

Censorship

Censorship, the changing or the suppression or prohibition of speech or writing that is deemed subversive of the common good. It occurs in all manifestations of authority to some degree, but in modern times it has been of special importance in its relation to government and the rule of law.

Concerns relevant to censorship

The status of "individuality"

Censorship, as a term in English, goes back to the office of censor established in Rome in 443 BCE. That officer, who conducted the census, regulated the morals of the citizens counted and classified. But, however honourable the origins of its name, censorship itself is today generally regarded as a relic of an unenlightened and much more oppressive age.

Illustrative of this change in opinion is how a community responds to such a sentiment as that with which Protagoras (c. 490–c. 420 BCE) opened his work *Concerning the Gods*:

About the gods I am not able to know either that they are, or that they are not, or what they are like in shape, the things preventing knowledge being many, such as the obscurity of the subject and that the life of man is short.

This public admission of agnosticism scandalized Protagoras’s fellow Greeks. Such statements would no doubt have been received with hostility, and probably with social if not even criminal sanctions, throughout the ancient world. In most places in the modern world, on the other hand, such a statement could be made without the prospect of having to endure a pained and painful community response. This change reflects, among other things, a profound shift in opinion as to what is and is not a legitimate concern of government.

Whereas it could once be maintained that the law forbids whatever it does not permit, it is now generally accepted—at least wherever Western liberalism is in the ascendancy—that one may do whatever is not forbidden by law. Furthermore, it is now believed that what may be properly forbidden by law is quite limited. Much is made of permitting people to do with their lives (including their opinions) as they please, so long as they do no immediate and evident (usually physical) harm to others. Thus, Leo Strauss has observed, “The quarrel between the Ancients and the Moderns concerns eventually, and perhaps even from the beginning, the status of ‘individuality.’ ”

All this is to say that individualism is made much of in modernity. The status, then, of censorship very much depends on the standing of government itself and of legitimate authority, revealing still another aspect of the complicated relation between “the individual and the state.”

Requirements of self-government

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One critical source of the contemporary repudiation of censorship in the West depends on something that may be distinctive to modernity, an emphasis upon the dignity of the individual. This respect for individuality has its roots both in Christian doctrines and in the (not unrelated) sovereignty of the self reflected in state-of-nature theories about the foundations of social organization. Vital to this approach is the general opinion about the nature and sanctity of the human soul. This general opinion provides the foundation of a predominantly new, or modern, argument against censorship—against anything, in fact, that interferes with self-development, and especially such self-development (or, better still, “self-fulfillment”) as a person happens to want and to choose for himself. This can be put in terms of liberty—the liberty to become and to do what one pleases.

The old, or traditional, argument against censorship was much less individualistic and much more political in its orientation, making more of another sense of liberty. According to that sense, if a people is to be self-governing, it must have access to all information and arguments that may be relevant to its ability to discuss public affairs fully and to assess in a competent manner the conduct of the officials it chooses. Thus, “freedom of speech,” which is constitutionally guaranteed to the people of the United States, first comes to view in Anglo-American legal history as a guarantee for the members of the British Parliament assembled to discuss the affairs of the kingdom.

In the circumstances of a people actually governing itself, it is obvious that there is no substitute for freedom of speech and of the press, particularly as that freedom permits an informed access to information and opinions about political matters. Even the more repressive regimes today recognize this underlying principle, in that their ruling bodies try to make certain that they themselves become and remain informed about what is “really” going on in their countries and abroad, however repressive they may be in not permitting their own people to learn about and openly to discuss public affairs. Whether anyone who thus rules unjustly, or otherwise improperly, can be regarded as truly understanding and hence truly controlling his situation is a question not limited to these circumstances.

“Freedom of expression”

The shift from the more political to the more individualistic view of liberty may be seen in how the constitutional guarantees with respect to speech and the press are typically spoken of in the United States. Restraints upon speaking and publishing, and indeed upon action generally, are fewer now than at most times in the history of the country. This absence of restraints is reflected as well in the very terms in which these rights and privileges are described. What would once have been referred to as “freedom of speech and of the press” (drawing upon the language of the First Amendment to the Constitution of the United States) is now often referred to as “freedom of expression.”

To make much of freedom of expression is to encourage a liberation of the self from the constraints of the community. It may even be to assume that the self has, intrinsic to it or somehow available to it independent of any social guidance, intimations of what it is and what it wants. Thus, liberation may be seen in the desire of most people to be free to pursue their own goals and life plans—which may involve a reliance upon standards and objectives that are solely their own. It is tempting, in such circumstances, to adopt a radical subjectivism that tends to result in a thoroughgoing relativism with respect to moral and political judgments. One consequence of this approach is to identify an ever-expanding array of forms

and media of expression that are entitled to immunity from government regulation—including not only broadcast and print media (books and newspapers) but also text messaging and Internet media such as blogs, social networking sites, and e-commerce sites.

On the other hand, if the emphasis is placed upon the more traditional language, "freedom of speech and of the press," the requirements and prerogatives of a self-governing people are apt to be made more of. This means, among other things, that a people must be prepared and equipped to make effective use of its considerable political power. (Even those rulers who act without the authority of the people must take care to shape their people in accordance with the needs and circumstances of their regime. This kind of effort need not be altogether selfish on the part of such rulers, since all regimes do have an interest in law and order, in common decency, and in a routine reliability or loyalty.) It should be evident that a people entrusted with the power of self-government must be able to exercise a disciplined judgment: not everything goes, and there are better and worse things awaiting the community and its citizens.

