

7 *Harm, Offense, and Media Censorship*

INTRODUCTION

The foundation of any liberal conception of the law is the presumption that the mere immorality of a particular act, whatever it is, cannot justify any legal proscription against it,¹ for the point and purpose of the liberal state is to maintain the rights and just conditions required for individuals to lead their lives as they freely choose. This includes the right to act immorally as long as such acts do not harm or infringe the rights of others. So the main justification for outlawing certain kinds of activities concerns the condition of harm to others.² Hence murder or torture is illegal because it involves taking the life of another or inflicting pain on a person without his or her consent. We should also note, however, that the harm condition is not a sufficient condition to outlaw an activity. For example, protecting people's right to travel by car leads to harm: if we allow cars on the road, a certain number of people will be maimed or killed on the road each year.³ Of course, a liberal state may, through traffic regulations and prohibitions against drunken driving, do all it can to minimize the number of people harmed in this way. Nonetheless, the state protects the fundamental right of the individual to choose how to lead his or her life and thus how to travel, even in the knowledge that harm may result.

We have seen that we have some reason to believe that certain kinds of news reports, programs, pornography, and violent films may harm people. This gives us some reason to consider whether they should be censored or not. But even if harm is involved, further argument is required to justify censorship. Furthermore, the question of offense is often thought to legitimate censorship. Hence films that

are sexually indecent or explicit or obscenely violent may perhaps be censored even where no harm is involved. Essentially there are two distinct grounds for holding to this claim. The first involves construing certain kinds of offense as a form of harm; if certain programs or publications are both public and offensive, then their offensiveness may count as a kind of harm. The second variant holds that to take account of the harm condition is itself overly restrictive—it must be supplemented by the principle that the offensiveness of an activity can constitute grounds for prohibiting it.

THE CASE AGAINST CENSORSHIP

Before proceeding to consider the arguments against censorship, we need to make a basic distinction. We are concerned with state censorship, which involves coercion by the state to prevent or withhold the publication or broadcasting of particular opinions, images, or films. This is to be distinguished from instances of self-censorship, where a paper or network organization decides to censor or withhold a news report or film for reasons that may range from the purely commercial to judgments concerning taste and decency. This is an important distinction. There may be cases where broadcasting a certain report or film is morally unjustifiable, and hence it would be morally correct for an editor or corporation to remove it from the schedules. Nonetheless, if the program is not pulled, the state may still not be justified in exercising its powers of censorship; as we shall see, there are good grounds for holding that the evil of state censorship may be greater than the evil that would result from allowing unethical reporting or broadcasting.

Given the liberal presumption that a just state is one that protects and enables its citizens to lead their lives as they choose, the arguments against censorship are very strong indeed. Perhaps the best articulation of these arguments, both negative and positive, are to be found in John Stuart Mill's *On Liberty*.⁴ Censorship constitutes an attack on the autonomy of the state's citizens, undercutting the rationale that justifies the state's rule and authority, because it involves measures whose very aim is to prevent opposing opinions from being heard and, as such, these measures are objectionable. This holds irrespective of the truth, falsity, or implausibility of opinions proffered and no matter how offensive they may be.

To start with, newspaper reports, billboard advertisements, television programs, and films should not be censored, because even if they proffer false views, censoring them would prevent us from understanding why what is true is in fact the case.⁵ Consider, for example, the case of the Holocaust, or the recent controversy over intelligence and race.⁶ Many people are inclined to think that reports, books, and programs that claim that the Holocaust never happened or that Blacks are naturally less intelligent than Caucasians ought to be censored; in both cases, what is being claimed is an explicit denial—in some cases motivated by racial hatred—of what we all take to be obviously true. The mere articulation

of such falsehoods, it is often thought, viciously perpetuates such pernicious views.

But if the articulation of such views were banned, then we would not be motivated to think about the evidential and rational basis for claiming that, for example, the Holocaust did occur, and we thus would be less likely to understand it. It would merely be held as a dead dogma or prejudice, among many others, rather than a belief that we understand and can rationally justify. Claims should be subjected to the light of evidence and reason and not merely understood as the assertion of conflicting prejudices, where mere weight of numbers determines what should be believed. Moreover, even if we do know the evidence and rational grounds for a particular belief, we should always remain open to the possibility that there are grounds for holding different beliefs. If we fail to remain open to this possibility, grounds given for holding to our own would be far weaker. Hence we should be able to see why someone is tempted to think, on the basis of IQ studies, that Blacks are naturally less intelligent than Caucasians. We should then be able to point both to better grounds for holding our own view and to an explanation as to why the evidence offered against us does not really count as such or is minimal in weight. Thus our own understanding of what is true is thereby deepened, and we can give better reasons to others to persuade them rationally to agree with us.

This naturally leads us onto the second argument that Mill gives against censorship: many prejudices and dogmas that we presume to be true often turn out, due to human fallibility, to be entirely false. If views are censored on the presumption that they are false, then we would never find out which views are in fact true, only partially true, or completely false. Thus not only would our knowledge about the world not increase, but, significantly, many things that we ought to know would never be found out.⁷ If Galileo had been successfully censored by the Catholic Church, our understanding of the universe would have been poorer for hundreds of years to come. Similarly, if journalists had been prevented from publishing evidence that showed that many people tried by McCarthy's commission in the 1950s were not communists, then perhaps the injustices perpetrated would never have come to light. Thus the dubious nature of McCarthy's commission would not have been exposed, and people would have been more likely to believe, falsely, that Hollywood itself was a haven for communists whose sole aim was to subvert the American way of life.⁸ In an uncritical culture, where the freedom of expression is constrained by the state, political corruption, vicious elitism, and the perpetuation of false myths and prejudices are far more likely to flourish.

Of course, it is more usually the case that most newspaper reports or television programs contain partial accounts of what is the case, rather than either the complete truth or utter falsehoods. But by silencing those who dissent from received or majority opinion on a matter, we sacrifice the possibility of getting at a more complete version of the truth.⁹ Had the news reports issuing from Viet-

nam from 1962 onward, which certainly contained elements of truth, been effectively censored, as both the military and the White House increasingly wished they were, then the progress toward a more complete account of the true state of affairs in Vietnam and the nature of U.S. involvement would not have become clear.¹⁰

The third argument Mill gives is that the censorship of certain views by the state tends to be self-defeating.¹¹ The point of censorship is, presumably, to prevent pernicious views being aired and thus gaining credence. This is very often quite difficult to do, as can be seen from the British government's censorship of IRA and Sinn Fein spokesmen in the 1980s. For the media still interviewed IRA and Sinn Fein figures but broadcast their views using actors' voices instead. But even if such censorship could be effective, the main problem remains, for where governments censor a particular view, then the public are not free to assess whether or not the view has any substance. Hence, quite naturally, we are inclined to think that there may well be something to what is being said and that the censorship is, really, a form of unjustified persecution. If there really were no credence in the view expressed, then surely the government would not be afraid of it being broadcast for us to assess and reject. Naturally, then, the censorship of a view tends to lend it, falsely, a certain possible weight and credence. Better to have a false and pernicious view out in the open where it can be assessed on its own merits by the public than allow it to gain unwarranted credence through the act of censorship. It is self-defeating to use the purported truth of a government's position as the basis for silencing contradictory ones; by silencing opposing opinions, governments destroy the credibility of their own.

