation of printed materials, the Rome Convention responded to the new circumstance of ideas variously represented in easily reproduced units by covering performers and producers of recordings under copyright:

1. Performers (actors, singers, musicians, dancers and other persons who perform literary or artistic works) are protected against certain acts they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent.
2. Producers of phonograms enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Rome Convention as meaning any exclusively aural fixation of sounds of a performance or of other sounds. When a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, or to the producers of phonograms, or to both; contracting States are free, however, not to apply this rule or to limit its application.
3. Broadcasting organizations enjoy the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such

fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows the following exceptions in national laws to the above-mentioned rights:

- private use
- use of short excerpts in connection with the reporting of current events
- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts
- use solely for the purpose of teaching or scientific research
- in any other cases—except for compulsory licenses that would be incompatible with the Berne Convention—where the national law provides exceptions to copyright in literary and artistic works.

WCT 1996

The World Intellectual Property Organization Copyright Treaty, abbreviated as the WIPO Copyright Treaty or WCT, is an international treaty on copyright law adopted by the member states of the World Intellectual Property Organization (WIPO) in 1996. It provides additional protections for copyright deemed necessary due to advances in information technology since the formation of previous copyright treaties before it. It ensures that computer programs are protected as literary works (Article 4), and that the arrangement and selection of material in databases is protected (Article 5). It provides authors of works with control over their rental and distribution in Articles 6 to 8 which they may not have under the Berne Convention alone. It also prohibits circumvention of technological measures for the protection of works (Article 11) and unauthorized modification of rights management information contained in works (Article 12).

There have been a variety of criticisms of this treaty, including that it is too broad (for example in its prohibition of circumvention of technical protection measures, even where such circumvention is used in the pursuit of legal and fair use rights) and that it applies a 'one size fits all' standard to all signatory countries despite widely differing stages of economic development and knowledge industry.

WPPT 1996

The **WIPO Performances and Phonograms Treaty** (or **WPPT**) is an international treaty signed by the member states of the World Intellectual Property Organization was adopted in Geneva on December 20, 1996.

WPPT was adopted with an objective to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible. This treaty would not disturb the existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (Rome Convention). Articles 183 and 194 of the WPPT provide similar obligations for performers and producers of phonograms to contracting states as provided under Articles 11 and 12 of the WCT

COPYRIGHT IN PAKISTAN

The Copyright law in Pakistan is governed by:

- The Copyright Ordinance 1962 (amended in 2000)
- The Copyright Rules 1967 (amended in 2002)

- International Copyright Order, 1968
- The Copyright Board (Procedure) Regulations 1981.

WORKS IN WHICH COPYRIGHT SUBSIST

- Literary works, including computer programme
- Artistic works, including drawings, maps, photographs and architectural works
- Cinematographic works including motion pictures & visual works.
- Records including audio works

DURATION OF COPYRIGHT

- Literary, Dramatic, Musical and Artistic works published within the life of Author. Life of the Author plus 50 years next after the death of author.
- For posthumous work: 50 years after first publication
- Cinematographic, Record: 50 years after first publication

THE COPYRIGHT ORDINANCE, 1962

Salient features:

- Period of copyright is the life of the author and 50 years after his death
- Registration of copyright is not mandatory but recommended
- Allows reproduction for 'Fair Use' in research, teaching, private study, criticism, review, news reporting, and judicial proceeding
- Provides 3 types of remedies against infringement:
 - Civil
 - Criminal
 - Administrative

COPYRIGHT AMENDMENT, 2000

Following amendments were introduced in the ordinance of 1962:

- Criminal penalties up to three years imprisonment or a fine of Rs.100,000 which are doubled for second or subsequent offenses
- Civil ex parte search orders (without notice to the defendant)
- Registrar's authority to prohibit (seize, detain, etc.) the export and import of infringing copies
- A new right in "typographical arrangement" of a published edition of a work

REGISTRATION OF COPYRIGHT

Following procedure is essentially followed in the process of getting copyrights registered:

Registration of Copyright

- Filing of application
- Examination
- Publication in newspaper (Artistic Work only)
- Opposition if any
- Issuance of Certificate by Registrar (Registration)

COPYRIGHT BOARD

- Board acts as an “Appellate Authority” against the order of the Registrar
- Consisting of a Chairman and three to five members
- Representing various stakeholders of copyright.

Appeals

Appeals for infringements are made to Copyright Board then to High Court.

Infringement of Copyright

Copy, issue copies, rent or perform the work without consent or License of the owner are the general infringement modes of the copyrights.

When Copyright Not Infringed

A fair dealing for:

- Research or private study;
- Criticism or review,
- Reporting current events

Penalties and Cognizance

- Penalties (upper limits) – Imprisonment for two to three years, Fine one lac or both

Copyright Statistics

Pakistan

S. No	Years	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07 (April 07)
	1	2	3	4	5	6	7	8
1.	Application Received	2342	2018	2696	2353	2479	2762	2238
2.	Examination	1739	1561	1544	1733	1635	1849	1845
3.	Registrations	1143	1071	943	932	872	1247	1048

Copyright Registrations in Other countries

Year	USA	Canada	Indonesia
2002-03	534,122	7965	-
2003-04	661,469	7928	3565
2004-05	531,720	7650	2316

REASONS FOR VIOLATION OF COPYRIGHT

- Non-cooperative attitude of the government and foreign publishers;
- High cost of book causes piracy; 80% piracy in textbooks;
- Piracy gains respectability because it promotes reading habits;
- Copyright laws are clear;
- No infringement in local books;
- Piracy due to high prices and non-cooperation from foreign publishers;
- Less public awareness.

TRADE LOSS OF US BOOK INDUSTRY DUE TO PIRACY IN PAKISTAN

Year	Loss (in millions of US dollars)
1995	30
1996	30
1997	30
1998	40
1999	42
2000	45
2001	44
2002	44
2003	44
2004	52

CAUSES OF BOOK PIRACY IN PAKISTAN

Causes	Percent
High price of original edition thus low sale	80
High rate of profit	33
Non-availability of original editions	29
Inclusion of foreign books in syllabus	28
Easy and affordable reproduction technology	24
Inappropriate law for copyright violation	20
Legal action is complicated and time consuming	20
No supervisory mechanism to enforce copyright law	18

Difficulties in obtaining copyrights from foreign publisher/author	14
Difficulties in importing foreign book	12
Lack of communication between publishers/booksellers and the Copyright Office	6

Two Sides of a Coin



Michael Jackson
A Billionaire



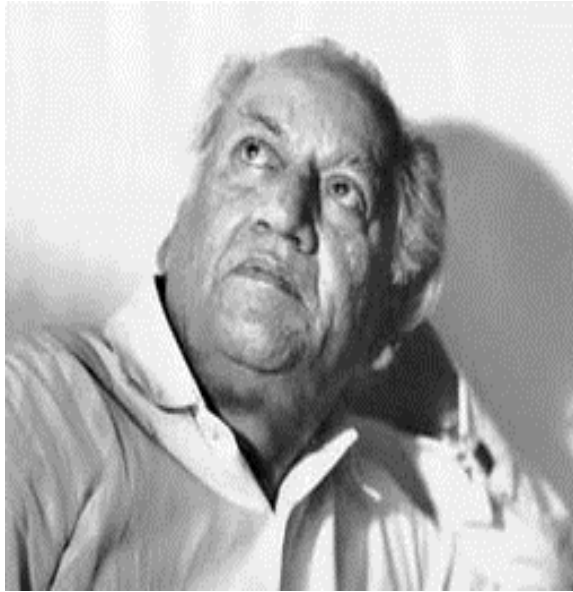
Nusrat Fateh Ali Khan
A Legend, but much lesser in wealth



Fahmida Riaz
Popular poet and novelist



J.K. Rowling
Royalties have made her richer than the British Queen



Faiz Ahmed Faiz - Leading poet had to seek one job or the other totally unrelated to his creative temperament

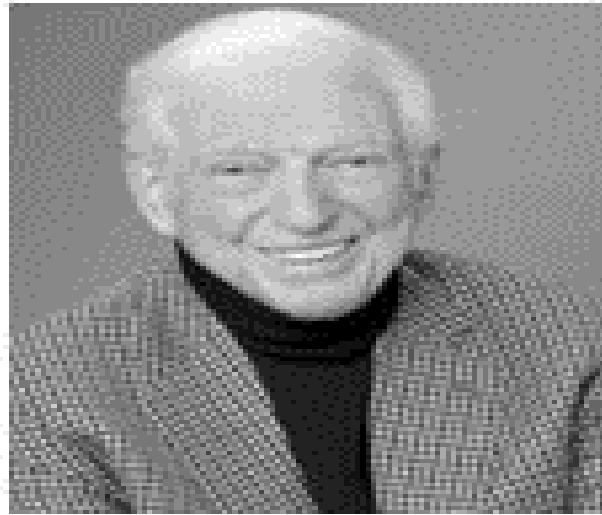


Photo by Taylor Sherrill

Sydney Sheldon, a millionaire

LESSON 37**CONTEMPT OF COURT AND MASS MEDIA**

The law of contempt is predicated on the absolute necessity to provide an enabling environment for the courts and the legislature to perform their constitutional duties without hindrance.

DEFINITION

Any act which is calculated to embarrass, hinder or obstruct court administration of justice, or which is calculated to lessen its authority or its dignity, committed by a person who does an act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice or by one who, being under the court's authority as a party to proceeding willfully disobeys its lawful orders or fails to comply with an understanding which he has given.

TWO TYPES

- a) Contempt in the face of the court (*facia curia*) otherwise known as direct contempt; and
- b) Indirect contempt or *ex facia curia*. This is contempt committed outside the court, so to say.

MORE TYPES OF CONTEMPT**CRIMINAL CONTEMPT**

It is a conduct that is directed against the dignity and authority of the court or a judge acting judicially. Or, it can be said to be an act obstructing the administration of justice which tends to bring the court into disrepute and disrespect.

CIVIL CONTEMPT

It consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.

ELEMENTS OF CONTEMPT

In criminal contempt, intent (*mens rea*) is a necessary element. It means that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. However, in civil contempt, intent is immaterial. Hence, good faith and absence of intent to violate court's order is not a defense.

WHEN IS CONTEMPT CRIMINAL OR CIVIL?

When the primary purpose for which the power is exercised is to preserve the court's authority and to punish for disobedience of its orders, then contempt is criminal. And, when the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil.

WHO INSTITUTES THE FILING OF CONTEMPT CHARGES?

In civil contempt, proceedings should be instituted by an aggrieved party, or his successor, or someone has a pecuniary interest in the right to be protected. While, in criminal contempt, it is generally held that the State is the real prosecutor.

MEDIA AND CONTEMPT OF COURT

Contempt of court covers various activities, which can be said to undermine the integrity of the legal process. A person guilty of contempt can be fined or imprisoned. Contempt of court may impinge on media law in a number of situations.

WHEN DO MEDIA FACE CONTEMPT OF COURT?

Under following situations, media may face contempt of court proceedings:

- Publication of material which might prejudice a fair trial
 - An obvious example is the publication of an accused's criminal record.
 - The law is primarily governed by the contempt of court act of a country which makes it an offence to publish material which creates a substantial risk of serious prejudice to pending court proceedings.
- Breach of a court order
 - Courts may make orders banning publication of all or part of proceedings.
 - Such orders are often challenged by the media.
 - Publications in defiance of such orders are a contempt of court.
- Restrictions concerning minors
 - In many countries, there are a number of statutory provisions in laws that restrict the reporting of proceedings involving minors, the breach of which is a contempt of court.
 - A similar provision applies to complainants in rape cases.
- Disclosure of sources
 - Occasionally, court orders are made compelling a journalist to disclose his or her sources.
 - A judge can only do so where disclosure is necessary in the interests of justice or national security, or for the prevention of disorder or crime.
 - Failure to disclose a source after an order has been made is a contempt of court.
- Publishing jury deliberations
 - In many countries the provisions in the laws make it a contempt to "obtain, disclose or solicit" any part of a jury's deliberations.

