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Freedom of Expression and Cultural Production in the Age of Vanishing Privacy

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The advent of the internet gave rise to a series of interrelated myths that determine how we will think about censorship and human rights for the foreseeable future. Clichés such as “information wants to be free,” “with instant global access, censorship no longer exists,” and “the market decides what gets sold and read” operate on the assumption that we are in a golden age for freedom of expression and information circulation, distribution, and access. But these apparently new freedoms conflict with traditional rights in particular ways. Simply put, freedom of expression for an individual often conflicts with the freedom to disseminate information of corporate information gatherers. I don’t want all of my GPS data available, you don’t want your notes accessible to all, that celebrity (or that once-silly college student and now-serious job candidate) is horrified to find her private photos are posted on sites all over the net. In today’s net culture, one often-neglected aspect of the freedom of expression has risen in importance — the freedom not to express, the freedom to be silent. And this freedom to be silent is but another name for privacy. Individuals now desperately want to be their own censors, in control of the circulation of their personal data. And yet, time and again, religious organizations, nation-states, and multimedia corporations have continued to assert their privileged positions as monopolistic controllers of their particular media networks, whether through claims that they own the cultural products posted by users on their sites or through the denial of service to particular users. The T-mobile blackout of “sms txtmob” services, which had allowed vast numbers of activists to coordinate around the Republican National Convention in New York City in 2004; the “great firewall” in China; and the shutting down of Twitter in Syria: all of these have become signs that censorship continues today as a major problem of social interaction and political organization (Hirsch and Henry 2005; Stevenson 2007; Reed 2000; Clayton et al. 2006; Baker 2014; Jansen 2010; Chaabane et al. 2014).
Such technological restrictions on access to cellular and internet networks might seem like inconveniences of modern life rather than “censorship,” invasions of privacy, or even violations of human rights. But historically, censorship has created classes with access to information and classes without; whether the Roman Catholic Church’s control over their infamous Index or Google’s control over its global search engine, those with authority over the dissemination of information have used it as a means of social control. And it is at the moment when individuals think that they are no longer under the control of an external and nameable authority that censorship may have finally succeeded in the goal of erasing its own trace. The most efficient and rational censorship is a censorship of which we are not aware, a way of thinking that feels as if it bears no relation even to self-censorship. So it is precisely when we find ourselves hesitant to label new phenomena in the mediascape (such as corporate decisions to curtail dissemination) as censorship that we need to rethink our current place in the history and structure of censorship. But how can we identify what is and what is not censorship when we barely sense anything out of the ordinary, when we genuinely feel free to express most of our opinions most of the time? The problem of the circulation of cultural products and the human right to expression has become so complex in recent years – from scholarly, political, and public viewpoints – that it has become impossible to understand it within simple binary terms of freedom versus censorship or privacy versus public good. This chapter is an attempt to form a theoretical basis, informed by historical understanding, for linking rights discourse with recent developments in censorship studies in light of changes in social media over the last half-century.

**Literary realities and the imaginative power of rights**

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

(Universal Declaration of Human Rights [UDHR] 1948)

On the point of stating not an inherent fact of nature, but rather a positive ideal – that we should possess the liberty to hold views and make them public – the Universal Declaration of Human Rights’ Article 19 gestures to dire realities, namely that such “interference” has occurred and continues to occur (1948). Article 19 goes on to suggest several defining characteristics of historical literary bans: they have sought not only to quash material traces of dissident belief that might circulate far and wide (“impart information and ideas”), but also those that are simply manifest as opinions held in the minds of individuals (“hold opinions without interference”); they have typically arisen at moments of media transfer and border-crossing (“through any media and regardless of frontiers”); they have often meddled not only at the level of production, but also at the level of consumption (“to seek, receive, and impart”). Thus, it is clear even at the outset that the rhetoric of rights grapples directly with a long history of suppression and repression, which characterizes the actual lived
experience of most humans. Such declarations of freedom of expression constitute statements of aspiration to a negative right – the freedom from actual censorships.