It is important to recognize, in the three considerations raised above, that Mill is not endorsing a crude form of relativism that holds that all opinions are equally good. The force of these considerations arises precisely because some opinions are better than others—they are more coherent, consistent, informative, and faithful to the empirical facts of the case than others. Rather, the point is that only in a free society are we ever likely to arrive at better, more complete, and truer opinions. Only through testing our opinions against those of others and being called to justify them, where we are free from coercion, can we expect to progress toward understanding the truth of the matter.¹² Hence the media have certain rights and privileges, which arise from their duties as the fourth estate, to provide the public with the information, opinions, and debate required to enable members of the public to judge for themselves as individuals and citizens what it is they want and why.

Another important argument Mill gives is the beneficial side-effect to society as a whole of allowing everyone, including vociferously opposed minorities, to have their say without fear of being silenced by the state.¹³ Imagine a society where a small minority thought that the prevalent social structures were deeply iniquitous. If a government suppresses the expression of that view through censorship, then the resentment of that minority will be much stronger than if

they had freely been allowed to air their grievances and had open to them the possibility of persuading others of their point of view. Since they are effectively denied a voice in the political and civil culture of their society, the implication is that they are not worthy of equal concerns as fellow citizens. In such circumstances the minority group will obviously feel marginalized and alienated from society as a whole. Hence they are more likely to detach themselves from society and possibly attempt to subvert the existing social structures in harmful, violent ways. By contrast, if those in a minority group are free to speak and thus have the opportunity to put their views forward, they are far more likely to continue to identify themselves with society as a whole, because they are able to participate in and contribute to a debate about the justice and good of that society and their place within it. Both the minority group's and society's self-development and integrity are thus maintained.

The last argument Mill raises against censorship is, in effect, a negative one, but no less powerful for all that.¹⁴ Even where we consider censorship to be justified in a particular case, say to protect national welfare, the legitimization of it in one specific instance may lead to censorship in illegitimate areas, which would be very damaging indeed. We may recognize that a state within which there is no censorship is far from ideal. After all, the commitment to freedom of expression, in the name of the public interest, is often used by the media as a cynical camouflage to justify the coverage of stories that bear no relation to the public interest whatsoever and may harm the lives of those whom the story concerns. Revealing that a one-time celebrity such as Arthur Ashe suffers from AIDS or giving the name of a rape victim may lead to great suffering and harm for the individuals concerned. Similarly, a report that reveals secret U.S. foreign policy goals may result in harm to the national interest. Nonetheless, a law designed to legitimate state censorship in such cases could be far more harmful to everyone. For such a law to be workable, it would have to be a very blunt, crude instrument. Thus it would end up legitimating censorship in all sorts of areas that could never be justified and would result in very great harm indeed. The public interest may then be used, illegitimately, to justify the censorship of cases of injustice, whether at the individual or state level, that we should know about. For example, had the U.S. government been permitted to censor investigative programs on the grounds of public interest, it is possible that the events surrounding the Iran–Contra affair would never have come to light.

However, despite the strength of Mill's arguments against censorship, we do tend to think that, in certain cases at least, censorship is clearly justifiable. With regard to state or public security it does seem that the state can legitimately withhold or prevent the publication of certain information. For example, imagine that the press corps in the Gulf War acquired the plans detailing the Allies' projected attack against Saddam Hussein's forces. Clearly, if the information were published before the battle, the Allies would face countermeasures from Saddam Hussein and possibly defeat. Assuming that the war itself was just and

that the lives of many Allied troops were at stake, if a paper attempted to publish the Allies' battle plans, the government would be justified in censoring the report concerned because, for the germane period up to and including the attack, this information should be withheld from the public arena. By parity of reasoning, the same point applies to intra-state security operations; we tend to think that were a television program about to broadcast details of a projected FBI swoop on a group of terrorists, the government, in the name of the public interest, would be justified in censoring it.

Furthermore, we tend to think that censorship is justifiable not only in cases where the public interest or lives are at stake. Certain individuals are, under particular circumstances, justified in demanding state protection that may involve media censorship. Imagine the case of a woman who has been raped, has reported it to the police, but has clearly expressed the wish for her identity to be protected. By chance or police error, a reporter manages to work out the exact identity and address of the victim and writes a report giving her details. If the story were to be published, not only would the woman's wishes clearly not have been respected, but her life may well be harmed in a number of ways. Her family, friends, neighbors—even strangers in her hometown and elsewhere—will find out that she was the victim. Thus they may pass judgment on her and treat her in all sorts of distressing and possibly damaging ways (which they would not otherwise have done), without even knowing more than the details outlined in the report. Furthermore, her life itself may become the object of media attention and harassment in any manner of unpleasant and unnecessary ways. It seems clear, in such a case, that we would think it legitimate for the government to step in and prevent her personal details from being published.

The third kind of area where we often think state censorship is justified concerns instances of vitriolic racist reports, programming, and films. This is not to deny Mill's general point that, as a matter of principle, all views should be allowed expression in a liberal state. Nonetheless where the expression of certain views, in this case violently racist ones, will probably lead to harm to others, they should be censored, for the fundamental justification of the liberal state is to protect—including protection from harm—the conditions required for all to live their lives freely. As Mill himself recognized, where the context and expression of a certain view is such that it has a serious chance of leading to harm, then the state is justified in censoring that view: "Even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act."¹⁵

For example, if a particular Ku Klux Klan rally in the deep south is likely to lead to violence against local Blacks then, in the name of protecting the latter from harm, the state may justifiably step in and prevent the rally from going ahead. Opinions that, through their expression in a particular way or due to circumstance, are likely to cause harm to others may freely be censored by the state.

Although a lot more needs to be said about these considerations, what they do point us toward is a legitimate basis for claiming that, in certain prescribed instances, state censorship may not only be permissible but obligatory. True, even where there is no long-term benefit from broadcasting a particular view, and even where there may be possible social costs, the initial position is that the program should be permitted since the expression of political, social, or moral views can only further rather than hinder the development of a free society. Nonetheless, state censorship is only a *prima facie* wrong. Where a news report or the broadcasting of a certain kind of program is likely to result in serious harm to others, the state may justifiably exercise its powers of censorship to protect the freedom of all to lead their lives as they wish, free from harm. Where there is no probable threat of serious harm, views, programs, or films should not be censored, because this would constitute an assault on our freedom of speech and thus on the kind of free society required for us to live our lives as we so choose.