CONTEMPT OF COURT ACT 2012

Section 3 of the Act defines Contempt of Court as:

Whoever disobeys or disregards any order, direction or process of a court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a court; or does anything which is intended to or tends to bring the authority of a court or the administration of law or the due course of any judicial proceedings, or to lower the authority of a court or scandalize a judge in relation to his office, or to disturb the order or decorum of a court, is said to commit "contempt of court. Provided that the following shall not amount to commission of contempt of court-

- (i) exercise of powers and performance of functions by a public office holder of his respective office under clause (I) of Article 248 of the Constitution for any act done or purported to be done in exercise of those powers and performance of those functions;
- (ii) fair comments about the general working of courts made in good faith in the public interest and in temperate language;
- (iii) fair comments on merits of a decision of a court made, after the pendency of the proceeding in a case, in good faith and in temperate language;
- (iv) subject to a prohibition of publication under section 9 or under any other law for the time being in force, the publication of a fair and substantially accurate report of any judicial proceedings;
- (v) the publication of any matter, amounting to a contempt of court by reason of its being published during the pendency of some judicial proceedings, by a person who had no reasonable ground for believing that such judicial proceedings were pending at the time of the publication of the matter;
- (vi) the distribution of a publication, containing matter amounting to contempt of court, by a person who had no reasonable ground for believing that the publication contained, or was likely to contain, any such matter;
- (vii) a true averment made in good faith and in temperate language for initiation of action or in the course of disciplinary proceedings against a judge, before the Chief Justice of a High Court, the

Chief Justice of Pakistan, the Supreme Judicial Council, the Federal Government or a Provincial Government;

PUNISHMENT

Section 4 deals with the subject of punishment for the offense of contempt of court, which says:

Subject to sub-section (2), any person who commits contempt of court shall be punished with imprisonment which may extend to six months simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both.

A person accused of having committed contempt of court may, at any stage, submit an apology and the court, if satisfied that it is bonafide, may discharge him or remit his sentence.

LESSON 38**ETHICS, LAWS, AND EMERGING TECHNOLOGIES**

The Internet boom has provided many benefits for society, allowing the creation of new tools and new ways for people to interact. As with many technological advances, however, the Internet has not been without negative aspects. For example, it has created new concerns about privacy, and it has been hampered by spam and viruses.

Moreover, even as it serves as a medium for communication across the globe, it threatens to cut off people who lack access to it. New solutions in information and communication technologies (ICTs) are constantly emerging, and, for good or for ill, the changes they bring may open up our societies and our world to a greater extent than did the first phase of the Internet revolution. It is imperative to consider the implications of these new technologies, and to encourage positive choices regarding their uses.

E-GENERATION

Present day world is the network of wifi, Bluetooth, TiVo, iPod, podcast, blog, Wiki, Gps, Smartphone etc. and PDA: personal digital assistants like portability for speaking, writing, listening, viewing messages.

LEGAL ISSUES VS ETHICAL ISSUES

Legal issues are pertaining to laws, which are binding in nature and are enforced by states. While, ethical Issues concerns our values systems and cultural systems, and principles of conduct governing individual behavior. **Where do your rights begin and where do mine end?** is usually the main question and concern in ethical issues.

ISSUES AND CHALLENGES

Issues pertaining to copyright and privacy and employee behavior and organizational actions, issues around use of phones in a manner which respects rights, safety and privacy of others, while not yet a law, some countries and states in the US restrict the use of mobiles to hands-free phones are prominent ones.

There was a lawsuit recently in the U.S. where the employer had to pay a wrongful death suit because an employee run a red-light and killed a bicyclist while trying to pick up a phone he dropped in a car.

Similarly, phone camera's taking pictures of people and intruding on their privacy and of course unethical. Legal options may be pursued if this is posted on the web and could embarrass the subject of the pix.

PHONE ETIQUETTE

Some of the etiquettes of phone use at work place, driving or at a public place are as under:

- Answer the phone quickly
- Speak quietly and end the conversation quickly
- Avoid taking or making calls when others are seated
- Do not use the phone when you are driving
- Treat email, voicemail, electronic mail as material that is public knowledge
- No pornographic sites
- Do not download movies on office time

IDENTITY THEFT

Identity theft is a form of stealing someone's identity in which someone pretends to be someone else by assuming that person's identity, typically in order to access resources or obtain credit and other benefits in that person's name. The victim of identity theft (here meaning the person whose identity has been assumed by the identity thief) can suffer adverse consequences if they are held accountable for the perpetrator's actions. Identity theft occurs when someone uses another's personally identifying information, like their name, identifying number, or credit card number, without their permission, to commit fraud or other crimes.

The term identity theft was coined in 1964, however it is not literally possible to steal an identity—less ambiguous terms are identity fraud or impersonation.

"Determining the link between data breaches and identity theft is challenging, primarily because identity theft victims often do not know how their personal information was obtained," and identity theft is not always detectable by the individual victims. Identity fraud is often but not necessarily the consequence of identity theft. Someone can steal or misappropriate personal information without then committing identity theft using the information about every person, such as when a major data breach occurs. A US study determined that "most breaches have not resulted in detected incidents of identity theft". The report also warned that "the full extent is unknown". A later unpublished study by Carnegie Mellon University noted that "Most often, the causes of identity theft is not known," but reported that someone else concluded that "the probability of becoming a victim to identity theft as a result of a data breach is ... around only 2%". More recently, an association of consumer data companies noted that one of the largest data breaches ever, accounting for over four million records, resulted in only about 1,800 instances of identity theft, according to the company whose systems were breached.

Identity theft may be key pieces of personal information to gain access to a person's financial accounts of an individual. This information may also include: name, address, date of birth, ID card number, passport number, driving license number, mother's maiden name which is usually kept as a secret question to internet banking etc. It is fastest growing form of fraud in the United States

PHISHING

Phishing is the act of attempting to acquire information such as usernames, passwords, and credit card details (and sometimes, indirectly, money) by masquerading as a trustworthy entity in an electronic communication. Communications purporting to be from popular social web sites, auction sites, online payment processors or IT administrators are commonly used to lure the unsuspecting public. Phishing emails may contain links to websites that are infected with malware. Phishing is typically carried out by e-mail spoofing or instant messaging, and it often directs users to enter details at a fake website whose look and feel are almost identical to the legitimate one. Phishing is an example of social engineering techniques used to deceive users, and exploits the poor usability of current web security technologies. Attempts to deal with the growing number of reported phishing incidents include legislation, user training, public awareness, and technical security measures.

A phishing technique was described in detail in 1987, and (according to its creator) the first recorded use of the term "phishing" was made in 1995. The term is a variant of fishing, probably influenced by phreaking, and alludes to "baits" used in hopes that the potential victim will "bite" by clicking a malicious link or opening a malicious attachment, in which case their financial information and passwords may then be stolen.

SPYWARE

Spyware is software that aids in gathering information about a person or organization without their knowledge and that may send such information to another entity without the consumer's consent, or that asserts control over a computer without the consumer's knowledge.

"Spyware" is mostly classified into four types: system monitors, trojans, adware, and tracking cookies. Spyware is mostly used for the purposes such as; tracking and storing internet users' movements on the web; serving up pop-up ads to internet users.

Whenever spyware is used for malicious purposes, its presence is typically hidden from the user and can be difficult to detect. Some spyware, such as key loggers, may be installed by the owner of a shared, corporate, or public computer intentionally in order to monitor users.

While the term spyware suggests software that monitors a user's computing, the functions of spyware can extend beyond simple monitoring. Spyware can collect almost any type of data, including personal information like Internet surfing habits, user logins, and bank or credit account information. Spyware can also interfere with user control of a computer by installing additional software or redirecting Web browsers. Some spyware can change computer settings, which can result in slow Internet connection speeds, un-authorized changes in browser settings, or changes to software settings.

Sometimes, spyware is included along with genuine software, and may come from an malicious website. In response to the emergence of spyware, a small industry has sprung up dealing in anti-spyware software. Running anti-spyware software has become a widely recognized element of computer security practices for computers, especially those running Microsoft Windows. A number of jurisdictions have passed anti-spyware laws, which usually target any software that is surreptitiously installed to control a user's computer.

PRIVACY IN THE GLOBAL VILLAGE

As the world is becoming a global village, people do not want privacy any more. The rise of social networking online means that people no longer have an expectation of privacy, according to Facebook founder Mark Zuckerberg. For those with socially isolated or low self-esteem, online social network sites can actually be of significant benefit, as it is easier to form links and make friends online. The research showed that the more intensively those with low life satisfaction or low self esteem use Facebook, the more social capital they gain.

People share photos, everyday life experiences, personal information, links, statuses, likes, dislikes on social networking sites which means they do not want privacy rather they want to share personal things with people in global village. People do not care about privacy anymore as they know that their personal information and digital data is already in possession of governments, internet and other secret institutions. They cannot survive without making their personal information public.

In this global village, it seems like that people do not much care about privacy as they can become famous in no time with the help of new media. Privacy invasion of the celebrities make them famous in no time e.g. leaked private pictures of models give them a lot of promotion in no time.

SPAMMING

Spam is the use of electronic messaging systems to send unsolicited bulk messages, especially advertising, indiscriminately. While the most widely recognized form of spam is e-mail spam, the term is applied to similar abuses in other media.

Spamming remains economically viable because advertisers have no operating costs beyond the management of their mailing lists, and it is difficult to hold senders accountable for their mass mailings. Because the barrier to entry is so low, spammers are numerous, and the volume of unsolicited mail has become very high. In the year 2011, the estimated figure for spam messages is around seven trillion. The costs, such as lost productivity and fraud, are borne by the public and by Internet service providers, which have been forced to add extra capacity to cope with the deluge. Spamming has been the subject of legislation in many jurisdictions. A person who creates electronic spam is called a spammer.

This is considered to be the extremely inexpensive method of marketing, even used by many legitimate organizations. It usually contains unwanted and objectionable materials.

According to a regime called Controlling the Assault of Non-Solicited Pornography and Marketing (CANSPAM), it is legal to spam but

- Spammers cannot disguise their identity
- There must be a label in the message specifying that the e-mail is an ad or solicitation
- They must include a way for recipients to indicate they do not want future mass mailings

OTHER**ADVANCED SURVEILLANCE TECHNOLOGY**

Camera surveillance is legal but it needs to be notified. In many developed countries of the world, expanded surveillance systems are in operation. UK is the best example in this regard. Not only this, “Smart surveillance system” through satellite is also being used to check organized crimes.

Facial recognition software which identifies criminal suspects and other undesirable characters, although yields mixed results at time.

Global Positioning System (GPS) chips are placed in many devices, which precisely locate users in mobile and vehicles.

Email and Internet: When employees forward jokes, exchange mail with family and friends and surf the web for personal use then organizations may not like it. So, they keep various checks and log record of surfing as email is not always private. IT monitors every breath you take; it can track and use material in court years later.

Copyright is another significant issue of the day; hence, always request Permission when in doubt. Original works of authorship - written works, art, music, photographs, multimedia and computer software all need permission, otherwise may amount to copyright infringement.

Plagiarism is stealing ideas and words without giving credit to sources, paraphrasing conveying the original idea but in your own words. Emerging technologies have made plagiarism easy and to avoid one must keep citing the person whose idea you are using. Software piracy can lead to severe legal penalties.