What is particularly difficult to argue for, and to maintain, is an arrangement that, while it leaves a people clearly free politically to discuss fully all matters of public interest with a view toward governing itself, routinely prepares that same people for an effective exercise of its considerable freedom. In such circumstances, there are some who would take the case for, and the rhetoric of, liberty one step farther, insisting that no one should try to tell anyone else what kind of person he should be. There are others, however, who maintain that a person is truly free only if he knows what he is doing and chooses to do what is right. Anyone else, in their view, is a prisoner of illusions and appetites, however much he may believe that he is freely expressing himself.

There are, then, two related sets of concerns evident in any consideration of the forms and uses of censorship. One set of concerns has to do with the everyday governance of the community; the other, with the permanent shaping of the character of the people. The former is more political in its methods, and the latter is more educational.

History of censorship

It should be instructive to consider how the problem of censorship has been dealt with in the ancient world, in premodern times, and in the modern world. Care must be taken here not to assume that the modern democratic regime, of a self-governing people, is the only legitimate regime. Rather, it is prudent to assume that most of those who have, in other times and places, thought about and acted upon such matters have been at least as humane and as sensible in their circumstances as modern democrats are apt to be in theirs.

Ancient Greece and Rome

It was taken for granted in the Greek communities of antiquity, as well as in Rome, that citizens would be formed in accordance with the character and needs of the regime. This did not preclude the emergence of strong-minded men and women, as may be seen in the stories of Homer, of Plutarch, of Tacitus, and of the Greek playwrights. But it was evident, for example, that a citizen of Sparta was much more apt to be

tough and unreflective (and certainly uncommunicative) than a citizen of Corinth (with its notorious openness to pleasure and luxury).

The scope of a city-state's concern was exhibited in the provisions it made for the establishment and promotion of religious worship. That "the gods of the city" were to be respected by every citizen was usually taken for granted. Presiding over religious observances was generally regarded as a privilege of citizenship: thus, in some cities it was an office in which the elderly in good standing could be expected to serve. A refusal to conform, at least outwardly, to the recognized worship of the community subjected one to hardships. And there could be difficulties, backed up by legal sanctions, for those who spoke improperly about such matters. The force of religious opinions could be seen not only in prosecutions for refusals to acknowledge the gods of the city but perhaps even more in the frequent unwillingness of a city (no matter what its obvious political or military interests) to conduct public business at a time when the religious calendar, auspices, or other such signs forbade civic activities. Indicative of respect for the proprieties was the secrecy with which the religious mysteries, such as those into which many Greek and Roman men were initiated, were evidently practiced—so much so that there does not seem to be any record from antiquity of precisely what constituted the various mysteries. Respect for the proprieties may be seen as well in the outrage provoked in Sparta by a poem by Archilochus (7th century BCE) in which he celebrated his lifesaving cowardice.

Athens, it can be said, was much more liberal than the typical Greek city. This is not to suggest that the rulers of the other cities did not, among themselves, freely discuss the public business. But in Athens the rulers included much more of the population than in most cities of antiquity—and freedom of speech (for political purposes) spilled over there into the private lives of citizens. This may be seen, perhaps best of all, in the famous funeral address given by Pericles in 431 BCE. Athenians, he pointed out, did not consider public discussion merely something to be put up with; rather, they believed that the best interests of the city could not be served without a full discussion of the issues before the assembly. There may be seen in the plays of an Aristophanes the kind of uninhibited discussions of politics that the Athenians were evidently accustomed to, discussions that could (in the license accorded to comedy) be couched in licentious terms not permitted in everyday discourse.

The limits of Athenian openness may be seen, of course, in the trial, conviction, and execution of Socrates in 399 BCE on charges that he corrupted the youth and that he did not acknowledge the gods that the city did but acknowledged other new divinities of his own. One may see as well, in the *Republic* of Plato, an account of a system of censorship, particularly of the arts, that is comprehensive. Not only are various opinions (particularly misconceptions about the gods and about the supposed terrors of death) to be discouraged, but various salutary opinions are to be encouraged and protected without having to be demonstrated to be true. Much of what is said in the *Republic* and elsewhere reflects the belief that the vital opinions of the community could be shaped by law and that men could be penalized for saying things that offended public sensibilities, undermined common morality, or subverted the institutions of the community.

The circumstances justifying the system of comprehensive "thought control" described in Plato's *Republic* are obviously rarely to be found. Thus, Socrates himself is recorded in the same dialogue (and in Plato's



Socrates, Roman fresco, 1st century

BCE

; at the Ephesus Museum, Selçuk,
Turkey.

DeAgostini/SuperStock

Apology) as recognizing that cities with bad regimes do not permit their misconduct to be questioned and corrected. Such regimes should be compared with those in the age of the good Roman emperors, the period from Nerva (c. 30–98 CE) to Marcus Aurelius (121–180)—the golden times, said Tacitus, when everyone could hold and defend whatever opinions he wished.

Ancient Israel and early Christianity

Much of what can be said about ancient Greece and Rome could be applied, with appropriate adaptations, to ancient Israel. The stories of the difficulties encountered by Jesus, and the offenses he came to be accused of, indicate the kinds of restrictions to which the Jews were subjected with respect to religious observances and with respect to what could and could not be said about divine matters. (The inhibitions so established were later reflected in the manner in which Moses Maimonides [1135–1204] proceeded in his publications, often relying upon “hints” rather than upon explicit discussion of sensitive topics.) The prevailing watchfulness, lest someone say or do what he should

not, can be said to be anticipated by the commandment “You shall not take the name of the Lord your God in vain; for the Lord will not hold him guiltless who takes his name in vain” (Exodus 20:7). It may be seen as well in the ancient opinion that there is a name for God that must not be uttered.