The study of literary censorship addresses concerns about how the contents of literary material can impact individual readers and society as a whole and about how some of our most fundamental human attributes (our thought and expression) are policed. And like the study of human rights, it is often based on the claim that a nonexistent, yet ideal state of freedom from censorship is natural and inalienable, or, at minimum, desirable. The rhetoric of human rights for its part might be productively compared with the literary genre of near future fiction, an aspirational discourse that prescribes a utopia or describes a dystopia as an extrapolation of our situation today rather than describing real existing circumstances. Indeed, this genre has had a deep role in helping us to see the efficacy and potential pitfalls of the rhetoric of rights. Near-future dystopic fiction has perhaps best allegorized the lack of justice in the real world. If the rise of dystopian speculative fiction novels from George Orwell’s epic 1984 (1949) to the most recent iteration in Dave Eggers’ The Circle (2014) has paralleled the history of human rights dialogue, then we should not be surprised that such fiction has become a significant mode for teaching human rights, asserting both what is morally right about our lofty declarations and what is logically wrong with our present reality. Whether the involuntary surveillance by the state of 1984 or the willing submission to surveillance by netizens in The Circle, the vanishing of privacy parallels and is connected to a growth of nuance in censorship. From Orwell to Eggers, we find the lack of controls on information gathering and the endless controls on individual expression to be the greatest threats to concepts of individual rights, to private thought, and to public action.

**Freedom of expression and literature**

Cultural production as a field of discursive endeavor has been a contentious ground for censorship. Among the least direct forms of dissent, but occasionally the most targeted, literature particularly draws more heated and debated scrutiny because it is (along with the jargon of specialist fields from the hard sciences to philosophy) a highly coded form of signification. And yet unlike elite specialist fields with their own means of obfuscation, literature is often pitched to a great variety of readers; because of this perceived threat of wider dissemination, historically, censors have focused closely on literature. At once susceptible to misunderstanding and also seemingly free from day-to-day political constraints of newspapers and other more putatively factual forms of writing, literature can achieve (even under repressive regimes), through flowery and metaphoric language, what other forms seem unable to do – expressing views that veer from social and communal norms.

There are two primary ways that the relationship between literature and freedom of expression has been conceived; despite the fact that both of these ways seem to reflect something of the truth of experience, they are mutually contradictory: first, literary creativity is said to require freedom of expression (censorship will stifle literary production); second, literature is often viewed as a way to circumvent censorship (censorship promotes literature.) The first more common understanding suggests
that censorship is the antithesis of literature. Literature in this figuration is a mark of individual freedom, the absence or conquering of censorship.

To say we need freedom from censorship, however, then is also to say we need the right to straight talk about serious issues, and this could also be a plea for not having to speak in metaphoric or literary ways. Rather than being seen as antithetical to literature, the other view finds censorship constitutive of the literary. Belles lettres have long been viewed as having developed as methods for circumvention of authority (Hegel 1975: 387). A version of this argument goes that censorship is not counter to literature; censorship creates literature as we know it. And counterintuitively, this point has even been taken further to link golden ages of cultural production with the most repressive and suppressive regimes (Losev 1984; Strauss 1952; Hoffman 2007; Peters 1989). In this sense, the very existence of literature as such is simply the cultural collateral damage of such censorship regimes. Such claims rest on the argument that literary language is circuitous and, therefore, thrives when authorities suppress straight talk about topics declared taboo, forbidden, or illegal. When the censorship system defined this way works, literature successfully conveys a forbidden idea in ways that are hidden from the censors but legible to readers.

This latter view assumes literature always already to be of radical or subversive underlying message, but literature has not always been a vanguard genre pushing the bounds of the expressible. In fact, as a form of bourgeois and middlebrow culture written and read most often by those with the time and money to do so, the majority of modern literature falls very much within the bounds of modern social, political, and religious mores. In fact, much literature (whether the Bildungsroman, stories with Confucian endings that reward virtue and punish vice, or quest narratives) has been structured around taming the id, educating the individual to fit better into society and culture and the nation, censoring out the unacceptable impulses. As a leisure time escape and release, modern literature has occasionally been the site for imagining alternative realities, pushing not only aesthetic bounds but also social decorum and political orthodoxy. To the extent that it seeks transformation, literature has been correctly targeted by those seeking to maintain the status quo. The degree to which we think that the impulse towards change is part of literature itself determines whether we think literature is opposed to censorship, produced by it, or simply in a relationship fluctuating between the two.