LESSON 39**PAKISTAN'S POLICIES REGARDING: TELEPORT, IPTV, CABLE TV, DTH, LANDING POINT, TEMPORARY UNLINKING**

Some important terminologies are defined in the following lines:

1. TELEPORT

Tele is a greek prefix which mean 'send'. 'Telephone' means 'send sound', 'telegraph' means 'send writing'. The word 'teleport' is composed of the prefix 'tele' and the common word 'port' which refers to a harbour city. 'Teleport' then would mean to send your destination or in other words 'send your location'. It refers to the ability to change where you are, usually through some method other than the ordinary ones. "Teleport" means a facility with installed equipment used or required in the process of up-linking or down-linking of audio-visual programs and signals between an earth station and a satellite.

2. UP-LINKING AND DOWN-LINKING

Up-linking means transmission of audio-video signal from ground transmission facility to a satellite in order to transmit any program within or outside Pakistan. Down-linking means transmission path for the signals and data from a communications satellite or other space vehicle to the earth and back.

PAKISTAN'S POLICY

It is the policy of PEMRA not to issue up-linking license without having valid teleport and satellite channel because without that news report is possible but live coverage is not possible without having teleport and DSNG (Digital Satellite News Gathering).

3. INTERNET PROTOCOL TV (IPTV)

Internet Protocol television (IPTV) is a value added service for viewing of broadcast content using a telecom/broadband infrastructure. IPTV in conjunction with voice & data services fulfills the concept of triple play service (phone, internet and TV at the same time) delivered to the customers. Internet Protocol television (IPTV) is a system through which television services are delivered using the Internet protocol suite over a packet-switched network such as the Internet, instead of being delivered through traditional terrestrial, satellite signal, and cable television formats. IPTV services may be classified into three main groups:

- **live television:** with or without interactivity related to the current TV show;
- **time-shifted television:** catch-up TV (replays a TV show that was broadcast hours or days ago), start-over TV (replays the current TV show from its beginning);
- **video on demand (VOD):** browse a catalog of videos, not related to TV programming.

History: The term IPTV first appeared in 1995 with the founding of Precept Software by Judith Estrin and Bill Carrico. In 1999, NBTel (now known as Bell Aliant) was the first to commercially deploy Internet protocol television over DSL in Canada. In 2005, Bredbands bolaget launched its IPTV service as the first service provider in Sweden. In 2006, AT&T Inc. launched its U-Verse IPTV service in the United States, comprising a national head end and regional video-serving offices. In 2007 TPG became the first internet service provider in Australia to launch IPTV.

In Pakistan, IPTV was launched by PTCL, under brand name Smart TV, which is available in most of the major cities of Pakistan. The number of global IPTV subscribers are expected to grow from 28 million in 2009 to 83 million in 2013. Europe and Asia are the leading territories in terms of the over-all number of subscribers.

Advantages

- An IP-based platform also allows significant opportunities to make the TV viewing experience more interactive and personalized.

- IPTV technology is bringing video-on-demand (VoD) to television which permits a customer to browse an online program or film catalog, to watch trailers and to then select a selected recording.
- Interactive portal that allows the user to navigate within the different IPTV services, such as the VOD catalog.

IPTV in Pakistan

IPTV licenses to be issued only to Local Loop Operators licensed by PTA. PEMRA issued IPTV licenses to two companies in NOV, 2006 - Pakistan Telecommunication Company Ltd. And Sachal Satellite Communications (Pvt.) Ltd. Currently only operational IPTV network is SMART TV by PTCL, other license was cancelled due to non-operational.

4. MOBILE TV

The content provider (licensee), under an agreement, provides broadcast content to Mobile Network Operator through video streaming technology over data networks. The Mobile Network Operator in turn distributes the content to its subscribers through any of the video streaming technology e.g. GPRS/EDGE, 3G networks etc.

Mobile TV in Pakistan: Two licenses have been issued to M/s Celle Vision and M/s Brand Promotion Services for provisioning of services to Mobilink and Telenor respectively. Another Mobile TV (Content Provision Service) license is under process to be issued to M/s Dialog Broadband (Pvt) Ltd.

5. DTH

One method of direct reception of channels from satellite which can render greater and better-quality coverage is the Direct-to-Home satellite television service.

Through this service, subscribers or end users, receive signals directly from geostationary satellites.

Brief History: DTH Service means (Direct to Home) Service when came in to existence brought the World Television to the different world. The DTH service was originally started in Europe & America in Early 1980's and it became very famous there. DTH entered in India very late, and has yet to come in Pakistan.

A DTH subscriber's installation consists of a dish antenna two to three feet (60 to 90 centimeters) in diameter, a conventional TV set, a signal converter placed next to the TV set, and a length of coaxial cable between the dish and the converter.

Working: The dish intercepts microwave signals directly from the satellite. The converter produces output that can be viewed on the TV receiver.

DTH in Pakistan: The issue of DTH bidding process earlier completed in 2003 is subjudice in the Sindh High Court. However, the court has not barred PEMRA from further licensing. Licensing Regime for the award of DTH licenses including Eligibility Criteria, SOQs, Terms & Conditions, Bidding Procedure etc. is in process and will be completed soon. Same will be finalized as per policy directives of the Federal Government. The number of channels will be decided by PEMRA based on the study of local needs, public interest, availability of channels and their conformity with the Code of Conduct.

6. CABLE TV

Cable television is a system of distributing television programs to subscribers via radio frequency (RF) signals transmitted through coaxial cables. This contrasts with traditional broadcast television (terrestrial television) in which the television signal is transmitted over the air by radio waves and received by a television antenna attached to the television. Cable TV Distribution Service means a service which receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through a cable network. The cable operators, in fact, get the signals from different satellites through their dish antenna receivers and after combining transmit these via copper or fiber cables connecting them to subscribers' television sets. Because

the signal from the antenna becomes weaker as it travels through the length of cable, cable providers have to insert amplifiers at regular intervals to boost the strength of the signal and make it acceptable for viewing.

CTV Licenses: PEMRA has issued over 2500 CTV licenses and 579 in-house channel permissions have been granted. In house channels are those channels which cable operators run locally with the permission of PEMRA.

Pakistan Policy: According to PEMRA rules and regulations:

- A maximum of two licenses shall be granted in the same area of operation
- Where already two or more licenses have been granted no further license shall be granted for the time being.
- Where already one license has been granted one more license may be granted
- Where more than two applications are received licenses may be granted through bidding
- A Cable Television Operator shall ensure that only eligible channels are distributed through its cable system to the subscribers
- A Cable Television Operator shall make provisions in its head-end facilities for carrying out **real-time editing for obscenity**, language, violence etc. according to the 'Code of Conduct' of the Pakistan Censor Board.
- A Cable Television Operator shall distribute television channels in such a sequence that the first three frequency slots (48-68 MHz. i.e., E2-E4) are allocated to the national broadcaster (PTV).
- A Cable Television Operator shall use PAL B/G television system on its cable system

7. **LANDING RIGHTS**

If a Satellite TV channel is uplinked from abroad and the channel operator wants to distribute the channel in Pakistan, he shall obtain permission (Landing Rights) from PEMRA for its distribution on Distribution Service Networks. PEMRA has so far issued 29 Landing Rights Permissions to various channels and brought them under the PEMRA regulations to make the media public friendly. The policy of legalizing the foreign channels has been instrumental in not only halting the distribution of illegal channels in the country but also number of parties have shown interest in obtaining Landing Rights Permission for legal distribution of other foreign channels.

Landing Rights Permissions have been granted to channels of different genre i.e. Sports, Educational, General Entertainment, Film, Music and Regional etc. Sky News, ESPN, Fox News, Star World, Star Movies, DW TV Aisa + etc. are among other channels which have obtained Landing Rights Permission. Recently, DW TV Asia + a national broadcaster of Germany has also been granted Landing Rights Permission.

8. **TEMPORARY UPLINKING**

Uplinking means transmission of audio-video signal from ground transmission facility to a satellite in order to transmit any program within or outside Pakistan. PEMRA has been issuing short / long term uplinking permission to various broadcasters and news agencies on completion of codal formalities. Uplinking permission has been granted to seven broadcasters / news agencies.

Uplinking Licenses: Short-term and long-term uplinking permission has also been granted to different companies in Pakistan. Currently three news agencies hold long-term uplinking permission for one year namely;

- Asian Television Press Network Pvt. Ltd.
- Eastern News Pvt. Ltd.

- Classic Entertainment Pvt. Ltd.

While following four companies have been granted short-term permission,

- Faizan Production Pvt. Ltd.(Madni Channel)
- GAAZA Broadcasting System Pvt. Ltd.(GKABOOM)
- Indus TV Networking Pvt. Ltd. (Indus News)
- Birds Pvt. Ltd. (Geo Super)

Pakistan Policy: According to PEMRA policy on Uplinking:

- No person shall carry out uplinking without a valid Teleport or Satellite TV license from the Authority
- The authority may subject to fulfillment of such conditions, as may be prescribed issue permission in writing to any party to carry out temporary uplinking from a ground transmission facility to a satellite in order to transmit any program within or outside Pakistan."

9. 3G TECHNOLOGY

3G technology, which is short for third generation mobile telephone communication systems technology. The data transfer rates for third generation mobile telecommunications is up to 2 Megabits per second. Aside from this feature, 3G cellular phones also have conventional voice, fax and data services, as well as high-resolution video and multimedia services which can be used while on the move. It also includes mobile office services such as virtual banking and online-billing, video conferencing, online entertainment and access to the Internet.

3G in Pakistan: Currently PTA is working for issuing of 3G licenses to Telecom companies of Pakistan. PTA advertised the RFP (Request for Proposal) for the consultancy services of 3G spectrum auction on August 13, in international as well as in national media.

10. TELECOM OPERATORS

Telecom companies like Telenor, Ufone and Mobilink have already upgraded their infrastructure to participate in the bidding. IPTV and Mobile TV services would be much better and efficient.

LESSON 40**PAKISTAN TELECOMMUNICATION AUTHORITY: INTRODUCTION, MANDATE AND FUNCTIONS**

The Pakistan Telecommunication Ordinance 1994, established the primary regulatory framework for the telecommunication industry including the establishment of an authority. Thereafter, Telecommunication (Re-Organization) Act no XVII was promulgated in 1996 that aimed to reorganize the telecom sector of Pakistan.

Under Telecom Reorganization Act 1996, Pakistan Telecommunication Authority (PTA) was established to regulate the establishment, operation and maintenance of telecommunication systems, and the provision of telecom services.

MEMBERS

“The Authority” consists of three members; one Profile of them is a professional telecommunication engineer and the other a financial expert, to be appointed by Federal Government for a period of four years. Among the three members, the Federal Government appoints one member to be the Chairman who is also the administrative head of the Authority.

FUNCTIONS & RESPONSIBILITIES

Pakistan Telecommunication Authority (PTA) regulates the establishment, operation and maintenance of telecommunication systems and provision of telecommunication services in Pakistan. It receives and expeditiously disposes off applications for the use of radio frequency spectrum and protects the interests of users of telecommunication services in Pakistan.

Authority promotes high quality, efficient, cost effective and competitive telecommunication services ensuring rapid modernization of telecommunication systems and telecommunication services throughout Pakistan.

Apart from these functions, Authority also investigates and adjudicates on complaints and other claims made against licensees arising out of alleged contraventions of the provisions of the Act, Rules, Regulations and license terms and conditions.

It makes recommendations to the Federal Government on policies ranging from international telecommunications, provision of support for participation in international meetings and agreements to be executed in relation to the routing of international traffic and accounting settlements.

PTA regulates arrangements amongst telecommunication service providers for sharing of revenue derived from provision of telecommunication service and enforce effective compliance by licensees on account of Universal Services Obligations.

PTA also regulates Access Promotion Contribution and settles disputes between licensees. Authority is responsible for protecting the rights of licensees as well as interest of end users of telecommunication services.

