Philosophical Issues in Censorship and Intellectual Freedom

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ABSTRACT

THIS ARTICLE SURVEYS A VARIETY of philosophical arguments concerning censorship and intellectual freedom in relation to specific contemporary events. The paper argues that deontological considerations concerning censorship and intellectual freedom take precedence over consequentialist arguments.

Recent times have seen a startling variety of events involving issues of free expression. Salman Rushdie has been condemned to death for writing a book allegedly insulting to Islam; his publisher and bookstores carrying *The Satanic Verses* have also been threatened with violence. A significant political battle has erupted following a Supreme Court decision which held that burning the American flag is a protected form of expression under the First Amendment. Some feminists have joined with those elements of the political Right wishing to ban pornography. The distribution and display of two recent films, Scorsese's *The Last Temptation of Christ* and Godard's *Hail Mary,* have been attacked as has the subsidy of a exhibition by publicly supported institutions of photographs by Robert Mapplethorpe and Andres Serrano. The University of Michigan and the University of Wisconsin, among the other colleges and universities, have adopted restrictions on speech deemed degrading or racist, and a number of school libraries have been pressured to remove books ranging from Cleaver's *Soul on Ice* to Twain's *Huckleberry Finn* alleged to be unsuitable for children because of

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their political or sexual content. On national security grounds, the government of Great Britain attempted to block the publication of Peter Wright's *Spycatcher.*

The often confused nature of the public discussion of these and other events, as well as their increasing frequency, suggests that we are unclear about the underlying principles at stake, and shows the need for a re-examination of the philosophical underpinnings of freedom of expression, with careful attention to the distinction between what is, and what is not, properly regarded as a problem of intellectual freedom and censorship. That reexamination is the primary purpose of this article.

The first task is to lay out the ethical theories under which issues of censorship and free expression can be evaluated. There are two basic types of moral theories: consequentialist theories and deontological theories. This discussion will regard utiltarianism, the pre-eminent consequentialist theory, and a variety of deontological concerns.

Consequentialist moral theories are those which hold that the rightness of an action is determined solely by the degree to which it produces good consequences. Utilitarianism is a consequentialist theory which holds that the best actions are those which produce the greatest amount of good (understood as pleasure or happiness) for the greatest number of people. It is the moral theory underlying modern cost-benefit and risk-benefit analysis, according to which we are directed to choose the action with the most favorable ratio of cost or risks to benefits.

Deontological theories, the most important alternative to consequentialism, hold that the rightness of an action depends upon factors other than the consequences of the action. These include such things as whether the intentions with which the act is done were good, whether the action is just, whether it respects the rights of those affected by it, whether the action is consistent with the demands of duty, and whether, whatever its consequences, something in the nature of the action makes it intrinsically wrong. There are a variety of deontological theorists, from the first deontologist, Immanuel Kant, to W. D. Ross in the twentieth century. This discussion is neutral among them for our interest is in the deontological form of argument rather that in the specifics of any particular deontological theory.

Our first major problem is whether issues of intellectual freedom are to be decided primarily by appeal to utilitarianism or to deontological considerations. That is, we must determine which of the two ethical theories expresses the more fundamental and overriding moral concerns.

The classical objection to utilitarianism is that it makes insufficient provision for considerations of rights and justice. Utilitarianism, it is argued, would countenance, even mandate, actions which violated individuals' rights or which were unjust in other ways, so long as those actions maximized utility. This objection is a sound one. Rights take precedence over utility; thus, deontological theories take precedence over consequentialist theories.