It should be evident that this way of life—directing both opinions and actions and extending down to minute daily routines—could not help but shape a people for centuries, if not for millennia, to come. But it should also be evident that those in the position to know, and with a duty to act, were expected to speak out and were, in effect, licensed to do so, however cautiously they were obliged to proceed on occasion. Thus, the prophet Nathan dared to challenge King David himself for what he had done to secure Bathsheba as his wife (II Samuel 12:1–24). On an earlier, perhaps even more striking, occasion, the patriarch Abraham dared to question God about the terms on which Sodom and Gomorrah might be saved from destruction (Genesis 18:16–33). God made concessions to Abraham, and David crumbled before Nathan’s authority. But such presumptuousness on the part of mere mortals is possible, and likely to bear fruit, only in communities that have been trained to share and to respect certain moral principles grounded in thoughtfulness.

The thoughtfulness to which the Old Testament aspires is suggested by the following counsel by Moses to the people of Israel (Deuteronomy 4:5–6):

Behold, I have taught you statutes and ordinances, as the Lord my God commanded me, that you should do them in the land which you are entering to take possession of it. Keep them and do them; for that will be your wisdom and your understanding in the sight of the peoples, who, when they hear all these statutes, will say, “Surely this great nation is a wise and understanding people.”

This approach can be considered to provide the foundation for the assurance that has been so critical to modern arguments against censorship (John 8:32): "And you will know the truth, and the truth will make you free." Further biblical authority against censorship may be found in such "free speech" dramas as that described in Acts 4:13–21.

It should be remembered that to say everything one thought or believed was regarded by pre-Christian writers as potentially irresponsible or licentious: social consequences dictated a need for restraint. Christian writers, however, called for just such saying of everything as the indispensable witness of faith: transitory social considerations were not to impede, to the extent that they formerly had, the exercise of such a liberty, indeed of such a duty, so intimately related to the eternal welfare of the soul. Thus, we see an encouragement of the private—of an individuality that turned eventually against organized religion itself and legitimated a radical self-indulgence.

Ancient China

Perhaps no people has ever been so thoroughly trained, on such a large scale and for so long, as the Chinese. Critical to that training was a system of education that culminated in a rigorous selection, by examination, of candidates for administrative posts. Particularly influential was the thought of Confucius (551–479 BCE), with its considerable emphasis upon deference to authority and to family elders and upon respect for ritual observances and propriety. Cautiousness in speech was encouraged; licentious expressions were discouraged; and long-established teachings were relied upon for shaping character. All in all, it was contrary to Chinese good taste to speak openly of the faults of one's government or of one's rulers. And so it could be counselled by Confucius, "He who is not in any particular office has nothing to do with plans for the administration of its duties" (*Analects* [*Lunyu*], 7:14). It has been suggested that such sentiments have operated to prevent the spread in China of opinions supportive of political liberty.

Still, it could be recognized by Confucius that "oppressive government is fiercer than a tiger." He could counsel that if a ruler's words are not good, and if people are discouraged from opposing them, the ruin of the country can be expected (*Analects*, 13:5). Blatant oppressiveness, and an attempt to stamp out the influence of Confucius and of other sages, could be seen in the wholesale destruction of books in China in 231 BCE. But the Confucian mode was revived thereafter, to become the dominant influence for almost two millennia. Its pervasiveness may well be judged oppressive by contemporary Western standards, since so much depended, it seems, on mastering the orthodox texts and discipline.

Whether or not the typical Chinese government was indeed oppressive, effective control of information was lodged in the authorities, since access to the evidently vital public archives of earlier administrations was limited to a relative few. In addition, decisive control of what was thought, and how, depended in large part on a determination of what the authoritative texts were—something that has been critical in the West, as well, in the establishment of useful canons, both sacred and secular. Thus, Richard McKeon has suggested, "Censorship may be the enforcement of judgments based on power, passion, corruption, or prejudice—political, popular, elite, or sectarian. It may also be based on scholarship and the use of critical methods in the interest of advancing a taste for literature, art, learning, and science."

Medieval Christendom

Among the heirs of Greece and Rome and of Israel were the Christians of varying professions. Perhaps the most dramatic form of censorship in Christendom was that displayed in the development by the Roman Catholic Church of the *Index Librorum Prohibitorum*, a list of proscribed books, the origins of which go back (in a primitive form) to the 5th century CE and which continued to have official sanction well into the 20th century. The most spectacular instance of the silencing of a thinker of note may well have been the restrictions placed upon Galileo in 1633.

Galileo, oil painting by Justus Sustermans, c. 1637; in the Uffizi Gallery, Florence.
SCALA/Art Resource, New York

The orthodoxy protected by an institution such as the *Index* probably had to be a system of thought in which much was made of certain books, particularly if other publications should seem to challenge in significant respects the teachings of the canonical texts. This must have appeared even more acute a problem when means became available, especially after the invention of printing, to produce and distribute books in large quantities.