THE HARM CONDITION

However, the argument sketched out in favor of justifiable censorship, on the grounds of harm, needs to be more carefully filled in. The first issue that needs to be addressed is just what constitutes the notion of "harm." Intuitively, it seems like a fairly clear notion, because we can all cite actions such as murder, torture, and injury which involve the unwanted annihilation of life or infliction of pain. But if we examine the notion further, it seems slightly vague. Consider, to use Anthony Ellis's argument, the case of rape.¹⁶ Typically, rape involves the infliction of obvious harm through vicious physical violence. But violence is a contingent feature of rape and not intrinsic to it. It is not just the violence that may be involved that makes rape objectionable (though where the rape is violent, the wrong of the action is compounded). Of course, rape may traumatize victims in such a way that their capacity to form meaningful sexual relations in the future is deeply marred. But this is far from necessarily the case.

Where no violence or traumatization is involved, and even though the victim feels abused and unhappy, this does not clearly fall within our intuitive notion of harm at all. Nonetheless, we do consider rape to be deeply harmful. Hence we have laws against it and punishments that reflect the serious nature of the wrong done. What this tells us is that harm is not reducible to the amount of violence or gratuitous pain inflicted, but that we can be harmed in far deeper, more subtle ways. Hence our understanding of just what constitutes harm should be broadened out.

One possible way of extending our intuitive notion of harm is to consider something to be harmful if and only if it mars, constrains, or abuses someone's interests. Hence *The Williams Report* suggests that, "Laws against public sex would generally be thought to be consistent with the harm condition, in the sense that if members of the public are upset, distressed, disgusted, outraged, or put out

by witnessing some class of acts, then that constitutes a respect in which the public performance of those acts harms their interests."¹⁷

But how, exactly, are our interests harmed if we are disgusted, outraged, or "put out" by something? What we should focus on here is the intrinsic link between where our interests lie and our desires.¹⁸ Our interests are harmed not just where our capacities are marred, as in the case of physical injury or the sexual traumatization that may result from rape; they may also be harmed where something frustrates certain fundamental desires that we may have. In the case of a rape that does not involve injury or traumatization, our interests are still harmed because our desire not to have sex with a person is ignored. Similarly, if we are forced against our wishes to look at pornographic, violent, or obscene images, then perhaps our interests have been harmed. Thus, consistent with the harm condition, we may have a justifiable reason for wanting such images legally prohibited.

But this is far too quick. Normally we think that only in certain kinds of cases does the frustration of a desire count as a harm. In the case of rape, the desire frustrated and abused is one that is intimately bound up with our identity and autonomy as a person. Conversely, the display of a pornographic billboard advertisement or the broadcast of a gratuitously violent movie is not tied to our fundamental identity or autonomy as a person at all. We may desire that other people should not see or watch such things, but we are ourselves free to look away or turn the television set off.

This distinction is far from arbitrary since the point of the harm condition, and thus of legislation with respect to it, is to protect and sustain the conditions required for meaningful choice. For individuals to function and develop in society, we require a level of public order, stability, tolerance, and protection from physical coercion and theft. So we should construe "harm" in terms of what is required to sustain these things. Something that is destructive of these conditions, whether public or private, constitutes a harm. Hence rape—irrespective of the degree of violence or traumatization caused—really does constitute a harm, whereas airing views or images that are offensive to some does not. In the latter case we are free to ignore whatever is proffered us. In the case of rape, the victim has no choice. Thus only those activities that directly constrain the lives of others should be prohibited. This certainly gets us some way toward, and makes sense of, the underlying justification for traffic regulations, parking restrictions, or nuisance laws, since prohibited activities such as these have the effect of undermining the choices open to others.

In relation to the media, we can thus make sense of the importance of libel laws prohibiting and compensating for character defamation. After all, our material prosperity, our capacity to function in our jobs, our social and self-image which depends on our personal reputation, and our ability to live our lives as we would choose are intimately bound up with such considerations. If a newspaper wrongly slanders a doctor's character and ability, he may be sacked; through the

resultant consequences including unemployment, a lack of trust in him by his future patients, and a wary attitude towards him by his friends and colleagues, his own self-image may suffer in innumerable and undeserved ways.

Nonetheless, the sphere of legislation appropriate under the harm condition remains relatively narrow, for something can only be a harm where it is motivated by or constitutes an attack on or constriction of an individual's autonomy. Hence the frustration of many desires that we have will not count as a harm at all. The prohibition of media and programs that offend against social customs or majority moral or religious views is clearly ruled out. Such a prohibition would not protect the prerequisites of individual autonomy but, rather, constitutes an attack on it.

This is not to deny that certain groups definitely wish, on moral grounds, that obscene images, pornographic or violent movies, and blasphemous programs should not be shown. That such images are displayed or programs shown does actually frustrate their preference. But this cannot constitute a harm. The immorality, obscenity, or blasphemous nature of an image, and the frustration of moral preferences, cannot count against its legality. It is perfectly understandable why certain people regard pornographic films, gratuitously violent dramatic reconstructions, or Salman Rushdie's *The Satanic Verses* as blasphemous or obscene. Indeed, we might even agree with them. But such frustration cannot count as a harm, because the liberal state should not prohibit or censor on moralistic grounds. After all, most people usually prefer others not to do what they themselves consider to be immoral. Puritans would, for moral and religious reasons, undoubtedly prefer that people did not go out dancing or shopping on Sundays. But the frustration of what they wish that other people would do is not a harm. Prohibition would be to constrain rather than protect the preconditions required for individual choice.

OFFENSE AS HARM

However, in emphasizing the significance of distress and disgust, *The Williams Report* may be pointing toward the idea that the very suffering of deeply unpleasant feelings that are characteristic in the case of offense perhaps itself constitutes a harm. But we need to be clear about the notion of offense underlying the claim.¹⁹

In one sense, to offend someone is merely to annoy them. If I swear at someone or spit in the street, people may be annoyed by what I have done and resentful that I should treat them or the public walkway in such a manner. Similarly, I may be annoyed that the youth of today should go around looking so untidy and slovenly. But since offense in this sense merely concerns my annoyance, there are no grounds for considering it a form of harm. I may be annoyed and disgusted for all sorts of reasons, many of which may reflect my own peculiarities rather than anything essentially harmful about what has been done.

There must be something more to the notion of offense involved if this line of thought is to be worth considering. Of course, if the annoyance itself were to create the serious risk of imminent disorder then the liberal state may have to step in. For example, the state may ban a Ku Klux Klan march through a Black area because of the likelihood of riots and resultant loss of life. But this is motivated not by the condition of annoyance provoked but by the requirement to protect people's lives.