This is not to say that utilitarian arguments are wrong or worthless, only that they do not express the most fundamental truths about ethical issues. In disputes in which injustice or violation of rights is not at issue, or in which equally balanced rights claims offset each other, it is often the case that utilitarian arguments determine the issue. Additionally, utilitarian arguments can be used in support of deontological arguments. The claim that deontological concerns take precedence over considerations of utility means only that in cases of conflict, rights and justice are more important than is maximization of utility. Deontological arguments cannot be answered by utilitarian counter-arguments, but need to be dealt with directly in deontological terms. This will prove of great practical significance when we begin to apply these ethical theories to a number of recent controversies involving freedom of expression. First, however, we must lay out the arguments concerning freedom of expression from both ethical perspectives.

In *Utilitarianism, Liberty, and Representative Government,* J. S. Mill (1950), the leading proponent of utilitarianism, gives an elegant and detailed defense of freedom of expression. He offers four arguments against censorship. The first is that:

> the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. (pp. 104-05)

Second, even if the opinion some wish to censor is largely false, it may contain some portion of truth, a portion denied us if we suppress the speech which contains it.

The third reason for allowing free expression is that any opinion "however true it may be, if it is not fully, frequently, and fearlessly discussed, ... will be held as a dead dogma, not a living truth" (Mill, 1951, p. 126). Merely believing the truth is not enough, Mill points out, for even a true opinion held without full and rich understanding of its justification is "a prejudice, a belief independent of, and proof against, argument—this is not the way in which truth ought to be

held by a rational being. This is not knowing the truth. Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth" (p. 127).

Fourth, the meaning of a doctrine held without the understanding which arises in the vigorous debate of its truth, "will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience" (p. 149).

Censorship, then, is undesirable according to Mill because, whether the ideas censored are true or not, the consequences of suppression are bad. Censorship is wrong because it makes it less likely that truth will be discovered or preserved, and it is wrong because it has destructive consequences for the intellectual character of those who live under it.

Deontological arguments in favor of freedom of expression, and of intellectual freedom in general, are based on claims that people are *entitled* to freely express their thoughts, and to receive the expressions made by others, quite independently of whether the effects of that speech are desirable or not. These entitlements take the form of rights, rights to both free expression and access to the expressions of others.

Natural rights theories, such as John Locke's, grounded these entitlements in God-given natural rights. According to Locke, human rights are founded on "natural law," and in *Essays on the Law of Nature* he holds that natural law derives ultimately from God's will. The concept of natural law is exceedingly vague, but in general the doctrine held that persons may come to know by reason the fundamental principles of morality which are otherwise known by Christian revelation.

The view that human rights derive from Divine grant enjoyed only a brief flourishing in philosophy, from the middle of the seventeenth into the early eighteenth centuries, to be replaced first by utilitarianism and later by positivism.

The idea that rights were granted by the Creator was rejected in part because it is unverifiable in principle. It introduces a particularly murky form of mysticism into political philosophy. Just which rights did God grant to humans? If one theorist's claims about which rights humans possess by nature conflict with those of another thinker, how in principle could such a dispute be resolved?

But the relatively brief life of natural rights theory occurred at just the right time to influence the political ideas of the American founding fathers, who built the doctrine of natural rights, now largely

regarded as a quaint philosophical curio, into the Constitution and Declaration of Independence. It is, for instance, the Lockean view of natural rights which impelled both Jefferson and Madison to their absolutist views of the First Amendment. Jefferson carried the view so far as to hold that: "Libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals."

Other rights theories eliminate the controversial theological step, claiming only that rights follow from the nature of human beings (whether God is responsible for that nature or not). Consider the following argument, which Kant did not make, but which I take to be implied by his views. Humans are ends in themselves, Kant says, and the most important fact about them is that they are autonomous, self-determining, rational agents. Restrictions on the transmission of information or ideas which interfere with the exercise of this rational autonomy are thus incompatible with a fundamental feature of human nature, and so are impermissible.

In any case, whether grounded in Divine grant or not, a deontological theory of rights holds that individuals have them independently of the consequences of their possession and exercise.