All of its decisions and determinations are made promptly, in an open equitable, non discriminatory, consistent and transparent manner and applications/complaints are disposed off expeditiously. In case of a determination or corrective decision, the persons/institutions effected by its actions are given a due notice thereof and provided with an opportunity of being heard.

DIVISIONS

To carry out its functions and exercise its powers in most efficient way, PTA has been structured into seven divisions which perform their duties in their respective areas.

LAW & REGULATION

L & R Division handles all the legal matters of the Authority and ensures legal cover for its actions and decisions. This division provides assistance to the Authority in drafting and vetting of Rules, Regulations,

licenses and contracts. It also advises the Authority on all regulatory issues such as implication of new enactment, government policies, introduction of new technology and its effect on the existing regulatory treatise, interconnection and dispute resolution between the licensees.

In case of violations by any entity within or outside PTA, L & R division issues show cause notice, files, manages and maintains record of court cases on behalf of the Authority.

COMMERCIAL AFFAIRS

This division manages and ensures efficient handling of matters pertaining to tariffs and interconnection agreements of telecom services providers. It also deals with issues related to cost unbundling of services, international accounting, Rate Settlement, interconnect disputes between licenses, and consumer complaint pertaining to tariffs.

Licensing

This division is responsible for granting and renewing licensing for any telecommunication system and service as well as modifying the licenses if needed, under the law. Its duties also include processing the applications for the use of radio frequency spectrum, promoting high quality, efficient, and competitive telecommunication services throughout Pakistan.

Promoting modernization of telecommunication systems and services, issuing regulations for licensing of different basic and value added telecom services are also the functions of this division.

STRATEGY & DEVELOPMENT

S & D division is considered to be the Think Tank of PTA as it has the important responsibility of devising strategies to drive the telecommunication growth in Pakistan. This division constantly reviews the telecommunication standards by conducting in-house studies and outsourcing those studies which contribute extensively in policy making and decision making of the Authority.

This division is responsible for keeping the Authority up-to-date with advancements in the ever changing trends in the telecom and IT sector around the globe.

SERVICES

The responsibilities of services Division include framing standards for telecommunication equipment, arranging type Approval of terminal equipment and management of numbering plan for telecom networks in Pakistan. It also deals with matters related to consumer protection and processes complaints against telecom service providers through a computerized database of complaints for accurate and expeditious action. The cell is responsible for monitoring action on all complaints and obtaining progress from the concerned operators till redressal or disposal of the complaint.

LICENSE ENFORCEMENT

This Division acts as the eyes and ears of PTA as it monitors/watches all sector operators in light of their license terms and conditions. The main functions of this division are the enforcement of license clauses, monitoring of service quality bench marks, protection of users as well as industry interests, adjudication of complaints and dispute resolutions. The division also secures national interests by carrying out inspections/raids against illegal operators in collaboration with Law Enforcing Agencies. It ensures that operators do not overcharge their customers from the laid down tariffs. It implements the Authority and court decisions and follows up court cases.

Meetings of Central Advisory Committee are also arranged by this division.

FINANCE

This Division manages finances of PTA including revenues receivables, employee pension and GP funds. The Budget & Accounts Directorate prepares the annual budget, monitors the budget, maintains the accounts of PTA, prepares the financial statements and gets them audited by the external Chartered

Accountants every year. It also deals with financial evaluation of license applications. Finance division is also responsible for analyzing and evaluation of audited annual accounts and determination of annual regulatory fee(s) payable to PTA by licensee.

ACHIEVEMENTS

Following are some of the PTA achievements:

- Pakistan Telecom Authority has recovered an amount of PRK 13.7 billion from LDI operators on account of APC for USF.
- In order to save smaller operators from abuse of dominant operators and to bring stability in telecommunication market, PTA has issued Determination on Significant Market Power (SMP) operators in Pakistan and AJK/GB region on 15th July 2010
- Billing Verification of Cellular Mobile Operators
- New Regime for sale of WLL Connections. Implementation and Monitoring of “Activation of WLL Connections after Verification through NADRA’s Database”
- Enforcement Division through its rigorous investigation carried out a total of 38 raids on grey traffickers throughout Pakistan and apprehended the culprits along with confiscation of number of illegal setups. A total of 42,898 sims were blocked used for grey traffic.
- Finance Department has achieved the recovery target for the year July 2010 to June 2011 of Rs. 10,865,560,411 in less than six months. The total recovery to date amounts to Rs. 10,972,149,748.
- As a result of extensive recovery efforts of Finance Division, Rs. 6 billion was deposited by operators directly with MoIT.
- The total amount recovered from operators in 2010-11 including deposits at MoIT is Rs. 16.97 billion.
- Out of 99 Recovery Petitions filed so far, Recovery Department has settled 56 RPs or 57% in all Zones and has recovered/settled total dues of Rs.937.281 million, while utmost efforts are being made to settle other RPs as early as possible.
- Completion of IPv6 Monitory Group Report
- Launching of Urdu, Mobile versions and Text to Voice Plug-in for PTA Website
- Launch of National Rabta Information Portal
- Broadband Subscribers Survey
- SMS based Education & Agriculture Information Systems
- Awareness was created among users through various media campaigns on obnoxious/fraudulent calls and SMS, 3G Services, broadband proliferation, launching of Urdu edition of PTA website, local contents and applications, Raids against illegal telecom service providers,
- National Rabta Information Portal launching, MoU signed between UET/NUST/Comsats and PTA, 100 million subscribers, SMS service to help flood affectees, mobile operators’ infrastructure sharing, consumer forum etc.
- Development and Implementation of SoP on Tower Sharing: A comprehensive SoP on passive tower sharing by CMTOs and WLLs was developed in consultation with the industry and issued on 15th September 2010. Salient features of the SoP are:
 - Tower sharing has been mandated if new cell site is to be in close vicinity of an existing tower. Maximum radius of this purpose for various areas has been given in the SoP.
 - A target of achieving a tenancy ratio of 1.5 has been set by end of 2013. Current ratio is 1.12
- CVAS Licenses and Registrations Issued: During the year 2010, 27 Data CVAS Licenses, 4 Voice CVAS Licenses and 14 CVAS Registrations (Total of 45 CVAS Licenses + Registration) were issued.
- Master List of Licensees: As per the Telecom Act, the Authority has to maintain a Register of all Licenses. Accordingly, list of all licenses / spectrum users was prepared according to their status (issued, cancelled, operational / non-operational) and uploaded on PTA’s Web Site for general public information.

- PTA introduces Short Code '1234' for Fund Raising for Flood Affected People and an amount Rs. 1,853,550/- was collected by sending messages on short code 1234 and deposited in Prime Minister Flood Relief Fund accordingly.
- A crises cell was formulated for managing complaints on subject matter. Round the clock facility was made available to cater to every complaint on the matter which stands at more than 6000 on record. Consolidated lists of more than 2073 URLs comprising of blasphemous contents were forwarded to the concerned department for further processing.
- Network/Subscriber level Voice/SMS blocking facility has been implemented by the CMOs. As a result of concerted efforts towards the same, a marked decrease in number of complaints on misuse of service has been witnessed in a period of two months.
- PTA's Consumer Protection Directorate received 26021 complaints in which 24331 have been resolved during the Year 2010. The redressal rate was 94% in 2010.
- PTA recovered an amount of Rs. 363,172,269/- so far on account of annual numbering charges from different operators.
- CMN billing verification Methodology
- GPRS/EDGE KPI's Regulations
- Study on the inter cellular Network utilization for SMS traffic and its comparison with global trends
- Study report on 3G/4G status globally and recommendations for Pakistan
- Industry working Group on Next Generation Networks (WG-NGN)
- Efficient utilization of spectrum and digital dividend
- Spectrum Pricing: A detailed consultation completed on rationalization of RF spectrum annual charges for all the radio based services. Final recommendations have been sent to GoP.

LESSON 41**PTA: REGULATORY ISSUES, IMPLICATIONS OF REGULATIONS AND BROADBAND POLICY**

According to Sec-3 of Pakistan Telecommunication Rules, 2000:

Application for grant of a license.- (1) No license to provide basic telephone service may be granted, but applications may be made for the establishment, maintenance and operation of any telecommunication system or the provision of any telecommunication service other than basic telephone service.

CONDITIONS AND CRITERIA FOR GRANT OF A LICENSE (SEC-4)

The Authority may grant license to an individual, class of persons, company or corporation, keeping in the following factors:

- (a) the financial and economic viability of the applicant;
- (b) the applicant's experience in telecommunications and relevant past history;
- (c) the technical competence and experience of the applicant's management and members of staff and local participation in the business;
- (d) the quality of the applicant's telecommunications system or network; and
- (f) the terms of bid made by the applicant where the license is to be issued under a competitive process.

INTERCONNECTION

"interconnection" means the physical and logical connection of two operator's connectable systems thereby allowing customers of one system to connect with customers of the other system, or to access telecommunication services provided from the other system; for instance; one cellular company's user call on another cellular company's mobile....etc.

Sec-13 to Sec-17 of PTA Rules deal with interconnections including the provision of facilities, quality of service, exchange of information, tariff etc.

PTA – GROWTH STRATEGY

Cellular Mobile Policy was announced in 2004. This policy reaffirmed the government's commitment to a competitive market and encouraged private investment in this sector.

Certain regulatory steps were taken, which are:

- PTA made it mandatory for all operators to expand their networks from the urban to the rural areas
- Mobile Number Portability was enforced to reduce network effects of switching network.
- Two more licenses were issued to foreign companies through transparent competitive bidding.
- Each one was asked to establish and operate its own network.
- Activation charge was eliminated and taxes further reduced.

Foreign Investment (Telecommunication accounted for most of the FDI received by the country) initiative was introduced, which created thousands of jobs directly and indirectly (e.g. the Franchise network of each service provider, and supporting industry e.g. mobile sales and repair shops). Pakistani experience demonstrates that a strong and credible regulatory regime was the key to the efficient operation of the mobile market based on fair competition.

It left fewer opportunities for political interference, increased transparency and adopted consultative approach.

Liberalised and pro-competition policy is beneficial (reduces price, enhances quality and efficiency, expands network and increases range of services), which it adopted. The case shows the benefits of adopting one

technological standard in a market. The prices of mobile handsets and accessories were high in Pakistan in the first phase, partly due to the deployment of the competing standards AMPS and GSM. The roaming and interconnection between two kinds of networks remained problematic. However after gradual shift towards all GSM networks, the handset prices and air-time cost reduced due to enhanced economies of scale.

ISSUES WITH PTA

Once far ahead of India, the cellular industry in Pakistan witnessed a bumpy ride such as average Revenue Per User (ARPU) that was nearly \$6 per month back in 2006 has dropped down to mere \$ 2 per month in 2012.

Foreign Direct Investments (FDI) have dried up terribly. Telecom investments were highest during 2005 – 2008, the investment figure peaked in 2006-07 with a total amount invested in Pakistan telecommunication sector as \$ US 3.97 billion having FDI up to \$ US 1.84 billion.

Telecom investments fell down to \$ US 495 million in 2010-11 and recorded a de-investment in the telecom sector up to \$ 253.3 million as several telecom operator decided to pull out the investment due to unfavorable investment conditions in Pakistan. The only hope of attracting FDI in Pakistan died with the inability of PTA to conduct 3G licensing in the country.

Mobile Cellular Policy of 2004 had highlighted the importance of 3G services in Pakistan, as per policy guidelines, 3G licensing was to be conducted in 2006. Even after 6 years of delay, the telecom authority has remained unsuccessful in implementing the rules of the business.

PTA has failed miserably to enforce very basic rules that are mentioned in the books. Recent examples show that authority could not handle the menace of unregistered SIMs despite of heavy media campaigns and tall claims. The fact is evident from latest hearing of Supreme Court with reference to illegal usage of mobile phones SIMs in Baluchistan.