A more substantial notion of offense is that of moral disgust or outrage, which is what obscenity gives rise to. Offense in this sense is not reducible to whether actual feelings of disgust or repulsion are felt; rather, something is deemed to be offensive in this sense because there is something fundamentally morally offensive or repugnant about the image or program concerned. So we can claim that something is obscene without ourselves actually experiencing any feeling of disgust, repulsion, or loathing. For example, we may claim that the display of nude women in newspapers, as in the case of *The Sun*, the gratuitous violence of Oliver Stone's *Natural Born Killers*, or the portrayal of sexuality in Nagisa Oshima's *In the Realm of the Senses* are degrading because they exploit women, or demean human life, or demean human sexuality, respectively, but we may do this without necessarily feeling any disgust ourselves. Essentially this is to express a moral judgment about the nature of the image or the program and the way we are prescribed to understand what is being depicted. Prohibition on these grounds, then, would clearly be motivated by the claim of offending against a particular moral view or principle and is thus inconsistent with the harm condition.

But there is a further sense of "offense" that captures the kinds of experiences that we may suffer when repelled by something—namely, deeply unpleasant emotions of abhorrence, loathing, anger, or repulsion. So the thought might be that people have a right, in line with the harm condition, to be protected from the constitutively unpleasant feelings of outrage and disgust rather than merely seeking to enforce particular moral judgments on others. After all, we think we have a right to be protected from being made to feel fearful or anxious by physical intimidation or stalking.

Yet, first, not everyone finds the feelings of fear, repulsion, and disgust unpleasant. After all, if this really were the case then the activities of mountain-climbing, car-racing, going to horror movies, or, indeed, watching very violent films would be unintelligible. For the most part such activities are not enjoyed merely because of the pay-offs involved—from looking out on beautiful scenery, competitively testing one's driving skills against others, to learning about what we find most frightening about the human condition. They are also enjoyed because of the elements of fear and loathing intrinsic to such activities.²⁰ Mountain climbers and racing-car drivers talk of the thrill of fear, which depends on the possibility of death, and moviegoers often complain that a film just was not horrific or violent enough. So an image or program that gives rise to feelings of

disgust may actually delight and be enjoyed by some or indeed many people. Hence, as long as we have a choice of whether or not to see the images and programs that disgust some people but delight others, there can be no law prohibiting them consistent with the harm condition.

Second, and more fundamentally, even if an image actually does disgust nearly everybody, this cannot constitute a good reason for prohibiting it. The question to be asked is this: just why do the unpleasant feelings of disgust arise in the first place? Presumably such feelings are thought to result from a moral or aesthetic judgment about the heinous, obscene nature of the image concerned. For example, the feeling or horror we might feel at Bennetton's exploitation of the image of a man dying of AIDS for one of their advertising campaigns is the proper expression of one's firm judgment that such an image is or embodies a commercial trivialization of the plight of the individual concerned and the fate of those suffering from AIDS generally. In other words, we judge the image to be morally pernicious. But, as has already been argued above, the frustration of desires concerning what others ought to see and do cannot constitute a harm. Feelings, no matter how unpleasant, cannot count as harmful if they are, in essence, the expression of a moral view.

Still, we could make a possible reply by making a further distinction between mere offense and indecency. What *The Williams Report* seemed to be getting at was the essentially public character of something that gives rise to moral feelings of disgust and outrage. Many things that we would consider indecent and offensive if they were they uttered or proclaimed publicly are not considered offensive in private at all. As Hart puts it: "Homosexual intercourse between consenting adults in private is immoral according to conventional morality, though not an affront to public decency, though it would be both if it took place in public. But the fact that the same act, if done in public, could be regarded both as immoral and as an affront to public decency must not blind us to the difference between these two aspects of conduct."²¹

Thus perhaps it is the public indecency of an image, independently of whether it causes offense to some or many, that constitutes grounds for prohibiting it. I take it that indecency is committed when an image or act that should essentially be considered private is displayed in public where others cannot but help see it.

However, views as to which acts or images are only appropriate for private indulgence is itself a moral stance. For example, sex is typically held to be an essentially private matter and not something that should be displayed for public spectacle and consumption. Hence the public display of sexually explicit images, from billboards to magazines, is typically regarded as indecent and, at least in some, arouses feelings that they would rather not have. But this stance depends on a particular, moral understanding of the proper aim of human sexual relations and activities, because if sex is to be properly understood as an essentially private communion between two souls, then the public display of it is indecent. But then its public indecency depends on a moral judgment concerning the appropriate

sphere for certain kinds of images and activities. Offense caused by public indecency provides, for the liberal, no good grounds for prohibition, because the offense arises from a moral understanding and evaluation of the object concerned.

THE PRINCIPLE OF OFFENSE

The second kind of argument for censorship does not claim that certain kinds of offense constitute a harm. Rather, it suggests that we ought to supplement the harm condition with the principle of offense. The offensiveness of an opinion, image, or film may provide grounds for censoring it. So we should always ask whether expressing a view on television, placing a particular billboard advertisement, or broadcasting a certain film offends those who have not sought it out and, moreover, whether they could reasonably have avoided it.²² If an image is both offensive and cannot reasonably be avoided, then this provides grounds for censoring it.

It is crucial to recognize that the importance of offense here is not supposed to derive from its expression of a moral judgment. Rather, censorship on such grounds aims to protect the public from opinions, images, and programs that can justifiably be regarded as an unreasonable nuisance. Dropping litter, spitting in the street, obscene billboard advertisements, offensive talk-shows, or the predominance of sexually lewd or violent movies on television ought to be constrained because, for many exposed to them at least, they constitute a nuisance.

Now is it reasonable to consider such things a nuisance and thus prohibit them. In the case of a man who compulsively swears and spits, we are either objecting because of the threat to public hygiene or because his manners are appalling. If such behavior really does constitute a threat to public hygiene, then under the harm condition we have good grounds for prohibiting such behavior. But if it merely constitutes an affront to social manners, then the grounds for prohibition are weak, indeed weaker than if the offense were based on a moral judgment: manners are merely a social convention, whereas morals concern what is good in a way significantly independent of particular social conventions.

A more important kind of offense involves the gratuitous display of contempt for and insult to others' deeply held values. For example, if I walk around with the insignia of the Ku Klux Klan, this will give deep offense to many because of its associations with the barbarity toward and vicious murders of many Blacks in the Deep South. Moreover, this may be compounded where my wearing of the insignia is not a matter of naive ignorance but motivated by the deliberate intention to insult Blacks. My aim is to flaunt the attitude that Blacks are worthy of little human consideration and thereby to rile as many Blacks as I come into contact with. But it is not yet clear that this gives sufficient grounds for the prohibition of such behavior, unless it is likely to lead to a serious breach of the peace, which falls under the harm condition. The offense, as such, is based on

moral outrage and thus cannot constitute grounds for prohibition. Consider, by analogy, posters advertising Gay Pride with two men kissing, or a gay talk-show deliberately setting out to offend and provoke orthodox Christians. Although in the latter the deliberate intent to cause offense is morally heinous, nonetheless the offense caused and the nuisance felt by orthodox Christians springs from a moral judgment concerning the blasphemous and immoral nature of the stance being advocated. The mere fact that an opinion, image, or program offends a particular moral or religious sensibility cannot constitute grounds for restriction or censorship.