**Censorship, the ineluctable**

Following the linguistic turn in philosophy, there has been a shift in censorship studies from consideration of censorship as a solely external phenomenon having to do with governments, religious institutions, and even corporations as the authorities of censorship to a focus on how the internal mechanisms of repression are related to such external historical offices of suppression. In recent scholarship, freedom of the press has increasingly been viewed as a pie-in-the-sky ideal, with the real situation of writing and publishing residing on a continuum between self-censorship and censorship. When censorship is seen in this way, it is a constant condition of literary production rather than a temporary aberration (Burt 1994; Butler 1997; Post 1998;
Holquist 1994). If modern understandings of language and psychology brought forth the idea that censorship is truly ineluctable, today the omnipresence of technological surveillance actively fills in the middle ground between censorship and self-censorship by shrinking the space of the private. When a handful of companies track our data-packets and movements, claim the copyrights to the fruits of our intellectual labor posted on their sites, and literally construct the ground platforms and formats upon which we write, can we claim our individual expression in cyberspace is ever free? Further, the identification of external/internal or censorship/self-censorship continuums mimics, if with some delay, the recognition already present in Article 19 of the UDHR that opinion is of equal importance to the expression of that opinion.

The conceptions of the right to free expression from the Enlightenment until today have more and more associated the material expression of opinion in recorded/recordable format (from print to YouTube) with the intangible “holding” of opinion. This conflation raises the question whether a subject/citizen can even hold opinions that are not expressed. Indeed, from the Inquisition to the Communist conversions of the early twentieth century, through the midcentury McCarthyist campaigns to rout out “un-American activities,” and the later “if you’re not with us, you’re against us” attitudes of the post 9/11 “War on Terror,” which led to the waterboarding of suspected terrorists in the twenty-first century, the verbal confession of taboo thoughts and plans has been a perpetual, integral part of mechanisms of suppression and repression. But it is precisely in a censorship regime’s need for (even coerced) expression of opinion – the need to materialize (record and report) such intangible opinions – that the rights discourse conflating the tangible and intangible breaks down. Because if simply holding the opinion were truly the crime, one could prosecute it without expression. And though this occasionally happens, the institution of confession seems to be the more common modern practice. Since in practice its expression is necessary to prove the holding of dissident opinion, mere accusation is seldom enough to constitute proof of dissent.

**Personification**

These shifts in thinking about the structure determining the function of censorship parallel the gradual historical relocation of censoring authority (at least in a western context) from the church, to the nation-state, and more recently to the global conglomerates that control much of the world’s media. Under religious and secular or village and state censors, it may have been easier to identify the external institutions of censorship. But matters have been made murky by corporate claims about market considerations, as in the aftermath of 9/11, when Clear Channel made a no-play list of 150 songs deemed too emotionally stirring, or when Amazon chose for a time not to carry the translation of Thierry Meyssan’s conspiracy theory book 9/11: The Big Lie (“It’s the End’ 2001; Riding 2002). Today those with the means to control the flows of information claim to be acting with disinterest in content, focusing on profit, and following the market. But as the cases of 9/11 in the US and 3/11 in Japan show, providers provide content based not only on the desires of individual consumers, on aggregate consumer demand, and on market pressures, but also on the basis of discretion, decorum, and restraint (Belson and Onishi 2011).
The rise of the corporation as the primary institution of censorship has coincided with the growing ease of publication for individuals with both means and access. Often coded in the neoliberal rhetoric of “letting the market decide” (as though the decision between giving personal data and metadata to Microsoft or Apple, Google or Yahoo is, indeed, a free choice and not a precondition for entrance into the discursive field today), this situation has led to a series of dilemmas for individual rights. Can human rights rhetoric and law designed for a world run by nation-states intervene in a field in which the primary actors have become nongovernmental, nonhuman corporations – Amazon, Weibo, Google, Facebook, Twitter, Apple, Microsoft, Comcast, Time Warner, Alibaba, Rakuten, and so on? Who can be held accountable for the company policies to which we willingly submit when we click “OK” on end user agreements? As individuals participate in the new public discursive venues must they give up privacy elsewhere? Have metadata (mail addresses on the outsides of envelopes, ticket stubs showing arrivals and departures, receipts and purchase orders, library cards and stamps that record borrowing dates and sometimes borrower names) historically been private property of the individual? Is the control and regulation of information flow different from censorship? Should internet service providers be considered “common carriers” and, therefore, be restricted from peeking inside the data-packets we have them deliver to our screens (Ammori 2014; Frieden 2008; Speta 2001; Brodkin 2014)?