The establishment of a fairly precise orthodoxy led to a perhaps unprecedented recourse to creeds. Thus, for example, the Nicene Creed was promulgated in 325 CE. It was devised to fend off a heretical threat to Christian doctrine—and it led, partly because of a unilateral change in wording made by the Western church, to a schism that has continued since 1054 between Eastern Orthodoxy and Roman Catholicism.

Thus, it very much mattered which doctrines people were taught and what came to be believed—and this was largely determined, as it usually is, by the action of some authority, ecclesiastical or temporal. Similar developments can be seen in the Islamic world to this day.

It is difficult to distinguish religious and nonreligious elements in some of the more celebrated controversies of the medieval Christian world, just as it is today among Islamic peoples. The persecutions of witches—which ranged across much of Europe from the 14th to the 18th century and cost hundreds of thousands, if not millions, of lives—can be understood as due to various political, social, and psychic disturbances as well as to strictly religious differences.

The trials of Joan of Arc in France (1431) and of Thomas More in England (1535) are notorious illustrations of the difficulty in distinguishing religious from political differences. Indeed, it has been common, because of the experiences of the Middle Ages and of the Renaissance, to see the cause of political liberty as intimately related to the cause of religious liberty (and especially the liberty to do without religion).

The Enlightenment, beginning in the 17th century, attempted to purge Europe of the censorship that found political despotism allied with religious traditionalism. Alexis de Tocqueville was astonished to find in the United States, in the 1830s, that it was possible for ordinary men who stood for political freedom to be, and to remain, religiously devout. This was not the typical combination in the Europe of his day.

Even so, it should be recognized that the rigorous medieval theological-political regime against which Moderns have rebelled did have at its core a principle that subjected the exercise of will (or sovereignty) to the test of wisdom. This principle, upon which the contemporary dedication to freedom of speech may

ultimately depend, is reflected in Thomas Aquinas's insistence in *De veritate*, "To say that justice depends simply upon the will is to say that the divine will does not proceed according to the order of wisdom, and that is blasphemous."

The 17th and 18th centuries

The struggle against censorship in the Anglo-American world in the 17th and 18th centuries took two principal forms. There was the effort to keep government from reviewing, before publication, any manuscript, and there was the effort to keep government from penalizing, after publication, any text that expressed forbidden sentiments. (There were throughout the Western world developments with respect to these matters similar to those in Great Britain and the United States, but they usually occurred later.)

The effort to eliminate "previous restraints" (also known as prior restraints) in Great Britain and in America had its roots in English constitutional experience. Previous restraint (or licensing) came to be regarded as an inheritance of Roman Catholic practices. And so, when the Anglican successor to the Roman Catholic Church was disestablished by the Puritans, it was evidently something of a shock to John Milton to find Parliament reinstating licensing in 1643.

Milton's "Areopagitica" (1644) has remained the classic statement of the arguments against censorship, particularly in the form of previous restraint. Milton conceded that criminal prosecutions might, perhaps even should, follow upon the publication of certain writings. He insisted, however, that such works must not be suppressed before publication.

Critical to Milton's position in support of freedom of the press is something that may not have been implicit in the traditional pre-Miltonian position against censorship—his confidence that truth, "in a free and open encounter," will be able to overcome error. Related to this opinion is the assurance that it is a positive good for mankind to be exposed to error; only in this way may virtue be tested, strengthened, and made adequate to the trials of earthly life. Milton cannot praise "a fugitive and cloister'd vertue." All this seems to rest upon a Christian view of the world: truth may indeed win out in its encounter with error, if the struggle continues long enough and if divine aid is thrown into the balance, as Milton seems to assume it will be; a person not only must act virtuously but must also personally choose to do so; he must be prepared to be exposed to alternatives, as inevitably he will be, and he must choose rightly if he is to merit and secure eternal salvation.

A reliance upon due process of law (which Milton in effect calls for) is the vital concession that the community can be led to make to reason: it provides a safeguard that must be so well established in times of calm and reflection that it is held to firmly, as a tenet of a common political faith, when the community is almost beside itself with passion. And, Milton might add if he were to use modern terminology, due process provides the ground rules for that free and open encounter in which truth may indeed prevail over error.

Thus, it is against the polemical background provided by Milton's "Areopagitica" that the abandonment of prepublication censorship in England in 1695 could be properly seen as a great victory for liberty of the

press in Anglo-American constitutional history. And so, in 1765–69, William Blackstone could say about the English common law with respect to liberty of the press in his *Commentaries on the Laws of England*:

The liberty of the press . . . consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.

The next major step in the Anglo-American response to censorship problems may be seen in the First Amendment to the Constitution of the United States. That amendment, ratified in 1791, provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Similar provisions may be found in most of the state constitutions in the United States, although the connection between political and religious liberty is not always recognized to be as intimate as it is in the First Amendment.

Such a guarantee of freedom of the press as is found in U.S. constitutional documents has long been understood to foreclose the possibility of previous restraints, thereby confirming the definition of “liberty of the press” found in Blackstone’s *Commentaries*. A few scholars and jurists have gone so far as to suggest that the First Amendment and the state constitutional provisions do no more than limit restraints prior to publication, but it is difficult to bring the “freedom of speech” language (often found in the same guarantees) within this suggestion, since there never had been (and, in the nature of things, could never easily be) previous restraints upon what might be spoken (as distinguished from what might be printed). Rather, as indicated above, “freedom of speech” is modeled upon the British parliamentary privilege, a privilege that should be generally available when a people becomes sovereign in the fashion of the American people. (In addition, the celebrated case of John Peter Zenger [1735] had already established for Americans the principle that truth was a defense in seditious libel prosecutions, thus going beyond Blackstone’s position in still another respect.)