Despite of clear directions from the apex court in May 2012, PTA hasn't been able to convince the cellular operator on this sensitive issue. Supreme Court had directed PTA to implement 5 SIMs against single CNIC mechanism.

Similarly, Supreme Court had ordered last month to immediately stop the Inaami Schemes as they are un-Islamic act and promoting gambling. PTA passed on the direction to telecom companies through an interim-order which was turned down by the cellular operators as they found it more appropriate to seek a stay in their favor from Islamabad High Court.

BROADBAND POLICY 2004

'Broadband' is generally accepted as high speed, 'always on' Internet connection. Various international regulators specify the minimum download speed of a broadband connection ranging from 128 Kbps to 2 Mbps or higher. The 'Always On' facility as opposed to the 'dial up' (10s of KBps) means that the user has access to the net as soon as he switches his internet.

Accordingly broadband in Pakistan will be defined as "Always on Internet connection with a download speed of at least 128kbps connectivity". This download speed target will be subject to an increase as the bandwidth prices reduce, local content becomes available and there is a general increase in awareness of broadband.

Broadband is more than a communication technology; it is a significant economic stimulus for any country as changing dynamics of the world economy rely heavily on well connected economic resources of a country. Advanced content, high quality mediums, reliable infrastructure and well-linked information repositories determine the future of country's economy by providing right information delivered through reliable and secure communication links at the right time. Broadband market in Pakistan underwent a great degree of technological and strategic transformation during the last fiscal year.

Competition in the broadband market intensified with the introduction of new operator Qubee, launching its WiMAX based broadband services in Pakistan. PTA's soft licenses, terms and conditions facilitated access of the latest broadband technologies to Pakistan which highlights tremendous potential in broadband sector.

Presently, a wide collection of technologies for broadband is available to customers including DSL, WiMAX, FTTH, EvDO, HFC and VDSL2.

Pakistan excelled on the global broadband technology landscape once again when PTCL became the first operator in the world to use 'VDSL2 Bonding' technology under the brand name 'PTCL Ultra Net' which can provide bandwidth up to 50 Mbps on its existing Copper network for broadband customers. Earlier, Wateen had launched World's first commercial WiMAX network in Pakistan in 2007.

STATISTICS

Broadband customer growth has been over 150% on average for the past four years.

Broadband subscribers have crossed the one million mark with highest net additions in a year.

According to the latest market data, the tally of Broadband users reached 1.5 million compared to 900,648 at the end of FY 2010.

Growth rate for the current period was at 66%, less than 118% of the previous year.

However, 590,843 new subscribers have been registered by the broadband companies during the FY 2011, breaking the record for the highest net additions during last fiscal year.

BROADBAND PLAYERS

PTCL retained its status as market leader with 848,379 subscribers representing 78% growth and 57% market share from its DSL and EvDO services.

Wateen had a sluggish year depicting only 16% growth with a count of 218,506 subscribers and 15% market portion.

WorldCall, the third biggest company with 148,441 clients and 10% market share, showed subscriber growth of 53%.

Wi-Tribe's customer base grew by a striking 163% to touch 136,674 and market share of 9%.

Starting its services last year, Qubee received encouraging response from the consumers as the company brought into fold 46,112 users, claiming 3.1% stake in the market.

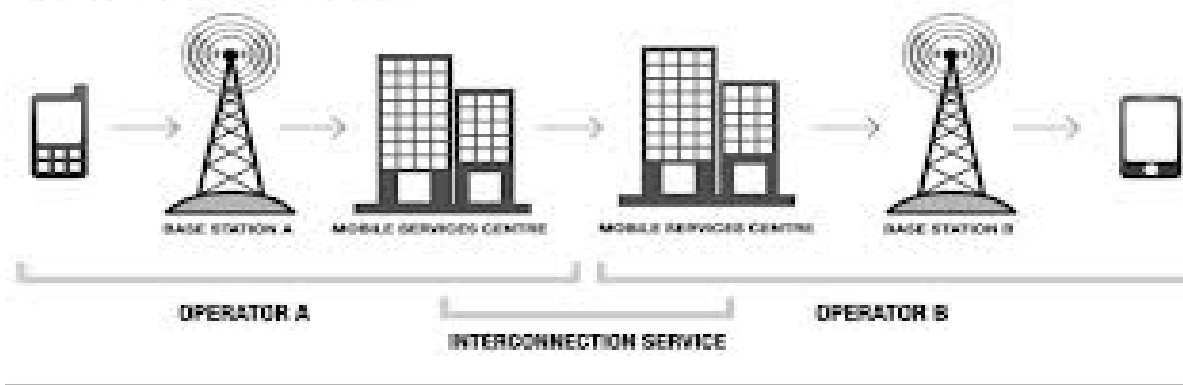
It was chased by Link Dot Net with 37,693 subscribers and 2.5% market share.

POLICY OBJECTIVES

1. Spreading of an affordable, 'always on,' broadband high speed internet service in the corporate/commercial and residential sectors across Pakistan.
2. Encourage the entry and growth of new service providers while stimulating the growth of the existing ones at the same time.
3. Encourage private sector investment in local content generation and broadband service provision.

LESSON 42**PTA - LICENSING ISSUES, INTERCONNECT COST ANALYSIS, ANALYSIS OF SETTLEMENT, INTERCONNECT STRATEGIES****INTERCONNECTION**

Interconnection involves a linking up of one telecom operator to the infrastructure facilities of another. Interconnections can be considered in terms of **network interconnection** and **access interconnection**. The former takes place between operators possessing networks, and the latter between an operator with a network and another without one.

What is Interconnection?**INTERCONNECTION SERVICE**

'Interconnect service' is when you make an 'off net' call (see diagram). Since an off-net call travels partially along the network of another operator, that party charges your operator a fee for carrying your call to its destination.

Interconnection services refer telecommunication services for the purpose of conveyance of intelligence between two connectable systems including any ancillary services, which an operator has requested from another operator after entering into an agreement, according to PTA Interconnection Guidelines.

IMPORTANCE OF INTERCONNECTION

Interconnection is crucial for communicating across networks, and makes it possible for the subscribers of two different operators to communicate with each other. It is essential for extending the scope and efficiency of the telecom network, and is especially important for new operators entering the market who normally use the existing facilities of another operator for providing their services. It therefore is fundamental to a competitive market structure.

TYPES OF INTERCONNECTION

Three broad types of interconnection are considered here:

- Connection to the **Public Switched Telephone Network (PSTN)** of equipment on customer premises, of private telecom networks, or of value-added networks (these types of interconnection do not compete with the basic network); (e.g. cell to ptcl etc.)
- Connection of **new fixed local networks** or **long-distance networks** to the PSTN.
- Connection of **cellular networks or other wireless** systems to the PSTN, or of the satellite systems to the PSTN.

INTERCONNECTION CHARGES

Interconnection charges include charges for collecting and delivering calls, for installing, maintaining and operating the points of interconnect, payment for supplementary services (such as directory assistance, fault reporting, network maintenance, or inter-carrier billing), and for ancillary and other facilities (such as space in the equipment room). Furthermore, in several cases, there is also a charge to fund the deficit arising due to the provision of universal service. However, if the funding of such a deficit is covered by the telecom tariff, then it should not be a part of interconnection charges, i.e there is a need to avoid double-counting in this context.

Interconnection charges play an important role in promoting investment, competition and growth of the telecom sector in any country. The cost based interconnection charges also help in improving economic and technical efficiency of telecom operators

METHODS OF CHARGING FOR INTERCONNECTION

There are basically two methods for charging for interconnection:

- One is through **sharing of revenues among the interconnected operators** of telecom services.
- The second, which is more commonly used, is **to establish interconnection charges on the basis of costs**. Cost-Oriented Interconnection - in a cost-oriented interconnection regime, there is no sharing of revenues between carriers. Instead, the operator from whom interconnection is purchased is paid for providing that interconnection.

The principle of cost-orientation in interconnection rates is intended to ensure that the rate charged by the provider of interconnection reflects that operator's cost of providing the service plus a reasonable profit.

LICENSING

PTA Licensing division deals with licensing of telecom system and services including fixed line i.e. wireless and wire line services, value added and cellular services. It invites expression of interests, receive proposals, evaluate applications and grants license after obtaining approvals from the authority. The division revalidates licenses and deals with transfer of management and assignments of right cases after getting necessary inputs from law/ Finance division of PTA.

CELLULAR OPERATORS

In Pakistan, currently five cellular mobile operators are providing services using GSM technology

- Telenor Pakistan,
- Pakistan Mobile Communication Limited (PMCL/Mobilink)
- PTML (Ufone)
- Warid Telecom
- China Mobile Pakistan (CMPak)

Whereas the sixth operator Instaphone was providing CDMA services had its license cancelled in 2011. All the GSM operators have also launched GPRS/EDGE services. As a result of progressive network rollout by the operators, the facilities are now available to over 95 % population of the country.

CELLULAR OPERATORS IN AJ&K

In Azad Jammu and Kashmir (AJ&K) and Gilgit Baltistan (GB), there are six cellular mobile operators. The five above are Pakistani GSM operators and Special Communication Organization (SCO) providing services. SCO is the incumbent mobile operator since 2003. After the earthquake of 2005, mobile licenses were issued to operators of Pakistan. Now, the AJ&K and NAs are at par with the Pakistan in terms of mobile facilities & competition in the sector.

SIGNIFICANT MARKET POWER (SMP)

The Government believes that the success of market liberalization depends on the development of a fair competitive environment for all licensees. In this regard, Mobile and fixed line licensees who emerge with

Significant Market Power (SMP) shall be prohibited from abusing their dominant positions through anticompetitive conduct. **PTA incorporates provisions of anti-competitive practices in the licenses for SMP(s).**

RIO (Reference Interconnection Offer)

Operators with SMP will also have to produce a **Reference Interconnection Offer (RIO)** detailing the services and tariffs they provide to other licensed operators.

APPROVED ROI

Pakistan Telecommunication Authority (PTA) has approved Reference Interconnection Offer (RIO) of :

- Pakistan Mobile Communication Limited (PMCL)
- Pakistan Telecommunication Limited (PTCL)
- Special Communication Organization (SCO) for facilitating different operators, seeking initiation of telecommunication services with its collaboration in its strong networking and subscribers' regions.

LDI

Long Distance and International (LDI) license issued for the provision of end to end communication between points that are located in Pakistan with points that are located outside of Pakistan. Licenses have been issued to 13 Long Distance and International (LDI) operators which includes:

- Worldcall Telecom Ltd.
- Telenor LDI Communications (Pvt.) Ltd.
- Wateen Telecom Pvt. Ltd.
- Witribe Pakistan Ltd.
- Dancom (Pvt.) Ltd.
- and many others

The LDI operators described in previous slide provide interconnect for international traffic through which local traffic connects to international traffic.

COMMON SMP IN PAKISTAN

Besides Mobilink, Pakistan Telecommunication Limited (PTCL) and Special Communication Organization (SCO) as SMP operators have granted access to different operators for interconnection services in different telecom region. Mostly, SMP is requested by operators for Call Termination and Short Message Conveyance services.

PTA POLICY FOR SMP

Significant Market Power (SMP) Operator, is obliged to providing service to operators to minimize wasteful and uneconomic duplication of network facilities; the existence of fair competition among operators and users of one operator should be ensured on different networks' users. SMP operator is required, pursuant to Rule 13 of the Pakistan Telecommunication Rules, 2000, to enter into an interconnection agreement within ninety (90) days from the request of another operator. The services and facilities shall be provided on the basis of unbundled network element and be charged accordingly. That is, a requested operator shall only pay to SMP operator for the network components or facilitates that it requires.