The vanishing privacy of the individual has accompanied the expansion of individual rights for corporations in terms not only of copyright (see the 2003 Copyright Term Extension Act [CTEA], which lengthened the term of copyright on Disney’s Steamboat Willy beyond the life of Walt Disney and his heirs for the benefit of the corporation alone), but also in terms of free speech. In the twisted legalese of the more recent Citizen’s United and Hobby Lobby Supreme Court decisions, in which corporations (redefined as persons in US legal precedent since the late nineteenth century) now have won the right to free speech, we find perhaps the ultimate challenge not only to the concept of the individual, but also to notions of rights and the human writ large (Brown 2013; Ghoshray 2011; Clermont 2010). When corporate actions are deemed to be protected under human rights (originally developed to protect individuals from corporate government overreach), individuals are left without recourse, desiring to censor or regulate the speech and information collection of this new class of corporate “humans.”

Paradoxically, the same personification that has enabled corporations to bend the right to free speech to their benefit might also be essential to the definition of freedom of expression as a human right in the first place. Freedom of expression represents one of the limits of human rights because it is a right that seems to accrue both to human beings and to the inanimate objects they produce. Not only human bodies, but the thoughts and public expressions produced by such bodies, too, need the protection offered by the right to speak freely. An important task for the ethics of rights is to relate freedom as consonant not only with the body of human beings, but also with the stuff of humans. Metaphors that consider both persons as things and things as persons have helped us to better elaborate property rights, cultural heritage claims to spoils seized in war, and freedom of expression. The origins of property rights are tied to the institutions of marriage and slavery (moments when persons
have been thingified); cultural heritage claims have reversed the discourse claiming particular things to be (in effect) proper to a given people, community, or nation; and words, books, and styles have been personified in order to defend the freedom of expression by authors from Cervantes to Milton and Marx to Heine. If a book is organic and animate, to censor is to kill. This recognition of the link between personification and expression as a right may be most clear in Milton’s Areopagitica in which he famously gave life to books: “he who destroys a good Book, kills reason itself, kills the Image of God, as it were in the eye” (Milton 1999: 42). In Milton’s call for the freedom of expression and in countless such calls since, we find the stuff of humans personified in rhetoric with the specific political end of calling for the protection of that stuff. Personification then throws into stark relief the confusion inherent in the right to freedom of expression; do calls for the right to freedom of expression call for protection of the human expressers or for the free circulation (or life) of the expressions themselves? Further, such personification reminds us that, historically, violence against human bodies has gone hand-in-hand with atrocities against human creations. Or as Heinrich Heine wrote in his play Almansor about burnings of the Koran: “That’s only the prelude. Where books are burnt, you also end up burning people” (Heine 1823: 148, translation mine).

Disembodied rights and the freedom of digital, virtual expression

The question of who or what counts as human in human rights is deeply rooted in the problem of the material and the intangible. This is not simply because censorship acts on both material in the world and intangible human ideas, but because the right to freedom of expression seeks to protect both cultural products and the potential internal effects of those products. Most human rights in the UDHR aim to protect the life of the mortal coil (the human body) from violation and violence, but freedom of expression seeks to protect something both at once less animate and more animate than the human being or human body. Whether painted in oil on a canvas, inked on a paper, saved in magnetic impulses on a tape, burned with lasers on a disk, or simply rendered through contrasting colors of pixels on a screen, the utterly inorganic cultural products circulating through society are things that are severed from the human the moment they transition from idea to prosthesis as something that exists outside of the human body.

One place where freedom of expression and cultural production have a direct relation is in the expression and representation of human rights violations which themselves are often targets of censorial authority. In recent years debates about both pornographic images and images of torture (“atrocity porn”) have been the ground for much thinking about rights and freedom of expression. The tension between the human body protected by some rights and the representations protected by others has been a challenge to the right to freedom of expression. This challenge is perhaps best epitomized in the development of debates about pornography over the last 30 years: second-wave feminists critiqued pornography as violence against women (Dworkin 1985); third-wave feminists largely dismantled such work, thinking more seriously about the multiple gendered agencies involved in porn production.
(Williams 1999); and these debates have been transformed yet again in the digital world (Cornell 2000; Attwood 2007; Kleinhans 2004). The spirit of protecting women from exploitation and abuse called for censorship of material that might encourage such criminal behavior. Yet the ways in which women had become a powerful part of the porn industry complicated any specific notion of exploitation or causal understanding of the correlation between porn and gendered violence. And the development of computer-generated imaging (CGI) brought the possibility of producing disturbingly explicit and violent pornography in which no real humans were directly exploited. Do entirely fabricated pornographic images that demean women constitute hate speech? We can begin to imagine the disclaimer: “no actual women were harmed in the creation of this porn.” And this question leads to a related corollary: do the already prevalent images depicting violence against animals in our culture (whether actually captured on film as the light reflecting off of the real animal bodies being cruelly treated or simply the CGI rendering thereof) create, support, or incite violence to actual animals in the real world?