The traditional parliamentary privilege—which is still guaranteed in the United States to members of Congress and to state legislators—can be considered virtually absolute in the protection it provides legislators against being held accountable “in any other place” for what they utter in a legislative body. The question remains, of course, as to precisely what kinds of matters may be discussed freely, and without fear of sanction, by citizens entitled to such protection as is provided by the First Amendment.

The old-fashioned answer was that the kind of discussion primarily protected by the First Amendment is that of citizens engaged in investigating and assessing the public business. Such protected discussion may be found in art, in moral and scientific inquiry, and in advertising, as well as in obvious political discourse. Thus, whatever is suppressed simply because of political differences is likely, in the circumstances, to be “political.” Another way of putting this is to say that the crime of seditious libel is not consistent with the

First Amendment. Particularly influential spokesmen for this position in the 20th century were Alexander Meiklejohn (1872–1964), Hugo L. Black (1886–1971), Harry Kalven, Jr. (1914–74), and Malcolm P. Sharp (1897–1980). It is a position epitomized by its questioning of the constitutionality of the Sedition Act enacted by Congress in 1798.

The Sedition Act made criminal the publication of “any false, scandalous and malicious writing . . . against the government of the United States, or either House of Congress . . . or the President . . . with intent to defame [them] or to bring them . . . into contempt or disrepute.” This act, which was allowed to lapse after two years, has been generally repudiated by American jurists and scholars. The U.S. credo in these matters may well be found in Thomas Jefferson’s First Inaugural Address (1801), in which he said, “If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.”

The First Amendment guarantee of freedom of speech and of the press was anticipated, in effect, by the provision of the Constitution (drafted in 1787) that “Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.” This too has made it difficult to prosecute citizens for their criticism of government, something that had been much easier to do under an expansive definition of treason. The First Amendment guarantee was anticipated as well by the assumption evident in the Declaration of Independence that a people is always entitled to examine and to assess the doings of its governments, all with a view to being able to replace any government deemed upon due consideration to be unsatisfactory.

The extensive freedom of Americans to discuss political matters can lead to serious abuses. But it is generally recognized that the abuses resulting from censorship of such discussion—whether in the form of previous restraints or in the form of postpublication sanctions—are apt to be even more serious for a community.

Perhaps not as generally recognized is that considerable self-restraint is required if the best possible use is to be made of free discussion in the circumstances of a people. A call for such restraint (or self-censorship), as well as for both public enlightenment and respect for organized religion, may be seen in George Washington’s Farewell Address (1796). Similarly, Lord Macaulay could say of the 19th-century British press, “Foreigners who dare not print a word reflecting on the government under which they live, are at a loss to understand how it happens that the freest press in Europe is the most prudish.”

Modern practices

The system in the former Soviet Union

The *Index*, which was abolished by the Roman Catholic Church in 1966, could be seen in another form in the Soviet Union before its dissolution in 1991. In the Soviet Union there was a comprehensive system of supervision of manuscripts before publication. (Similar control, in varying degrees, was made a practice in other countries with Marxist governments.) Such supervision, in the light of official Communist Party doctrines, was not limited to political discussions or to books and newspapers but seemed to cover all

kinds of subjects and all forms of publication, including broadcasts. This led, in effect, to considerable self-censorship by authors seeking to be published in some form. Of course, the more "unreliable" authors were simply refused publication in the conventional places. There were, in the 1970s and '80s, periodic relaxations of control in the Soviet Union, but a pervasive and shameless control by the Communist Party oligarchy predominated. The advent of government policies of *glasnost* (or "openness") in the late 1980s involved some relaxation of the censorship that marked the greater part of Soviet history.

The comprehensive Soviet system led to the development of sophisticated modes of guarded expression in print and even in music, the aim of which was designed to conform with official proprieties even as signals were given to the more perceptive about sensitive political and social themes. It also led to (or perhaps permitted the perpetuation of) such expedients as the transformation of the circus clown into a tolerated means for exhibiting and venting public exasperation with the regime. All in all, in such circumstances, the bearing of persecution on the arts could be seen.

A limited uncensored circulation of literary manuscripts was effected by private copying; a few authors had their manuscripts published abroad. Some materials were smuggled into the Soviet Union, and there were foreign radio broadcasts, which were "jammed" from time to time. But these exceptional modes provided uncensored information and discussion to only a very small number of Soviet citizens. The large body of citizens knew, by and large, only what the government chose to reveal, often remaining ignorant of critical conditions and developments in their own country (such as the serious illness of a Soviet leader) that were well known abroad.

This sort of control was justified as necessary for the protection of the state and the welfare of its citizenry. Some of the restrictions were designed to permit retention of information that was considered vital to national security; others were designed to keep citizens from being "misled," especially since a proper understanding of dialectical materialism was said to be necessary to determine what is relevant and what contributes to the health of the community and the well-being and moral soundness of citizens. Variations of the arguments used in the Soviet Union may be found in medieval apologetics, in Confucian doctrines, in Plato's *Republic*, and in UNESCO proposals for "a new world information and communication order."