Lastly, there is the idea that certain kinds of offense are indecent and lead to unpleasant feelings of embarrassment, shame, and repulsion. Of course, for the argument to work, the notion of indecency here had better be distinct from the one canvassed above—namely, that something is indecent because it is the (morally) inappropriate display of something that should remain private. But an interesting account of indecency has been suggested by Joel Feinberg. Immorality may exacerbate the indecent nature of what is expressed, but indecency is the public display of something that is inherently unpleasant to observe, hear, or come across. Public nudity, for example, is embarrassing since it draws the eye and provokes thoughts that are normally repressed. "The conflict between these attracting and repressing forces is exciting, upsetting, and anxiety producing . . . the result is not mere 'offense,' but a kind of psychic jolt that in many people can be a painful wound. Even those of us who are better able to control our feelings might well resent the nuisance of having to do so."²³ We may, Feinberg claims, justifiably demand protection from this kind of unpleasantness.

Now the inherent unpleasantness of an image, say, had better not amount to the claim that it is an affront to accepted social or moral norms, because there may be nothing inherently unpleasant about confronting certain norms. For example, Neil Jordan's *The Crying Game* certainly tests many people's normal evaluative assumptions about transsexuals and the nature of romantic love but is not, itself, an unpleasant film. What may be identified as unpleasant or uncomfortable is the positive evaluation of a complex relationship which challenges most people's normative assumptions about sexual love. But then this is to move back to offense arising from moral judgments. So the unpleasantness of an image, program, or film cannot lie in its abrogation of standard social or moral norms.

Indecency arises from the intrinsically unpleasant nature of the image, program, or film concerned. A particularly grotesque image of a corpse or a sexually explicit program may provoke us to attend to and contemplate certain conflicting emotions and thoughts that we find deeply distressing and painful to cope with. Why this stressful conflict arises in different people may vary, from the thought that contemplation of such an image is itself immoral to the frustration at having certain desires provoked without the possibility of acting on them. Whatever the reason for such conflict, it is the inner conflict and stress caused by the image or

program concerned that makes it unpleasant. We have a right to be protected from such unpleasant turmoil where it is caused or determined by others rather than ourselves.

Yet, first, as Ellis points out, it is not clear that we actually desire, let alone need, such protection. A sexually alluring image may not just give rise to conflicting emotions but may afford great delight. Human life would be all the more impoverished if we were to attempt, unrealistically, to do away with all spontaneous thoughts and emotions caused by the expression of certain views, the display of certain images, or the broadcasting of certain films. Second, inner conflict and stress arise from all sorts of things over which we have no control ourselves, and which we would not consider ought to be prohibited. Certain people become very vexed at the intrinsically unpleasant nature of certain youth cultures, from punk to grunge, but it would be ridiculous to prohibit them (not to mention well-nigh unenforceable). Similarly, watching cringingly dreadful films may cause deep embarrassment and vexation, but it would be ridiculous to prohibit them. Lastly, the display of certain images or programs, from nude bodies to boxing promotions, may give rise to vexed and conflicting thoughts and desires. If we thought them immoral, we obviously would wish that people did not delight in such images or activities. But the cost of enacting and enforcing a law to prohibit either of them, for the reasons Mill gives, would be so high as to far outweigh any particular inconvenience or conflict that we might feel.

As Ellis argues, the reason the offense caused in such cases is significant is because our attitude to indecency has a moral aspect to it. Yet, according to liberalism, moral judgments have no business influencing what, legally speaking, is or is not permissible. The law is there to protect our capacity to lead our lives as we so choose—and that includes, unless harm to others is involved, the possibility of choosing to do, watch, or express that which is immoral.

OFFENSE AND INDIRECT HARM

However, Ellis's conclusion rests on the failure to see the force of a crucial distinction. The claim is that views, images, and programs that lead to, or are likely to result in, direct harm to particular individuals may justifiably be censored. Hence, for example, we can justifiably ban a Ku Klux Klan march through, images in, or programming directed at a Black area if riots are likely to break out and the march is likely to lead to the direct harming of particular individuals. But significant harm need not be direct in this sense at all, for we can be harmed—quite significantly—in ways that are much more insidious and indirect.

Consider, at the individual level, the nature of gossip and slander. If someone gossips behind my back, this may not lead to any direct harm at all. Nonetheless, it may significantly affect how my friends, colleagues, and clients come to treat me in the future. They may be less likely to trust my professional abilities; hence

my ability to develop myself in my job is clearly harmed, promotion is less likely to come my way, and my position in the office may be challenged at every step so that eventually I feel unable to function at all and am forced to leave. Similarly, my friends may suddenly become less trusting, the kinds of confidences and activities that we had enjoyed up until recently are suddenly cut short, and I become excluded from the friendships that I had previously enjoyed. Both at a professional and personal level, gossip can clearly harm me, even where I am not aware of it. Moreover it is important to see that such gossip can be harmful even where it is not clearly slanderous and thus based on falsehoods. The malicious gossip may not make any false claims about my actions or things I have or have not said. A clever gossip would be unlikely to be so obvious, since he or she is more likely to be challenged and less likely to be believed; rather, a Machiavelian gossip will point to my actual views and actions but seek to insinuate ulterior motives underlying them. Thus good relations toward my boss are interpreted as slimy and pernicious operating; similarly, altruistic acts toward my friends are, it is suggested, to be interpreted in terms of my self-interest rather than any true concern for my friends. Hence a truly effective gossip will cultivate an attitude of cynicism toward all my actions.

The very same kind of harm can be extended from the consideration of individual people to, for example, the slander of particular groups. Hence the rationale underlying laws against viciously racist literature, broadcasting, and reporting is exactly the same. Namely, the capacity for Blacks to pursue their lives as they would choose is clearly constricted if, for example, newspaper reports and television programs represent Blacks as necessarily lazy, filthy, subhuman, and so on, for their capacity to realize gainful employment, get housing, be treated with respect, and be taken seriously is constricted by the promulgation of viciously racist literature and programming. Such images and programs are akin to an assault on certain people's identity as autonomous individuals rather than the mere frustration of a particular choice or preference that they may have.