PTA Guidelines states that:

The SMP operator is not allowed to unfairly discriminate the terms and condition of interconnecting and provide the same quality of services it ensures to its customers. SMP is allowed to provide interconnection services to interested operators as per agreement approved by the authority.

Accordingly, SMP and requested operator sign agreement on the approved *modus operandi* for services access, formula of charges, schedule of payment, quality of services, co-location and numbering formula, limitation of liability, intellectual property rights and etc.

For the avoidance of doubt, charges are payable by the operator to SMP for any Calls or Short Messages terminating on the SMP Network which are handed over from the Points of Interconnection. Each party (Incumbent and Requested operator) is responsible for the safe operation of its network and shall take all necessary steps to ensure network with practicable measures.

The parties shall manage their networks to minimize disruption to the services and they shall restore the services in the event of interruption or failure, normally stated in RIO agreement draft. The Parties shall convey telephone numbers to each other in the national and international formats as contained in the Numbering Plan issued by the PTA.

Neither party shall use or permit the use of any service, or install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment in contravention of any law. Each Party shall ensure that its Network and operating procedures comply in all respects with its Interconnection Agreement.

ANALYSIS OF SETTLEMENT

Normally regulators encourage the operators to settle interconnection rates through negotiations. In this process, intervention by the regulators is sought in the event of a difficulty or a dispute. Interconnection charges for establishing a connection with another operator's infrastructure facilities should be separated from charges for using the network facilities. The set-up costs associated with establishing and maintaining interconnection facilities should be shared between the interconnecting operators.

It would not be possible (nor desirable) to specify interconnection prices for each one of the interconnection services. The interconnection services should be divided into essential services (essential for competition or for consumption), and others. While the regulator would address the issue of interconnection charges for both these services when there is a dispute or lack of agreement among operators, greater control and scrutiny has to be exercised for interconnection charges for essential services. This includes changes in these charges for essential services being subject to specific approval. To promote competition and to guard against unfair competition, interconnection charges should be non-discriminatory.

If a relatively higher charge has to be imposed on any operator, it should be based on a demonstrated difference in the cost of providing the particular interconnection service to that operator. Similarly, the interconnection price charged to competitors must not be greater than the interconnection provider's best price to its own vertically integrated operations (unless there is a cost justification).

CHARGING ANALYSIS

As much as possible, the charging structure should be unbundled so that a telecom operator pays for what it uses and is not forced to pay for what it does not use. Since the operator seeking interconnection has to operate with a reasonable profit in the market, the interconnection charge should be below the end-user price of the service. In fact, there might be a need to provide a preferential treatment to a new entrant. For that purpose, the interconnection charge could be based on a cost-concept which provides an interconnection charge lower than a concept which has a wide coverage of costs.

This preference could be granted for a transition period, based on certain criteria such as market share. The preference could be removed once the entrant's market position is stabilized.

RECENT CONTROVERSY

The controversy started in August, 2012 regarding tax on interconnect charges. The National Accountability Bureau (NAB) issued notices to five telecom companies and directed them to pay their **sales tax** along with penalty charges. A NAB press statement read the companies were operating in the country and had to pay their outstanding taxes of Rs 47 billion on interconnect charges for the past five years.

PTA PERSPECTIVE

A PTA official said the PTA declared the interconnection charges as expenses when the CCP regime was inked. The official said the interconnection charges are not income and tax can be imposed on expenditures. “Therefore, we do not see the operators will be penalised in this case at the end of the day,” they added.

PTA – PEEPING INTO FUTURE

Stepping into e-Pakistan : E-Pakistan is a unique concept that the Authority envisions for the next ten years to employ substantial telecommunication infrastructure in terms of fixed and wireless for resolving country's challenges relating to education and health. The well-built communication highways could be utilized to reach out to larger segments of the people having no access to basic health and education services. The concept also focuses on knowledge sharing in different domains of ICT for development besides facilitating multi-stakeholder partnerships and networking among governments, industry, academia and civil society organizations in the country. A mammoth tide of local content and applications will be provided through this infrastructure to take the people of Pakistan beyond basic voice and data services.

Switching to Broadband 2.0: The Broadband 2.0 networks will eventually replace current broadband networks. While old and new networks may exist simultaneously for a short period of time, there would possibly be strong business reasons to shift to a single and modern network in the longer term. Hit by the current global economic recession, there are substantial pressures to encourage excessive use of digital technologies to lower the cost of providing core public services and improving national economic competitiveness. Broadband is a critical tool to achieve these goals. The next ten years would bring in ubiquitous personalized communication lifestyle where any service would be run on any device, network or location through a broadband connection.

3 G and Beyond: Vision of 4G and beyond, including established technologies like WiMAX, are heralding the age of convergence. The most prominent example of convergence is the facility of watching television on telecom networks. In the wired world, this means IPTV and WebTV, while in the world of wireless, it suggests mobile TV. Additionally, wire line and wireless networks are converging as multimedia services are being delivered across all-IP broadband. Mobile phones are now capable of running sophisticated applications through 3G platforms. In the IP world, consumers are increasingly participating in the creation of content, applications and services by blending available resources and creating value for all contributors.

LESSON 43**TECHNOLOGICAL CHANGES AND THEIR IMPACT ON THE REGULATIONS AND POLICIES: THE DIGITAL FUTURE, CABLE AND SATELLITE, DIGITAL TV**

Human communication has changed immeasurably in less than a generation. Today's children are born into a world in which their means and opportunities to connect with each other and to share information would have been unimaginable to their own grandparents - even their parents. Whether it's called the Digital Age, the Information Society, or the Digital Economy, we are witnessing a fundamental transformation of the most basic relationships among individuals, governments, and cultures. This new era brings with it limitless possibilities for humankind to realize new achievements, harnessing the powers of information and communication for the betterment of the planet. But it also presents new and unfamiliar challenges, and the risk that these technologies of enlightenment could be turned to darker purposes.

In this environment, the role of communications regulation is changing fundamentally as well, but it remains critical to the prospects of realizing the most ambitious goals for ICT-driven development.

Indeed, it is due to the strong successes of regulatory authorities, *inter alia*, in their implementation of many of the traditional and innovative practices highlighted in the foregoing chapters of this book, that the current ICT revolution has taken off with such force. As the next generation comes of age in a world saturated with interconnected devices and infinite information resources, their aspirations to take advantage of these media to enhance the fortunes of the global society they will inherit will be heavily influenced by the policy and regulatory landscape that governs them. This chapter thus introduces some of the most prominent new regulatory challenges arising in the context of this transformative digital communications age.

CONVERGENCE, UBIQUITY, AND WEB 2.0

The communications world is vastly different than even a decade ago and continues to evolve rapidly. The greatest forces for change are convergence of media, increasing ubiquity of connections, and the interactive, user-generated nature of the new paradigm.

CONVERGENCE OF COMMUNICATIONS**MEDIA: THE FUTURE HAS ARRIVED**

The concept of convergence II in the world of communications has been anticipated, forecast, planned, and discussed for several decades - always with the implication that convergence is —on the way and when it arrives, the traditionally distinct realms of media, technologies and networks will ultimately blend into a seamless and interchangeable whole. As we enter the second decade of the new millennium, it is safe to say that this long-awaited era of convergence has at last arrived in full force.

Over time, the idea of convergence has taken on multiple and overlapping meanings, reflecting different perspectives of the traditional communications landscape. In fact, a variety of interrelated phenomena have been converging at the same time:

Computing and Communications: The merger of IT with C to yield the integrated world of ICT is ultimately at the core of all convergence trends. For more than two decades, the processing power and storage capacity of integrated circuits has been multiplying endlessly, while becoming deeply interwoven with the exponentially growing transmission capabilities of global telecommunications networks. The marriage of the two previously discrete fields is what has made possible the instantaneous sharing of limitless data in any form, in any location around the world.

Wires and Waves: Wireline and wireless networks remain separate in only limited ways; most services involve some combination of both. Telecommunications operators deploy terrestrial fixed cables (copper or fiber) where it makes technical and economic sense, and utilize a variety of radio-based connections, from microwave to satellite, for other segments of their networks. This extends all the way to customer premises equipment, where users often prefer cordless handsets attached to wireline public switched networks, as well as in-home or corporate WiFi local area data networks. The chief distinction from a technical and regulatory point of view remains the need to allocate frequencies for wireless segments and minimize interference.

Broadcasting and Telecommunications: Broadcast television and radio developed separately from point-to-point telecommunications, often with separate regulatory regimes. They are increasingly integrated: cable and satellite TV are becoming the dominant media by which audiences receive television signals, and IPTV is right behind them; Internet and satellite radio

are also widely utilized. Frequency allocations for broadcasting are being reassigned to allow more efficient use of spectrum for digital broadband transmissions. Ironically, some broadcast signals are returning indirectly to the airwaves in this manner: as they are transmitted from their original source onto the Internet, then accessed by users via wireless mobile devices.

Conduit and Content: The traditional separation of broadcasting from telephony also yielded distinct approaches to regulation of communications content. Television and radio stations were subject to public oversight of their programming, but monitoring the content of voice telephone calls required a special permit to eavesdrop, usually only granted to law enforcement agencies and national security services. Telephone networks were –common carriers,¹¹ or merely conduit for the signals sent over them. In the converged environment, all networks carry an indistinguishable mix of messages, from voice to data to audio and video.

Corporations and Networks: Convergence is naturally also reflected in the strategic maneuvers of the corporate interests that inevitably vie for control of each new popular manifestation of consumer demand for communications. Both within countries and across national boundaries, media and network ownership is heavily concentrated among a core of mega-corporations (e.g., AT&T, NTT, Deutsche Telekom, Vodafone, Microsoft, Intel, Samsung, Sony, etc.), which are likely to consolidate further as the industry matures worldwide. Such corporate convergence and market consolidation will be a key trend to watch in the years ahead.

The practical impacts of all these converging trends are limitless, and have created both challenges and opportunities for industry planners, consumers, and governments alike. Today, there are no longer isolated and independent service markets for any and all kinds of communication. Customers can watch television on their MP3 players, access e-mail from their iPads, chat online while playing video games, conduct telephone conversations via their laptops, listen to radio through their cable TV, upload photos and videos directly from their digital cameras. They can do all of the above and more while working, travelling, or sitting in a park. And these options will only continue to expand in the years ahead.

For those concerned with regulation of the increasingly wide ICT universe, convergence implies a certain **fundamental realignment of perspective.** It means that regimes and rules once applied separately to broadcasters and telephone companies, to mobile networks and landlines, to content providers and common carriers, all must be revisited, and often themselves merged into a new, integrated regulatory framework. Some of the imperatives arising from this new perspective have been noted in the previous chapters of this *Handbook*: on licensing, competition, spectrum regulation, and the like. Looking ahead, it is clear that regulatory functions and objectives will have to take into account a variety of new issues resulting from convergence, as well. This will demand both new resources and new ideas, which recognize that a new communications era is most definitely upon us.

UBIQUITY: MASS COMMUNICATION FOR THE MASSES

While communications networks, media, and devices have been converging, they have also been spreading: blanketing nearly the entire planet, multiplying exponentially, finding their way into the homes and hands of millions more people every year. The raw numbers speak for themselves.

INFORMATION WEALTH

At the high end of the economic scale, in OECD countries and among the wealthier segments of nearly every society, individual citizens are becoming almost permanently connected. They utilize PCs on their office and school networks, while carrying WiFi-enabled laptops to every meeting, classroom, and coffee shop, listening to their iPods and perusing their e-Book readers on the train and bus, or else navigating their cars with smart GPS devices, then returning home to their personal PCs and in-house broadband networks, 500-channel digital television services, online video game systems, and satellite radio receivers, all the while talking, texting,

e-mailing, surfing, and posting via their always-on mobile smart phones. The term –ATAWAD has been coined for this growing trend of digital ubiquity: Any Time, Any Where, Any Device.