I turn now to comment on the relevance of these philosophical ideas to some of the recent disputes which are referred to in this article. The first issue is the recent attack by some feminists on the legal availability of pornography. Historically, the arguments over pornography pitted a deontological rights argument in favor of permitting freedom of expression and the legal distribution of pornography against a consequentialist one opposing its legal distribution. The major argument against pornography was its putative bad effect on the morals and behavior of those exposed to it. Pornography was alleged to result in sexual violence and other undesirable sexual behavior. Not surprisingly, the rights arguments protecting free expression usually won out over these consequentialist objections, for, as we have seen, rights take precedence over utility. The consequentialist opponents of pornography were in a very weak position, for not only were their claims about the effects of pornography contentious and controversial, but even if the alleged bad consequences were shown to result from pornography, it would not follow that is was permissible to ban it. The exercise of one's rights does not depend on the felicitousness of the consequences of that exercise.

The recent feminist arguments have introduced new elements into the debate. In addition to the traditional argument that pornography should be banned because it causes harm (e.g., violence against women), we have the new claim that pornography violates

human rights because it is degrading to women. That is, the deontological rights argument in favor of free expression is now being challenged by an opposing rights argument, rather than by the *prima facie* weaker consequentialist objections to pornography.

The argument is in some ways similar to objections raised by some Muslims to the publication of *Satanic Verses*. The claim was that publication of this book was wrong because the novel was insulting to Islam, that it degraded that religion. These are serious deontological objections, and in both cases require a straightforward response.

Some have attempted to answer these objections by claiming that *Satanic Verses* is not insulting to Islam or that pornography is not degrading to women. But this strategy just misses the central point which is that neither a gender nor a religion have the right not to be insulted or degraded.

I would argue that pornography, at least that depicting the violent subordination of women, not only degrades women but men as well by depicting them as enjoying the violent subjugation of women. But this just does not entail that such pornography should be banned. A good deal of protected speech is arguably unfairly insulting or degrading or demeaning to some identifiable group or other, but, excepting the cases of literal slander and libel (in which specific individuals are identified), people have no right not to be insulted or characterized in degrading terms. The cure for such bad speech, as often pointed out, is good speech, not prohibition. In fact, elevating the undesirability of the degrading nature of pornography to the status of a right not to be degraded is a danger to the power of rights to protect legitimate human autonomy. The broader our rights claims are, whether for education, welfare, employment, housing, or freedom from the insulting nature of some pornography, the less plausible those claims are, for the more frequent their conflict with other, equally plausible rights claims. In general, claims of so-called "positive" rights, such as a "right to a job" are less plausible than those of "negative" rights, such as the right to free speech. This is because the former require that others take positive steps toward providing the right-holder with the object of the right (in the example, a job), while "negative" rights require only that others refrain from interfering in the actions of the rights-holder. The right to free speech is the right not to have one's speech interfered with. Requiring that other members of society not interfere with a person's speech in no way violates or even threatens to violate their rights. However, requiring members of society to take positive action to provide a job, or education, or health care, etc., may conflict with their rights.

The upshot of this is that the pornographer and the consumers of pornography (as well as the author and readers of *Satanic Verses*), are in an extremely strong philosophical position. They claim only the right not to be interfered with in their expression and consumption of expression. It would take a strong argument indeed to supersede this rights claim, an argument which has so far not been forthcoming.

The second issue in this discussion is the controversy surrounding the grant of public money from the National Endowment for the Arts to support an exhibition of photographs by Robert Mapplethorpe and Andres Serrano. Several of the photographs in the exhibition, including Serrano's *Piss Christ* (in which a crucifix is shown immersed in what the artist says is urine), and a number of sado-masochistic homoerotic images by Mapplethorpe (including one depicting one man urinating into the mouth of another, as well as erotic images of children), provoked great controversy. A number of federal legislators objected to the use of public funds for the support of artistic expression which they (or their constituents) found offensive or obscene, and they proposed legislation to prohibit the National Endowment for the Arts to subsidize obscene art in the future.