How seriously such arguments are to be taken depends, in part, on whose interest the rulers exercising this control truly serve. George Orwell, in his novel *Nineteen Eighty-four* (1949), portrayed a ruling class that was evidently drawn in large part from his study of the practices of the ruling party in the Soviet Union. The rulers in *Nineteen Eighty-four*, when they speak most frankly, disavow serving any interest but their own, whatever they may say publicly about national security and social progress. Such ruthless self-centredness on the part of rulers fits the traditional definition of tyranny. (It is not necessary to be concerned here with whether such a completely self-centred tyranny, which must be rare, would be likely to withstand determined opposition by men and women willing to sacrifice themselves.)

George Orwell.
BBC Copyright

The portrayal in *Nineteen Eighty-four* is particularly gripping because it suggests how extensive the modern control of ideas can be. (Developments with respect to computers subsequent to the publication of Orwell's novel made the prospects of comprehensive control seem even more ominous.) The ultimate in censorship may be seen, in the novel,

in a technology and an ideology that permit government to edit not only what is being said today and tomorrow but also what is recorded or remembered to have been said yesterday. The Western reader of *Nineteen Eighty-four* is likely to be offended not only by its government's efforts to control political discussion but also by the official assumption that the individual has no standing worthy of serious consideration.

It is unlikely that any system of censorship in the world today, with the possible exception of that in China, is as effective as was that in the Soviet Union. But official secrecy, as well as tyranny, was something to which Russians were long accustomed. (In the late 19th century, the Russians had perhaps the only extensive censorship system in the world.) It is instructive, therefore, to consider how censorship has worked in countries with somewhat more experience in self-government.

Censorship under a military government

Particularly revealing in this respect was what happened in Greece between 1967 and 1974, when a conspiracy of junior army officers seized control of the government. The dependence of Greece upon foreign trade and tourism made it difficult to keep out the foreign press and foreign broadcasts. This meant, among other things, that the more educated citizens in the country were always fairly well informed about the world at large. But information about domestic affairs (especially economic data) was scarce, since much of that kind of information depends in modern times (as in ancient China) upon official sources. (Thus, there was the better-known example of the chronic complaint about the unreliability of official Soviet statistics. Thus, also, the strict censorship in Poland during the 1970s and '80s evidently kept the communist government there from becoming aware of how serious the country's economic problems were, leading to considerable domestic turmoil. Such regimes depended, in effect, upon free peoples to do their thinking for them about the most serious matters.)

The limits of government censorship in a country such as Greece, where the press (unlike the broadcast media) is not owned by the government, are in part determined by the fact that much of the business of daily life depends on fairly reliable news operations. All kinds of information—about goods for sale, about schedules and timetables, about innumerable activities upon which an efficient daily life depends—must be published regularly and reliably in the press, whoever may be in power. This means that newspapers and other publications must not be unduly delayed in their appearance; it also means that if they are to continue to appear, they must be profitable.

Censors who are too slow (that is, careful) in reviewing everything that is to appear in a forthcoming daily publication obstruct the flow of work. And if they are too restrictive in what they permit, the publication is apt to become so dull that readers do not buy or subscribe to it. Either way, sales suffer and news companies go out of business.

What happens in practice is that a rough accommodation develops between an editor and a censor. Each can make the duties of the other a constant aggravation. The accommodation worked out is rather like that which guards and inmates arrive at in their collaborative governance of a prison. One critical problem in maintaining indefinitely a system of censorship is, as Milton pointed out, that it is dull, unrewarding work for the typical censor—and so the quality of people drawn to it tends to deteriorate.

Of course, one way of avoiding much of the difficulty, expense, and inefficiency of a system of prepublication censorship is simply to allow editors to publish as they choose, subject to the risk of prosecution for whatever is published contrary to the standards laid down by the regime. But it is far from easy, even in a dictatorial regime, to prosecute effectively so long as some semblance of due process remains. It appears simpler for dictators to refuse to permit a particular report to be published than it is to explain in open court what was wrong with the report once published. Whether it is indeed simpler can be doubted, however, considering the mammoth effort required to supervise many thousands of innocuous reports.

It should be evident from these observations that "censorship" is used today in two senses. The more limited, perhaps more rigorous, sense refers to a system of prepublication control; the broader sense includes, in addition, sanctions visited upon a publisher after publication (whether or not the publication has previously been "approved"). Something analogous to prepublication censorship is often said, by contemporary psychologists, to operate in the human psyche to prevent the conscious awareness of any unacceptable desires harboured in the unconscious. Comparable suppression, as well as intimidation, may be seen in the political world when prosecution and persecution for various kinds of associations and actions can render certain opinions virtually unthinkable.

Postpublication censorship does tend to be moderated to the extent that there is the rule of law in the community (including trials that are conducted more or less in public). The Greek military government of 1967–74 was repeatedly embarrassed by the trials it dared to conduct in public. The same could be said of the South African government during the era of apartheid (1950–94), so long as an independent judiciary was trying sedition cases. (One result of this was that certain cases involving "national security" were removed, by act of the South African Parliament, from the ordinary jurisdiction of the courts. Or, to put this in terms familiar in Anglo-American law, nothing comparable to a habeas corpus hearing was permitted in South Africa in certain categories of cases.) In the Soviet Union, on the other hand, the judicial proceeding in a political case seemed, by and large, to be but another tool of government policy: in such circumstances, there may not be much to choose from between prior restraint and postpublication sanctions if an efficient allocation of resources is not a concern.