But extensive levels of connectivity are penetrating well beyond the elites, to moderate and lower income households, farther and farther out from cosmopolitan centers, and most especially among younger age groups, in nearly every region, country, and culture. Mobile phones have been the leading wave in this rising tide; the combined innovations of pre-paid calling cards, calling-party-pays pricing schemes, and SMS texting, together with the convenience of mobility and shrinking size and cost of handsets, created a perfect industry storm that was largely unanticipated, particularly in the less developed corners of the world. According to the ITU, at the start of 2010, there were over 4.6 billion mobile phones in the world and the overwhelming majority of the growth in recent years has been in developing countries.

THE REGULATORY IMPERATIVE

The implications of this immense growth for governments, and especially regulators, are profound. Increasing success in the quest for universal communication means that the scope and impacts of communications services are increasingly significant throughout society. The numbers of people affected by each decision, each new policy, each bold initiative or grave misstep are consistently growing, and the reach of those decisions into their daily lives, their jobs, their social and cultural and political experiences, is ever more extensive.

The role of ICTs in national and local economies naturally has expanded dramatically too, both in terms of the total amounts of money spent on equipment and services, as well as the dependence of companies and employees upon these technologies. Any shift in fees or taxes, any new restriction or prohibition, any investigation or intervention, carries potential consequences that could ripple throughout the economy, for better or worse.

In effect, the role of communications regulatory authorities, whether by design or not, has been elevated into the nerve center of public policy, simply by virtue of the public's insatiable demand for unlimited opportunities to communicate. The pressure on those with day-to-day responsibility to oversee the smooth functioning of the industry has thus increased by orders of magnitude. Any service outages, for example, or perceived poor quality of service, are more likely to galvanize public dissatisfaction with both operators and those that regulate them. Instances of objectionable content or scams or other online controversies will, rightly or wrongly, often be laid at regulators' doorsteps. Moreover, other political powers, as far up as Presidents and Prime Ministers, will be drawn into disputes and crises that might once have stayed well out of their range of vision, simply because of the sheer numbers of citizens affected by ICT developments. The jobs of regulators have never been more challenging, or more important.

THE RISE OF SOCIAL NETWORKING AND WEB 2.0

One of the overriding features of the digital economy is that it is also an age of democratization: an era in which the masses have a greater voice than ever before in history. It is sometimes forgotten that the World Wide Web, and even the Internet itself, was not created from the R&D budget of any commercial enterprise. While the technology of the Internet was driven by defense research and public funding, most of the innovations that transformed it from an academic and scientific endeavor into a global communications phenomenon were pioneered by disparate, self-motivated users of the original system. Hypertext transfer protocol (http), hypertext markup language (HTML), and the original Web browsers in the early 1990s, were developed by users for their own experimental (and non-commercial) purposes. That these developments caught on and forged a truly worldwide revolution was as much accidental as intentional.

THE NEXT GENERATION

In recent years, Internet enthusiasts have begun to describe the emergence of –Web 2.0, a term that implies a second generation of the Web's evolution – a more participatory network in which end-users take on a much more important role. In this iteration, the decentralized global Internet has become even more decentralized: peer-to-peer communication and data sharing far outweigh top-down information delivery; the Web is everywhere, and everyone is the Web.

The killer application of this latest phase of the Internet is arguably social networking. The core concept involves web-based services that allow individual users to create their own virtual biographies and diaries, and thereby to link themselves electronically with countless digital companions throughout cyberspace. In just a few years' time, the Internet has become thoroughly dominated by these interactive, user-focused sites. By far the most successful service in this genre – and indeed on the Internet as a whole – is Facebook, the site that claims over a half billion members around the world, who constantly update their status, friends, photos, likes, and interests on a daily, even hourly basis. In terms of traffic generated, it is rivaled by YouTube, in which users themselves are also the main generators (or at least disseminators) of content. Both these applications are now driving mobile Internet traffic as well.

Among the countless other global sites offering similar services are such leading alternatives as MySpace (allowing multimedia user profiles), Twitter (immensely successful focus on short status messages, or –tweets), LinkedIn (concentrating on business and job profiles), Ning (a shared web development site), hi5 (very successful in Asia), and several sites competing to dominate the vast Chinese social networking market: QQ, RenRen, Baidu, and others. A special category of social networking sites are dating and marriage services, which abound in nearly every society, helping millions prospective lovers to find one another through photos, text, videos, and chatting features.

The simple concept of having users themselves create the content of an information or entertainment service, thus both minimizing costs and engaging users in the active development of the service, has also expanded far beyond the pure social networking model. There is a wide and growing array of media that now follow the same path of bottom-up, populist content sharing, many of which have risen to be among the most popular features available:

Multimedia Sharing: Sites that allow users to upload and share photos, music, and especially video, showcasing their own creations or interests. By far the leader in this group is YouTube, which hosts over 120-million video clips, from archival to esoteric to amusing to political and even commercial scenes.

Weblogs: Personal and community diaries, universally known as –Blogs, which typically involve commentary and discussion on topics of interest to the blog host, with user feedback and debate. The largest blogs, which cover politics, industry, entertainment, and other popular subjects, draw thousands of visitors and comments every day from around the world.

“Wiki” Media: A Wiki is a format for interactive user-based editing of online documents. In addition to posting new material, contributors are encouraged to review and revise others' previous posts, in a collective editorial process. The dominant forum of this kind is Wikipedia, the immense non-profit Internet encyclopedia with more than 10-million entries in dozens of languages, all user-generated and user-edited.

Chat, Voice, Video: Some of the most common activity on the Internet involves old-fashioned person-to-person conversations. Chat and Messenger services such as MSN and Yahoo! Messenger allow users to chat together or in small groups in real time. Skype, one of the first successful VoIP services, highlights free PC-to-PC voice telephone calls. All of these services now permit video calling as well, using low cost webcams.

Interactive Online Games: Playing games on the Internet may be the single most popular activity among the younger generation (and many not so young), who represent the largest growth segment of the digital culture. Although most game structures and engines are created by programmers, many of the most successful involve –role playing by users, who invent their own characters and interact with other online players across the virtual world. The largest community to date of these Massively Multiplayer Online Role Playing Games (MMORPGs) is for *World of Warcraft*, a fantasy game which had reached over 12-million paying subscribers by October 2010.

Virtual Selling and Shopping: Users have also become digital shop owners. The virtual marketplace pioneered by eBay, through which anyone can sell almost anything via a simple auction or direct sale, has been adopted by a variety of other, more traditional Internet retailers such as Amazon.com. This trend of micro e-commerce has encouraged millions of small entrepreneurs in dozens of countries.

Reality TV, Talk Radio: Reflecting the populist trends in cyberspace, traditional broadcast television and

radio have also brought users (audience) more into their programming.

Reality television programs have become dominant genre, including talent contests among amateur performers, with audiences voting for their favorites, as well as wide variety of other formats which showcase the lives and challenges of –real people. On radio, the spread of mobile phones has pushed the –talk format to new heights, as listeners can call to express their views on sports, politics, and current events, wherever and whenever they get the urge to talk.

NETWORK EFFECTS

One significant impact of exploding user demand to produce and display their own content has been exponentially increasing demand for bandwidth and data storage. The most appealing aspects of social networking involve sharing images, sounds, voices, and videos: the full scope of one’s virtual identity. As this phenomenon continues to spread via multiple overlapping and converged media networks and devices, worldwide requirements for digital capacity will continue to mushroom without limit, placing recurring pressures upon service providers and technology suppliers to keep pace.

The most fundamental effects of this new era of human interaction, however, will be far more difficult to measure or predict. We have entered an epoch in which physical and authoritative boundaries on information sharing are no longer relevant, in which non-hierarchical knowledge diffusion is becoming the dominant paradigm. In the early 1960s, the father of media analysis, Marshall McLuhan, defined the concept of the –Global Village, to represent the impact of mass media in bringing disparate cultures together into a common worldview. The reach of technological development since McLuhan’s time has only intensified this effect, linking the consciousness of billions of individuals, allowing their thoughts, ideas, beliefs, experiences, and collective wisdom to be shared universally, and democratically.

SELF-REGULATION AND NETIQUETTE

In a world where every user is also a provider of information, where does the responsibility fall to regulate, and otherwise oversee all of this multilateral communication? Public authorities, of course, will always have a key role to play in setting boundaries and responding to the most serious and far-reaching challenges, as the further sections of this module describe. But in the most practical sense, a large portion of the converged, ubiquitous, user-dominated communications universe actually functions rather effectively through self-regulation: of the users, by the users.

On one level, self-regulation takes place within the management of the business entities that facilitate unfettered user interaction. Given that commercial success in these realms depends primarily on popularity and reputations, which can spread and change like wildfire in cyberspace, most not operations are acutely sensitive to prevailing customer attitudes, and are often prepared to adjust their practices based upon popular opinion. As huge as it is, Facebook has more than once backtracked on attempted policy changes regarding customer privacy in response to outcry from users.

Service providers also may work voluntarily with law enforcement and regulatory authorities to address public interest concerns, even if they are not legally bound to do so. Several U.S. telephone operators controversially cooperated with Bush administration wiretapping and data access requests in the post-9/11 period. And the large online classified advertising service Craigslist agreed to cut back on erotic services (i.e. prostitution) ads, following high-profile abuse and murder cases.

NETIQUETTE

Even more prevalent, however, has been the emergence of unofficial, collective standards of conduct, and mechanisms for enforcing them, throughout broad segments of the user-dominated online world. In effect, a form of frontier democracy has taken hold, defined and constantly modified by the implied consensus of countless millions of activist users, for their own self-interest: to enhance the quality of their virtual lives. Sometimes known as netiquette, or community moderation, the terms and methods of this self-governance may vary from site to site depending on the nature of the service and its most enthusiastic participants. One generally common feature is to allow participants to rate or vote on each others’ contributions, which yields relatively democratic rankings of the most appealing inputs, while downgrading and even censoring the most

disapproved content. This type of rating system is used by all kinds of blogs, movie and book review sites, travel and tourism portals, as well as a preponderance of news media, which invite commentary on published stories from virtually any reader (often with a result of thousands of flame-filled epithets). The Internet has sometimes been compared with the -wild west, and it is nowhere more vigilante than in the shootouts over community rated online content.

LESSON 44**CYBERSPACE AND INTERNET, CASE STUDIES, AND NEED FOR UNIVERSAL LEGAL AND ETHICAL FRAMEWORK****THE ONTOLOGY OF CYBERSPACE**

Cyberspace, which for our purposes can be equated with the Internet, can be defined as the *network of interconnected computers*.

What exactly *is* cyberspace?

Is it a "place" – i.e., a virtual space that consists of all the data and information that resides in the connected servers and databases that make up the Internet? Or is cyberspace a "medium" of some sort?

CYBERSPACE AS A MEDIUM

Mike Goodwin (1995) believes that the Internet is a new kind of medium. It is a medium that is significantly different from earlier media, such as the telephone or TV. The telephone as a "one-to-one medium," and television as a "one-to-many medium". Goodman suggests that the Internet be characterized as a "many-to-many medium" in which one does not need to be wealthy to have access and in which one does not need to win the approval of an editor or a publisher to speak his or her mind.

CYBERSPACE AS A PUBLIC SPACE

There are four types of media: *publisher*, *broadcast*, *distributor*, and *common carrier*. An example of a publisher would be a newspaper or a magazine; and examples of broadcast media include television and radio. Telephone companies and cable companies can be considered instances of common carriers.

None of the four media models are appropriate for understanding the 'Net. Instead, it is a spatial model – one in which cyberspace is viewed as a "public space with certain digital characteristics" – is a more plausible way to conceive of the Internet.