Racism is not damaging merely because, in particular contexts, the expression of racist views is likely to lead directly to harm to particular individuals in a resultant riot. Rather, racism's pernicious nature lies in the harm that results more generally and indirectly, for it cultivates a pernicious general attitude toward people from certain ethnic groups, Blacks or Jews, say, which harms their fundamental interests as autonomous human beings. Clever racist literature points to indisputable facts—for example, that Jews have historically been very good at business and money-lending and successful in many societies, while significantly remaining apart from them—but the interpretation of these facts is given in terms of corruption, the perversion of honesty, and a parasitical culture whose aim is to devour and take over its host society. The cultivation of such attitudes, where successful, clearly leads to harm, albeit indirectly, because people who come to believe these views, and thus adopt an anti-Semitic attitude, will

obviously treat Jews in ways that they otherwise would not have done. They are less likely to employ a Jewish person if they assume Jews are endemically dishonest, or to listen to the opinions and arguments of someone who is Jewish, since the presumption is that Jews are motivated solely by their pernicious, money-grabbing aims. It also becomes harder for Jews to achieve certain personal and social goods. People are more likely to object to synagogues being put up in their community and less likely to entertain the possibility of befriending a Jew. So anti-Semitic literature can lead to significant indirect harm, where it succeeds in influencing public attitudes, since at the political, social, and personal level the ability of Jews to pursue fundamental aspects of their lives is constricted in a vicious manner. The frustration of fundamental political, social, and personal interests, which are tied up with our identity and autonomy, constitutes a significant harm that the state should prevent.

It is important to note, however, that the scope of the argument from indirect harm is much wider than the particular instance of racist reporting and programming. The general criterion concerns whether significant harm results regarding any group. Thus, for example, certain religious groups may legitimately demand protection from certain kinds of offense. Christians and Moslems may find their lives harmed in similar ways where a hostile secular culture is predominated by programs and films that are derisive and mocking and deliberately set out to blaspheme against their religious beliefs and way of life. The perpetuation of programs that cultivate the attitude that religious belief is no more than superstitious nonsense, fail to take religious claims seriously and mock it merely as something akin to a sad and naive faith in Santa Claus clearly makes it more difficult to live a religious life freely. At the political level, the claim that certain policies, ranging from abortion to lack of welfare provision for the poor, go against certain religious commitments and are therefore wrong will not be taken seriously at all. At the social level, the ability to bring one's child up within a religious tradition becomes much harder where it is publicly mocked.

Another kind of case might be where only a few people constituting a small minority in society wish to pursue their personal lives outside the sphere of marriage. In a culture where media reporting and programming is based on the assumption that homosexual couples, couples living together outside wedlock, or single parents should be consistently derided and mocked for their fecklessness, immorality, and parasitic free-riding off the welfare of others, it is obviously much harder to live freely the life that one would choose. Where an attitude like this prevails, at a personal level, such couples may be openly mocked or chased out of their homes and their children cruelly bullied in school and made to feel that their parents are monstrous by virtue of such behavior. At a political level, their voice as citizens may well typically be discounted and their problems ignored because of a general attitude that such people are not really worth thinking about or are not of equal worth as members of that society.

Thus offense, where we have good grounds to believe that it will constitute a significant indirect harm, can and does provide grounds for censorship. How-

ever, it is crucial to recognize that this judgment does not depend just on the nature of a particular report, program, or film. A film that directly offends against the sensibilities of, for example, heterosexual married couples and represents an attitude of scorn for such a lifestyle should not be censored in a society where this is the presumed norm; for the free pursuit of such a life will not be indirectly harmed by such a film where the predominant attitude is one that this is a perfectly acceptable and legitimate lifestyle. By contrast, a film that is offensive to Jews, Blacks, or single parents, where the cultural position of such people in society is precarious, is a candidate for censorship. It is not the offense per se that legitimates censorship; rather, it is whether the offense cultivates and perpetuates an attitude that is likely to contribute to or reinforce the harmful discounting or disdain for people in these groups, which is a judgment that can only be made in relation to the culture as a whole.

It is important to recognize that, although many gratuitously offensive images and programs that may fall under this heading do not have to be seen by those who are offended, the claim still holds, for those who are offended and indirectly harmed by the contents of racist programs or blasphemous films will, as in the case of gossip, be indirectly harmed by the consumption of these things by other people. The problem lies not with any offense given but with the consumption of what is gratuitously offensive in circumstances where this will contribute to the significant indirect harm of particular groups in society.

However, we should go on to add a significant qualification. Consider a news documentary that reveals new statistics and insights showing that a significant number of single mothers do go out of their way to have babies in order to gain greater welfare support. Let us assume that this news documentary offends the sensibilities of a precarious group in society—single mothers—and does reinforce the generally harmful attitude that single parents are feckless parasites. But this is not yet sufficient to legitimate censorship, for the program may give good, coherent reasons and evidence to believe the claims they are making to be true. So although indirect harm may result, the fact that we have good reason to believe that the claims are justified means that the program should be broadcast. It is clearly in the public interest to know such facts, which are important for public policy matters, and the offense given is not a result of the nature of the program as such but merely the sensibilities of those in the group concerned and their reaction to the program. Similarly, it may be true that most inner-city crime is committed by Blacks. A program that develops this claim, giving good reasons and evidence, may be offensive to many Blacks and reinforce harmful stereotypes. Nonetheless, it is clearly legitimate and, where this relates to significant public policy matters, the media have a clear obligation to broadcast such a program despite the offense caused.

Where the criterion of indirect harm kicks in is where programs or reports are both gratuitously offensive, by their very nature, and lead to indirect harm. A program that lambasts single parents or Blacks as feckless, criminal, and

consideration of the actual evidence, is gratuitously offensive and not really concerned with arriving at a true understanding of the plight or state of the groups concerned. Similarly, religious programming or films that seek solely to scoff and scorn religious belief per se are inherently offensive where no effort is made to understand the basis of religious belief and no argument is given.

The considerations raised above give us good grounds for allowing that censorship of news reporting, programming, and films is justified, though only on tightly circumscribed grounds. Where a report, program, or film is likely to lead to serious, direct harm of others or where the gratuitous offense inherent in them is likely indirectly to harm a particular, precarious group in society, then censorship is legitimate. The argument also gives grounds for holding that the liberal state has certain positive obligations regarding those whose position in society is rather precarious. For example, where a particular culture or subgroup finds that its views, opinions, and perhaps even cultural goods, such as its language, are in danger of withering away in the public arena, then the state has an obligation to make sure that the members have channels of public access both to express their culture and communicate their views.²⁴

The only relevant consideration that we have failed to entertain concerns the question of artistic merit, for it may be true that a film that is gratuitously offensive to a particular, precarious group in society, and thus may indirectly harm them, may possess much artistic merit. But, on the argument above, such films could legitimately be censored. Yet we find it harder to swallow the claim that valuable artistic works that are offensive in this way should be banned than we do where programs or films that possess little or no such artistic merit are involved. It is clear that, for example, Ezra Pound's *Cantos*, Martin Scorsese's *Last Temptation of Christ*, or Oshima's *In the Realm of the Senses* may be both offensive and, under certain circumstances, indirectly harmful. Yet their artistic merit, though of varying quality, nonetheless inclines us to think that our culture would be worse off were the broadcasting of them to be censored.