Whatever the merits of exhibitions of Mapplethorpe's or Serrano's work, this case is not properly construed as a freedom of expression issue. No one (at least no responsible person) in the furor surrounding the exhibition of these photographs suggested that the artists had no right to produce them, or that anyone had the right to forbid the exhibition of these works. What was at issue was whether taxpayers' money should be used to support these artistic expressions. Subsidy, not censorship, is the issue in this case. And failing to subsidize expression is not the same as suppressing expression. Freedom of expression is the right not to have one's speech coercively interfered with; it is not the right to be provided with the resources necessary to produce and distribute speech. Freedom of the press, in other words, is not the right to be provided with a printing press, but only the right not to have others interfere with the operation of one's press.

No one's rights are violated by failing to subsidize the exhibition of Mapplethorpe and Serano's photographs. The artists had no right to such a subsidy, nor did the institutions which produced the exhibition, nor the prospective audience for the exhibition. The legitimate claim of right here has to do with the right of the citizens in a democratic society to choose (through their legislators) which art they wish to support and which they do not. The mandate of the National Endowment for the Arts (and other such bodies) derives from an expression of the popular will through the legislature. This mandate therefore can also be modified or rescinded by popular will,

in the form of legislative act, as it was in this case. It would be hard to argue, in other words, that the taxpayers did not have the right to determine what they are and are not willing to support be it artistic expression or any other service or commodity.

This is not the same thing, though, as arguing that the popular will is wise in what it chooses to support. One might argue that an enlightened electorate would choose to support artistic expression, even controversial expression, not because the artist or audience has a right to subsidy but rather on the sorts of utilitarian grounds provided by Mill.

This line of reasoning has consequences for what I take to be a more important issue than the subsidy of controversial works of art. That is the issue of removal or banning of books from publicly supported libraries (including public school libraries) because of their political, sexual, racial, or ethnic content. What is the ethical position for the librarian in such cases? The libraries in question are publicly supported. Doesn't this give the public the right to determine which books will and will not be included in the collection? Isn't the librarian a public employee, obligated to carry out the public's will, as expressed through the appropriate elected officials?

The answer to these questions is "yes," but an importantly qualified "yes." It is true that no one's rights are violated if the taxpayers remove *Huckleberry Finn* or *Soul on Ice* from a tax-supported library. The taxpayers are exercising their acknowledged right to decide what they will and will not support, just as in the Mapplethorpe/Serrano case. And the librarian, if he or she is to remain in that position, must acknowledge the public's rights to be selective about what it wants in libraries it pays for.

This does not mean that we, or the librarian, must agree with the public's position. What librarians can do in such cases is to articulate the important consequentialist reasons for not removing books. In the passion of the moment, the public might rashly choose to ban what it regards as a particularly outrageous book from the public library with no thought to the difficult to discern and serious long-term costs imposed by a policy which allowed such removals. The librarian is in a special position to aid the public in understanding that, while it has the *right* to remove or ban books from publicly supported institutions, doing so is *unwise*. Such removals are wrong and constitute bad public policy just because the long-term consequences may be disastrous.

The points of this article can be summarized in a few succinct ideas. Deontological rights-based arguments for intellectual freedom and against censorship are stronger than, and take precedence over, consequentialist considerations. Utilitarian counter arguments fail

against arguments based on justice or rights. This precedence however must not serve as a motive for attempting to turn all that is desirable into a right. The inflation of rights, by conflating the merely desirable with the obligatory, dilutes the rights which protect us all.

But when rights issues are not at stake, or when conflicting plausible rights claims produce a "deontological stand-off," consequentialist arguments, especially those of Mill, are authoritative. To say that such arguments are secondary to deontological considerations in no way diminishes their validity in those situations where they correctly apply.

Reference

Mill, J. S. (1950). *Utilitarianism, liberty, and representative government.* New York: E. P. Dutton & Co., Inc.