Cyberspace is not the technology or infrastructure itself (although it cannot exist independently of these), but the *experience* of virtual spaces that these engender. The word literally means 'navigable space' and is derived from the Greek word *kyber* (to navigate). As a description of virtual space it was conceived by William Gibson, in his novel *Neuromancer* (1984), as a three-dimensional 'datascape' inside the global matrix of computer networks where disembodied users interact with "clusters and constellations of data".

Cyberspaces are not 'real' in terms of common-sense definitions of material 'stuff' you can touch; they are, in Gibson's phrase, a 'consensual hallucination' created by software code and visual interfaces, and made tangible by access.

INTERNET

Anyone with a computer, a modem and a telephone can connect to one of the networks and, through it, to the rest of the public Internet. The sum of the Internet's nodes and their connections is greater than their parts, forming a network of network that empowers millions of people to directly communicate and share information with each other for the first time in human history.

Built around this agreement is a vast socio-material infrastructure to move data and to provide services.

The physical construction of the Internet ranges from individual PCs connected via modems, to small domestic LANs up to immense networked assemblages such as undersea cable systems linking continents that cost billions to construct and require specialized ships to maintain them in working order.

The Internet itself is experienced as a variety of different virtual spaces and media channels that are built seamlessly on top of it, including email, instant messaging, peer-to-peer file sharing, and, of course, the Web. Internet is more than just the sum of its infrastructural parts; "it is the technological tool and organizational

form that distributes: information power, knowledge generation, and networking capacity in all realms of activity.” It should be viewed as a general purpose technology, much like steam power and electrical current, in that it sets no preconditions on how it is used.

SPAM

Spam is e-mail that is (1) *unsolicited*, (2) *promotional*, and (3) sent in *bulk* to multiple users. These three characteristics distinguish spam from other forms of e-mail. Because spam is unsolicited, it can also be viewed as a form of communication that is nonconsensual.

Not every nonconsensual e-mail that one receives, however, should necessarily be considered an instance of spam. Spam "shifts costs" from the advertiser to several other parties, including Internet Service Providers (ISPs) and the recipients of their service. The cost shifting even affects the individual users of the Internet who are indirectly inconvenienced by spam. Because others must bear the cost for its delivery, spam is not cost free. Spam consumes valuable computer resources because:

- When spam is sent through ISPs, the result in wasted network bandwidth for the service providers;
- Spam puts an increased strain on the utilization of system resources such as disk storage space.

IS SPAM UNETHICAL?

Spinello argues that spam is morally objectionable because:

- (a) It has harmful consequences;
- (b) It violates the individual autonomy of Internet users.

Spam consumes and strains valuable computing resources and “degrades” the fragile ecology of the Internet. Many argue that explicit laws need to be passed to control the threat of spam.

The e-Bay v. Bidder’s Edge case, which is not really about spam per se, illustrates some of the arguments used against spam as a form of behavior that consumes valuable system resources.

PORNOGRAPHY IN CYBERSPACE

The concept of pornography is often debated in the legal sphere in terms of notions such as obscenity and indecent speech. In *Miller v. California* (1973), the court established a three-part guideline for determining whether material is obscene under the law, and thus not protected by the First Amendment.

According to this criteria, something is obscene if it:

1. depicts sexual (or excretory) acts whose depiction is specifically prohibited by law.
2. depicts these acts in a patently offensive manner, appealing to prurient interest as judged by a reasonable person using community standards.
3. has no serious literary, artistic, social, political, or scientific value.

The Miller case has been problematic in attempting to enforce pornography laws.

The second criterion includes three controversial notions:

1. "prurient interest";
2. "reasonable person";
3. "Community standards."

The term *prurient* is usually defined as having to do with lust and with lewd behavior. Also, many have challenged the question of who exactly would count as a "reasonable person."

Until recently, one might have assumed that the notion of a "community standard" would be fairly straightforward. But what exactly is a community in cyberspace?

Where more than one community is involved in a dispute involving pornography, whose community standards should apply? The Amateur Auction BBS made sexually explicit images available to its members.

Because the BBS was an electronic forum, its contents were available not only to residents of California but to users in other states and countries who had Internet access. A person living in Memphis, Tennessee became a member of the BBS and then downloaded on his computer in Tennessee sexually explicit pictures. Although including sexually explicit images on a BBS may not have been illegal in California, viewing such images was illegal under Tennessee State law. Criminal charges were brought against the operators of the California-based BBS, who were prosecuted in Tennessee.

The California couple was found guilty under Tennessee law of distributing obscenity under the local community standards that applied in Memphis Tennessee. This case raised issues that had to do with what was meant by "community standards" on the Internet. Can a community in cyberspace be defined simply in terms of geography? Or in the age of the Internet, should "community" be defined in terms of some other criteria? For example, can a cyber-community be better understood as an "electronic gathering place" where individuals who share common interests come together?

TWO TYPES OF CONTROVERSIAL SPEECH IN CYBERSPACE

In addition to pornography, two additional kinds of speech that have been controversial in cyberspace are:

Hate speech - forms of speech that can *cause physical harm* to individuals and communities.

Hate speech on the Internet often targets members of certain racial and ethnic groups. For example, white supremacist organizations such as the Klu Klux Klan (KKK) can include on their Web pages offensive remarks about African Americans and Jews. Because of the Internet, international "hate groups," such as "skin heads" in America, Europe, and Russia, can spread their messages of hate in ways that were not previously possible.

Whereas the US has tended to focus its attention on controversial Internet speech issues that involve on-line pornography, European countries such as France and Germany have been more concerned about on-line hate speech. In 1997, Germany enacted the Information and Communications Act, which was directed at censoring neo-Nazi propaganda. However, the German statute applies only to persons who reside in Germany. Initially, the statute was intended to regulate the speech transmitted by ISPs outside of Germany, as well.

Another controversial form of hate speech on the Internet is one that has involved radical elements of conservative organizations. For example, right-wing militia groups, whose ideology is often anti-federal-government, can broadcast information on the Internet about how to harm or even kill agents of the federal government. Consider the kind of anti-government rhetoric that emanated from the militia movements in the US in the early 1990s, which some believe led to the Oklahoma City bombing.

SPEECH THAT CAN CAUSE HARM TO OTHERS

Some forms of hate speech on the Internet are such that they *might* also result in physical harm being caused to individuals. Other forms of this speech are, by the nature of their content, biased towards violence and physical harm to others.

Two examples of how certain forms of speech on the Internet can result in serious physical harm:

- information on how to construct bombs;
- information on how to abduct children for the purpose of molesting them.

Should such information be censored in cyberspace? Recall the Amy Boyer cyberstalking case.

Was the posting on Liam Youen's Web site, describing his plans to murder Boyer, an example of hate speech? It resulted in physical harm to Boyer – viz., her murder. Should the ISPs that enable users to construct Web sites that contain this form of speech be held legally liable?

CASE STUDIES: MAINSTREAM LOUDON V. BOARD OF TRUSTEES

Adult members of the Loudon County public libraries sued the Board of Trustees of the library for what they alleged to be the impermissible blocking of access to Internet sites.

The library pointed out that its use of filtering was designed to block child pornography and obscene material. The plaintiffs complained that the filtering devices also blocked access to non-pornographic sites such as the Quaker Home Page, the American Association of University Women, and others. The district court in Virginia ruled in favor of the plaintiffs. It determined that the installation of filtering software on public access computers in libraries violates the First Amendment. But no clear direction was given as to how to resolve the problem. One solution would have been for libraries to provide no Internet access at all. This would not have been a satisfactory alternative for obvious reasons.

Another solution would be for the library to set aside one or more sections for children, in which computer with filtering programs could be provided. Because children are protected under the Child Pornography Protection Act (CPPA) of 1996, it was argued that it would be permissible for libraries to include filtering devices on computers intended for use by children in restricted sections of the library.

FOUR MODES OF REGULATING CYBERSPACE: THE LESSIG MODEL

Lessig (1999) describes four distinct but interdependent constraints, which he calls "modalities," for regulating behavior:

- *Laws*;
- social *norms*;
- *market* pressures;
- *Architecture*.

Analogy: Regulating Smoking Behavior in Physical Space. Using the Lessig Model, we can:

1. Pass Laws Against Smoking;
2. Apply Social Pressure (Norms);
3. Apply Market Pressure (e.g., in Pricing Practices);
4. Use Architecture (e.g., no cigarettes in vending machines).

In cyberspace, Lessig notes that *code is law*. Lessig compares the architectures of NET 95 (Chicago) to NET 98 (Harvard). Net 95 favors Anonymity. Net 98 favors control. Elkin-Koren (2000) worries that *control* is exacerbated because information is being privatized.

LESSON 45**DEALING WITH ISSUES OF OBSCENITY, OTHER OFFENSIVE CONTENT, ECONOMIC ASPECTS, AND PRIVACY****OBSCENITY/INDECENCY**

It is a violation of all code of ethics to air **obscene** programming at any time. It is also a violation of law to air **indecent** programming or **profane** language during all hours. Obscene material is not protected by any canon / principle of freedom of expression and cannot be broadcast at any time.

Usually, to be obscene, material must meet a three-pronged test:

- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political or scientific value.

Broadcast indecency may be defined as “language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities.” Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity

PROFANITY

Profanity is defined as “including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.” Like indecency, profane speech is unethical and unlawful act on broadcast radio and television for all hours.

DEALING WITH OBSCENITY

All code of ethics – PFUJ, APNS, PCP, PEMRA etc. prohibit and declare obscenity unethical and illegal. Issue of obscenity in advertising needs special attention of the bodies, government and civil society to build up a pressure against obscenity in ads.

OTHER OFFENCES AND MEDIA

Some of the other offences are:

- Drug use and youth
- Discuss talking media, thinking youth
- Youth and drugs are linked, and media should avoid showing them as such.
- Promotion of Taboos
- Boy-girl friend relationship
- Smoking
- Sexually inciting activities
- Glorification of Crimes
 - Crimes and adventures are mixed which affect the youth badly
 - Crime related programmes to be relayed after 2300 hr and before 0700 hours as per PEMRA policy

ECONOMIC ISSUES

Irregular competition due to entry of business tycoons in media.....regulation issues? In Pakistan’s scene, there are a considerable number of business tycoons that operating big media houses. Of course, they have all the rights to usher such business ventures; but, is media a business or a profession which requires sufficient professional skills. We have to see this issue seriously as it has to do much with the society and media as a professional too.

CROSS MEDIA OWNERSHIP

Media cross-ownership is the ownership of multiple media businesses by a person or corporation. These businesses can include broadcast and cable television, radio, newspaper, book publishing, video games, and various online entities. Much of the debate over concentration of media ownership in the United States has for many years focused specifically on the ownership of broadcast stations, cable stations, newspapers and websites. Meaning, that when one organization owned any two of these media outlets, that organization was involved in "cross-ownership."

Historically, Media ownership was reasonably restricted. Media producers tended to stick to one channel of distribution (film, TV, radio, magazine). The producers were smaller, specialist companies. Since the 1980s, the world economic climate has altered rapidly, with companies either merging or being taken over by other companies with similar interests. This happened in all industries and not just Media. The notable fact is Bigger companies = bigger profits.

As well as the economic changes, the Media industry has changed rapidly in the last 20 years. Since the late 1980s, the technology available to distribute Media texts has exploded. This has impacted upon the companies that produce these texts. To take advantage of the changing technology, media companies have seen a significant amount of merger, takeover and buyout. IPC now owned by Time Warner (originally 2 companies, Time and Warner Brothers). New Line Cinema now owned by Disney. As a result of the size of the companies which now operate, they are able to diversify into more than one Media area. The term to describe this is CROSS MEDIA OWNERSHIP.