Censorship in the United States

Freedom of the press

One of the most dramatic attempts by the government of the United States to exercise prior (prepublication) restraint occurred in connection with the *Pentagon Papers* (1971), a "top secret" multivolume report on the Vietnam War that was surreptitiously supplied to various newspapers, which then began to publish it in installments. Each newspaper that managed to secure and thereupon to publish the report was enjoined in turn, at the request of the U.S. Department of Justice. The Supreme Court of the United States, after hearing arguments, lifted the injunctions, and publication proceeded. In 1979 the U.S. government sued *The Progressive* magazine in federal district court to prevent the publication of an article purporting to reveal the operating principles of a thermonuclear bomb. The author and the magazine argued that the article should not be suppressed because it was based on information that was already in the public domain; the government insisted that publication of the article

would make it significantly easier for unfriendly governments or terrorist organizations to obtain a nuclear weapon. Although the court issued a preliminary injunction, the government dropped the case on appeal after newspapers in two states published a letter containing approximately the same information. The magazine published the original article two months later. These cases point up how difficult it is in the United States to prevent publication, whatever recourse there may be to criminal sanctions or to damage suits after unauthorized or improper publication.

By the very nature of things, prior restraint is, in the United States, a rare occurrence. If each newspaper that began to publish the *Pentagon Papers* had published in one issue everything it had, or if *The Progressive* had published the thermonuclear bomb article without first communicating its intention to the government, that would have been the end of the previous-restraint case. And it should be obvious that that is the typical situation in the United States: the government usually first knows about any publication when the newspaper or magazine comes out—and by that time, of course, prepublication restraint is out of the question.

Thus, the U.S. government, in order to keep certain information out of the press, has to depend upon its ability to select those to whom sensitive information may be entrusted. An alternative method, used increasingly since the 1980s, is simply to broaden the categories of information officially classified as restricted or secret. In 1984 the U.S. government made an attempt to require thousands of officials handling classified matter to pledge that they would submit any future writings for prepublication review by government censors. Opposition in Congress kept the new code from taking effect, except perhaps to a limited degree.

Contributing massively to the limitation of censorship in any country is the existence there of considerable private property. Personal resources provide both a cushion against government unfriendliness and independent access to the means of publication, if only in the form of a private printing with private circulation or of paid advertisements in the press (for those who can afford them). Many of the best-known attempts at censorship in the United States testify, in effect, to the importance of private property for freedom of the press. Instances of widely publicized censorship have involved public libraries, textbook selections, and government employment contracts. But in these cases, as with most of the repressive measures of the 1940s and '50s, public funding, government authority, or a critical dependence on public opinion—e.g., as in the motion-picture and broadcast industries—is involved. Otherwise, there would be no effective way for either the government or public opinion to control what is published—certainly not when those with private means are determined to make their opinions known.

Nevertheless, the private ownership of news media in the United States has itself resulted in a kind of censorship, according to some critics. Because nearly all major news companies in the country are owned by large corporations, and because those companies derive the bulk of their income from paid advertisements by other large corporations, they have tended, in the view of critics, to disregard viewpoints that are broadly critical of corporate influence in the political life of the country or that stray too far from a conventional political discourse that is unthreatening to economic elites. This problem has been exacerbated by the gradual concentration of media ownership in the hands of fewer and larger conglomerates since the mid-20th century. A related development is the steady reduction since the late

20th century in the coverage of traditional or "serious" news topics. In order to increase or protect their market shares, some publications and broadcasts have devoted fewer resources to (or avoided altogether) stories that they fear might challenge, disturb, offend, or simply bore a significant segment of their audience. The result, according to some critics, has been a decline in the practice and quality of investigative, or muckraking, journalism and, in general, news coverage that is bland, homogeneous, conventional, and superficial. The emergence in the 1990s of "infotainment," the commercially driven blurring of the traditional distinction between entertainment and news, may be seen in retrospect as the natural outcome of these trends.

Parallel to the immunity provided by the institution of private property is that provided in the United States by academic freedom in colleges and universities. This freedom, which encourages scholars and teachers to traffic in unpopular truths, rests in part on the private property of tenured appointments. On the other hand, libel suits on behalf of another kind of private property—one's reputation—are seen by some as a growing danger to freedom of the press. That is, concern has been expressed lest the protection provided by *New York Times Co. v. Sullivan* (1964) be eroded. In that case, the U.S. Supreme Court required that any public official who sues for damages because of an alleged falsehood prove that the falsehood had been issued with knowledge that it was false or in reckless disregard of whether it was false or not. The court was determined to protect the press from the prospects of large damage awards in libel cases that would intimidate it into drastic self-censorship. The court also saw itself as confirming the settled U.S. opinion condemning the Sedition Act of 1798.

A different kind of "protection" for the press, less welcome to journalists, was the decision by the U.S. government not to permit reporters to accompany the troops invading Grenada in 1983. Concerns also were raised in later years about the U.S. military's practice of "embedding" journalists within combat units during the Persian Gulf War in 1990–91, the invasion of Afghanistan in 2002, and the Iraq War in 2003. Critical to these controversies was a concern that too much of the information necessary for adequate discussion of public affairs remained within the exclusive control of the government. Thus, it is sometimes said, a government may need neither previous restraints nor postpublication sanctions when it can shape public opinion simply by regulating the flow of vital information as it pleases. This too can be considered a form of censorship, the more insidious in that it is obviously sensible in some cases to restrict public access to information for the sake of legitimate defense, diplomatic and administrative efficiency, or confidential professional relations.