To see why this should be so we need to have some kind of understanding of why art, as such, is important and valuable. The value of an artwork cannot lie in its being merely beautiful or aesthetically pleasing. After all, if that is where art's primary value lies then it would not be clear why we think that attending to artworks is more significant than the pleasures afforded by beautiful, natural landscapes or by activities ranging from ten-pin bowling to playing cards. Rather, we typically value artworks, at least representational ones, because of their cognitive value, for the point of depicting a particular character—whether it be Captain Ahab or Jesus Christ—in a certain way is to prescribe in the viewer a particular imaginative understanding of the character's emotions, motives, ideals, character, and dilemmas that they confront or are caught up within.²⁵

Of course, many television programs, dramas, and films are fictional, genre-specific, and only indirectly related to our own world.²⁶ But, for us to be entertained by them and value them as art, they must be related significantly to

how we conceive of and understand our own world. For example, it is a staple convention of science-fiction films to portray an alien threat that seeks, in some form, to infect and thus destroy us. In the 1950s such a device was often used as a blatant cold-war allegory, as, for example, in Siegal's *Invasion of the Bodysnatchers*. Such films, though apparently at the furthest remove from our everyday worlds, actually concern and engage with the most fundamental concerns, drives, and desires manifested in ordinary life. This is, after all, why films and dramas may be profound in a way that transcends genre, time, and culture.

Yet, it might be thought, why give art special status? Even the profoundest of programs and films cannot touch our own world, for a work's putative insights about the world are only properly assessable within the appropriate intellectual discipline. We do not watch Kenneth Branagh's *Frankenstein* and then presume that experimentation with life itself is profoundly immoral. Rather, we enjoy the film but consider the issues raised, say in relation to genetic engineering, quite separately. Furthermore, the fact that we can and typically do value films containing seemingly contradictory "insights" seems to back this picture up. The pleasures afforded by Tarantino's *Pulp Fiction* depend on, in part, backgrounding a natural presumption in favor of the significance of human life. Conversely, Oliver Stone's *Natural Born Killers* depends on foregrounding such a presumption, in order to function as a critique of contemporary popular culture. Thus, in order to enjoy both films, we must call upon apparently incompatible attitudes toward human life. Therefore, given that films cannot provide "insights" about the human world, they should not be afforded special status when weighing up the matter of censorship.

But that our appreciation of different works requires apparently incompatible attitudes does not show that we do not expect a film to illuminate our world. After all, we rightly criticize films for failing to provoke an appropriate response to the events depicted. Hence, it would be a significant criticism of Branagh's *Frankenstein* were we to find the psychological motivations of Victor, perhaps arising from the gruesome loss of his mother in childbirth, wholly unconvincing. Similarly, we may legitimately criticize Francis Ford Coppola's *Dracula* because it fails to scare us—for, given the nature of Dracula, we ought to feel afraid. Moreover, insights about our world are not the only things we value in a film. We value a film if it is original and interesting, deepens our understanding of the medium, or prescribes us to imagine something in a particularly vivid way. Hence we value films both for their content and the way that we are prescribed to imagine what is represented. Thus we may enjoy a film because of the way it prescribes particular imaginings, even though we may think that the putative insights about, say, human psychology or the state of affairs that it depicts are false. So Leni Riefenstahl's triumphalist Nazi film of the 1936 Nuremberg rallies, *Triumph of the Will*, is flawed because it misrepresents the nature of Nazism. All its aesthetic power and imagery is devoted to representing Hitler and

Nazism as the glorious savior of the human race. It glorifies and celebrates what is, in essence, a vicious and immoral creed. Nonetheless, in terms of its imagery, originality, and appreciation of the aesthetically attractive nature of Nazism, it is a valuable work.²⁷

As we have seen from the arguments considered, such works may indirectly threaten the very fabric of a liberal society, for even fictional films—through engaging our imaginings—promote particular self-understandings. We imagine what it would be like to be a particular person or in a certain state of affairs. Such imaginative simulation is crucial in our ordinary lives if we are properly to understand others, whether at an individual or cultural level. Ordinarily, we do not refer to abstracted hypotheses that explain another's behavior. Rather, we seek to imagine how, given their nature, other people conceive of their situation and are prone to feel and act.

Given that our imaginings enable us to grasp our own world and that of others, it should seem obvious that films may affect, directly or otherwise, the way that we conceive of and thus act within the world. Films, through engaging our imagination, promote particular self-understandings. Hence what we watch, through showing us various ways in which we may look upon our world, may deepen or distort our understanding. This serves to explain precisely why it is that we should rightly be suspicious of violent or racist movies. The problem is not one of mere offense, it is the age-old Platonic paradox: art may both enlighten and corrupt.²⁸

For example, in a culture increasingly tolerant of the appetite for violence, violent films may not only reflect but cultivate the delight taken in it. Perhaps this is the reason why Quentin Tarantino's films have enjoyed such a rich vein of success. They touch upon an element of sadism flowering within our culture: the delightful stylization, enjoyment of, and reveling in the infliction of violence. What is peculiar about Tarantino's films, and sadism generally, is the celebration of this delight. Such a positive evaluation of violence and the concomitant indifference to others may, in a society threatened by increasing levels of violence, dissolve the ties that bind us within the larger liberal society. Similarly, deeply racist or blasphemous films may cultivate an indifference or hostility toward the groups concerned and thereby indirectly harm the ability of particular citizens within our society to lead their lives as they would choose.

Yet where films or dramas possess intrinsic artistic merit, even though they may lead to indirect harm in the sense discussed, they should not be censored except in the most extreme of instances; because the cost of indirect harm is worth paying in order to enable people to watch programs, dramas, or films of artistic merit. Similarly, the indirect harm of allowing cars on the road—the deaths of a few individuals each year—is considered worth paying because of the social benefits that car travel brings with it. This is perfectly consistent with the claim that those films or programs that are gratuitously offensive and indirectly harmful, and lack artistic merit, should be censored. D. W. Griffiths' *Birth of a*

Nation should be available to the general public and the media free to broadcast it. But gratuitously racist films of little or no artistic merit, in a society where racism constitutes a grave social ill, should not be broadcast at all.

CONCLUSION

No doubt for some, the position for which I have argued will seem deeply unsatisfactory because it is neither a clear-cut defence of an absolute right to freedom of expression nor an argument that applies cleanly to all programs or films that may be considered offensive. Moreover, such a view will no doubt attract charges of elitism. Who should say whether someone can adequately understand a particular film? Who is to say what constitutes gratuitous violence? When and where may a gratuitously offensive film constitute an indirect harm? Moreover, will the legitimation of censorship in very particular cases not lead to its illegitimate use in many other areas?