Still another form of censorship may take the form of the preferences government bodies exhibit through the financial and other support they distribute to artistic, scientific, medical, and educational applicants. And yet it is generally recognized that such distribution can be helpful, perhaps even necessary, and that it has to be done on the basis of standards that must rely on the good-faith judgment of public officials for their application. Here, as elsewhere, an informed and vigilant citizenry may be the best guarantor of both quality and fairness.

Freedom and truth

Postpublication sanctions were used in the courts, between 1948 and 1961, against leaders of the Communist Party in the United States. Even so, the indictments in those cases were put in terms of a

conspiracy to overthrow the government. That is, despite the unpopularity of communism in a time of considerable international tension, no U.S. government could rely merely on the fact that people found the defendants' opinions to be offensive. An effort had to be made to connect what the defendants were saying to what they (and others elsewhere) were likely to do.

Still, such prosecutions were confronted by the prohibition in the First Amendment that "Congress shall make no law . . . abridging the freedom of speech, or of the press." But the apparent absoluteness of that prohibition had long been subverted by the ill-conceived, yet all too influential, statement by Justice Oliver Wendell Holmes in *Schenck v. United States* (1919):

The character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [The] question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

There does not seem to be much doubt that the man who causes a panic in a theatre should be dealt with firmly. But it is far from clear that this sensible conclusion has justified punishing men and women whose principal offense seems to have been that of raising fundamental (however ill-conceived) objections to the established political, economic, and social arrangements in the United States. Justice Holmes's constitutional flexibility in the *Schenck* case can be considered to have culminated in the later assurance by Chief Justice Fred M. Vinson in *Dennis v. United States* (1951), in which the convictions of a dozen Communist Party leaders were upheld:

Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phrase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature....To those who would paralyze our government in the face of impending threats by encasing it in a semantic straitjacket we must reply that all concepts are relative.

This is hardly in the spirit of Milton's high confidence in the power of an enduring truth to prevail. Nor is it in the spirit of the Declaration of Independence, with its informed reliance upon natural rights, upon self-evident truths, and hence upon the right of revolution.

Be that as it may, it is unlikely that any of the prosecutions from the *Schenck* to the *Dennis* case for what was, in effect, sedition would succeed under present conditions. The things those defendants said are no longer considered dangerous by the community at large. Rather, the much more vexing question is whether any kind of speech is not entitled to First Amendment protection. That protection is now said to extend far beyond political discussion. Thus, advertising (or commercial speech) is said to be protected as is much (if not virtually all) obscenity, although reservations are heard about child pornography and about inducements to violence and the worst depravity. (Whether any particular utterance or action should be regulated has itself always been a political question open to free discussion.)

Much is made today of an asserted right of self-expression and of the related right to privacy. The arguments drawn upon in their support seem to be variations of those developed in John Stuart Mill's *On Liberty* (1859). Mill's arguments are invoked today not only in opposition to government censorship but in opposition as well to those suppressive efforts by private organizations or interest groups that are sometimes more effective than government can be in a liberal democracy. Particularly susceptible to the influence of private censors are the broadcasting media, especially since they are still subject in the United States to some government regulation. A different kind of private suppression has been usefully described in this fashion by Jamie Kalven:

Being badly edited is as close as most American writers ever come to being censored. It thus offers a vehicle for imagining the *experience* of censorship, for getting at what it *feels* like. My strongest impression is that the abuse of one's prose feels like an assault on one's mind.

Similarly, Lord Radcliffe (in his *Censors*) could speak of "the real licensors of thought today, the editors, the publishers, the producers, the controllers of radio and television."

Character and freedom

Lord Radcliffe could speak as well about "the apparent indifference of censors of all kinds to the depiction or portrayal of mindless violence and brutality, that witless rejection of civility that threatens to be the Black Death of the twentieth century." Thus, it is not usually noticed today that Mill recognized that a people has to be trained properly to make use of the considerable liberty he advocates. If, for example, a community believes that video games are corrupting the young and generally playing havoc with education and the public character, is it really helpless to do anything about it? Would it be censorship to abolish altogether such a baleful influence? And if abolition of video games should be considered censorship, may not that suggest that censorship is not altogether bad? What, in short, is the popular character presupposed for effective self-government, and how is that character properly to be developed and maintained?

Such questions reflect the fact that censorship and freedom of the press problems depend for their sensible resolution upon more general considerations of liberty, of the common good, and of the rights, virtues, and duties of citizens entrusted with self-government. Thus, Tocqueville could observe in *Democracy in America* (1835–40):

It cannot be repeated too often: nothing is more fertile in marvels than the art of being free, but nothing is harder than freedom's apprenticeship. The same is not true of despotism. Despotism often presents itself as the repairer of all the ills suffered, the support of just rights, defender of the oppressed, and founder of order. People are lulled to sleep by the temporary prosperity it engenders, and when they do wake up, they are wretched. But liberty is generally born in stormy weather, growing with difficulty amid civil discords, and only when it is already old does one see the blessings it has brought.

Among the blessings of liberty may be found the philosophical pursuits that have sometimes appeared so threatening to public order. Laurence Berns has reformulated the ancient dilemma posed by the trial of

Socrates, "the greatest hero of freedom of thought"—a dilemma that exposes one of the roots of the perennial censorship controversy:

Is philosophy, the intransigent quest for truth (including the truth about politics and religion), inherently subversive? Does it necessarily undermine political society and conventional morality, or, on the contrary, is a good society impossible without freedom to philosophize?

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