Of course, such questions are crucial and a question of judgment. But it is unmistakably true that judgment is required. True, we may be mistaken in our judgment of particular cases and circumstances; all human judgment is fallible. But, at best, such considerations show that it may be difficult to judge when and where certain kinds of gratuitously offensive programs and films may constitute an indirect harm. Furthermore, the regulatory authority that judges such matters had better be at a great distance from the political government of the day, for the justifiable case for censorship may, illegitimately, be used by political governments to protect their own interests in ways that are detrimental to justice and democracy. Thus the regulatory bodies whose job it is to make such judgments and enforce censorship where required had better be made up of a body of politically disinterested people whose powers do not depend on or are subject to undue influence from the particular government of the day. Furthermore, the regulatory framework need not be so imprecise as to permit censorship in illegitimate areas. The grounds for censorship can and must be clearly circumscribed. For example, a liberal state could pass a law, as is the case in Britain, that the identity of a rape victim should remain anonymous in the period up to and including the trial. Similarly, any move by the regulatory body to cut or ban the broadcast of a program or film must be based on a strong case that suggests that the gratuitously offensive nature of the film, in the present circumstances, constitutes or is likely to lead to direct or indirect harm.

The point here is that such worries do not hold, in principle, against the case for media censorship per se. Freedom of expression is qualified by the obligation not to harm, whether in relation to a particular individual or civil society as a whole. Hence we require a much greater emphasis on the need for self-censorship by film makers, ranging from the commissioning to the editorial process, and by the families or groups that constitute civil society. However, where society itself is riven with harmful attitudes that may be cultivated or reinforced

by gratuitously offensive films, which thus constitute an indirect harm, the liberal state can legitimately allow for a politically neutral regulatory body to exercise fairly strong powers of censorship where the media community fails to do so.

Furthermore, to my mind, the complexity of the position that I have argued for and its recognition of the need to exercise judgment is precisely where its virtue lies—for the point of a right to freedom of expression is underwritten by the general liberal commitment to protect the conditions of stability, tolerance, and freedom from harm which enable people to lead their lives as they freely choose. So where protection of the right to freedom of expression threatens those very conditions, then it must give way. This is compatible with the liberal separation of legal constraints and morality, for mere indecency or gratuitous offense do not themselves constitute grounds for legitimating censorship.

Recognizing the importance of context and circumstance in determining whether a film constitutes an indirect harm is crucial; the same film may be gratuitously offensive and indirectly harmful in one culture but not so in another. In a secular society, no one may take offense at antireligious programming. In a society where religious traditions are not under threat, an antireligious program may be found to be gratuitously offensive but not constitute an indirect harm. But in a society where racism is a deep problem or religious ways of life are deeply threatened, programs that are gratuitously offensive may constitute an indirect harm and thus may legitimately be banned or censored. The very same gratuitously racist film may in one context be legitimately censored—in Germany after World War Two such material threatened to destabilize the fragile shoots of a liberal society—and yet in another should not be; in a strong liberal society where racism is not endemic and does not threaten the preconditions of the liberal state, such films are not harmful. Furthermore, the position argued for recognizes the general importance we place on programs and films that attain a certain artistic merit and recognizes that even where they do constitute an indirect harm, this may be a cost worth paying.

The complexity and context-sensitivity of such a position is a virtue and not a fault, for the evolution and maintenance of a liberal society is a great historical achievement and one that we must be careful to sustain. What is required to maintain the conditions of a liberal society will vary over particular times and cultures. This is precisely why sophisticated liberalism is more adequate to the dilemmas posed by imagery, programs, and films that harm and offend people than an ahistorical liberalism that blindly and damagingly holds to an absolute right to the freedom of expression. Typically illiberal measures are sometimes required to maintain the conditions of meaningful choice that the liberal state must protect and sustain.

NOTES

1. See, for example, Jeremy Waldron, "Legislation and Moral Neutrality," in his *Liberal Rights* (New York: Cambridge University Press, 1993), pp. 143–167, and Gordon Graham, *Contemporary Social Philosophy* (Oxford: Blackwells, 1988), pp. 121–137.
2. Graham Gordon, "Sex and Violence in Fact and Fiction," in ed. M. Kieran, *Media Ethics* (London: Routledge, forthcoming), makes this point.
3. John Stuart Mill, *On Liberty* (Harmondsworth: Penguin, 1982), especially pp. 59–74, 141–162.
4. *Ibid.*, pp. 75–118.
5. *Ibid.*, pp. 96–108.
6. David Irving's *Hitler's War* (London: Hodder and Stoughton, 1977) argues that the Holocaust did not happen strictly speaking and that what genocide did take place was clearly not the result of Hitler's intentions or the ideology of Nazism. The controversy over race and IQ has recently been sparked off again by Richard J. Herrnstein and Charles A. Murray's *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994), and in Britain in April 1996 the psychologist Christopher Brand's *The G Factor* was withdrawn by its publishers, John Wiley and Sons, the day before its publication, on the grounds that his conclusions were racist, as reported by Aisling Irwin and Olga Wojtas, "Racist I.Q. Book Withdrawn," *The Times Higher*, 19 April 1996, p. 1.
7. Mill, *On Liberty*, pp. 77–96.
8. See Richard M. Fried, *Nightmare in Red: The McCarthy Era in Perspective* (New York: Oxford University Press, 1990), and Edwin R. Bayley, *Joe McCarthy and the Press* (Madison, WI: University of Wisconsin Press, 1981).
9. Mill, *On Liberty*, pp. 108–115.
10. See Phillip Knightley, *The First Casualty. From the Crimea to Vietnam: The War Correspondent as Hero, Propagandist, and Myth Maker* (New York: Harvourt, Brace, Jovanovich, 1975), pp. 374–400.
11. Mill, *On Liberty*, pp. 91–94, 150.
12. *Ibid.*, pp. 107–116.
13. *Ibid.*, p. 115.
14. *Ibid.*, pp. 151–162.
15. *Ibid.*, p. 119.
16. Anthony Ellis, "Offense and the Liberal Conception of the Law," *Philosophy and Public Affairs* 13 (1984): 3–23, from which this and the next section of the chapter closely draw.
17. *The Williams Report; Report of the Committee on Obscenity and Film Censorship*, ed. Bernard Williams (London: Cmnd. 7772, 1979), p. 99.
18. See David Lewis, "Dispositional Theories of Value," *Aristotelian Society Supplementary Volume*, Vol. LXIII, 1989, pp. 113–137.
19. See Ellis, "Offense and the Liberal Conception of the Law," pp. 12–19, for a more detailed discussion of the nature of offense.
20. M. J. Apter, *Reversal Theory: Motivation, Emotion and Personality* (London: Routledge, 1989), reviews recent psychological research that underwrites the fact that, under certain circumstances, we can and do enjoy what is otherwise typically unpleasant.
21. H. L. A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963), p. 45.
22. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), pp. 36–54.
23. *Ibid.*, p. 44.