For cases in which the pornography shot under coercion and duress captures and then represents real and direct violence to individuals, the case for human rights seems clear. In those cases, the pornographic material is nothing more than a documentation of acts violating other human rights. Another recent case illuminates the problems of virtuality, censorship, and human rights in a slightly different way. From the standpoint of human rights, the circulation of images of the abuses at Abu Ghraib is a social good. Despite the best efforts of the US government to prevent the circulation of the images, widespread knowledge of the abuses became available through the rapid Internet dissemination of the images. We may all agree that the release of those actual images of torture and humiliation at Abu Ghraib was useful in exposing the human rights violations there and, therefore, that the censorship of such images simply enables such violations (Middleton 2011; Hansen 2014; Laustsen and Ugilt 2012). We can easily imagine the counterfactual: what if those images had been successfully censored? Then all we might have would be the oddity that is the Legofesto website’s photographs (Legofesto 2006a–2009, 2006b–2013) that recreate the Abu Ghraib images in the world of colorful plastic toys by posing the figures in precisely the same positions as the US soldiers posed their captives. Here we have a complete reversal of the logic of censorship and pornography: those who would censor porn along with those who would censor the Abu Ghraib images would do so because of the fact that the images document real violence to bodies; however, the computer-generated images of porn may cultivate precisely the same responses despite the fact that no body was directly hurt in the creation of those images, and the images of the Legofesto website would never be considered a threat because they are entirely virtual. In this case the virtual images are disregarded by the censoring authority because they are unreal (if still true), while the real photos mattered to the censoring authority as damning evidence of imperial power.

The nature of the right

When we express the human right to free speech or expression or freedom from censorship, we tend to mean first and foremost neither the right to scream “fire” in a
theater, something with a direct sociological cost (see Justice Oliver Wendell Holmes in *Schenck v. United States*, 249 U.S. 47 [1919]), nor the right to create and distribute documentation of the human rights exploitation of individual people as in pornography. However, the circulation of certain kinds of documentation such as the “atrocity porn” of Abu Ghraib might be good for humans around the world until cases are demanded at the Hague. What must be meant when we say the right to freedom of expression, then, is different from what we are saying. What must be meant first and foremost is a limited right to say things that may sway opinions in a number of different directions (without direct incitements to violence or without speech that is seen as an act of violence in and of itself – such as hate speech). A problem and debate arises from the perception of direct harmful effect. Who gets to decide what constitutes violence or direct social and individual harm? In the case of pornography, the debate has moved from direct harm to those filmed to the cultural harm of attitudes towards women. With Abu Ghraib, the reason for censorship of the images was to protect the institutions of empire (the occupation forces), not those depicted.

Today, as individual rights are giving way to the assertion of corporate privilege, it seems the freedom of expression for individuals needs as much protection from those with power as ever. This is not simply to reject the capitalist claim for the necessity of a market free for corporations to practice economic exploitation of labor, but also to understand that when corporate entities (whether governments or multinational NGOs) secure discursive market control, they will have finally beat dissent. To use another of Milton’s metaphors, there can only be the classic “free market of ideas” when the barriers for entrance to and sustainability in the discursive field are level for individuals. What the corporate demand for free speech amounts to is nothing less than a method of regulating the market for individual expression. Until such an always-to-come moment arrives, the right to free expression for the individual will need to be guarded.

**Further reading**


Attwood, F. (2010) *Porn.com: Making Sense of Online Pornography*, New York: Peter Lang. (This collection looks at the transformative role of online entertainment dissemination for pornography from a multitude of different standpoints, with articles on everything from child pornography and the porn industry to gay porn and costume play.)


individuals are now personalizing political action in ways that are transformative for organizing collective action.


Fish, S. E. (1993) There’s No Such Thing As Free Speech: And It’s a Good Thing, Too, New York: Oxford University Press. (A cantankerous book as mercurial as its author who vacillates between radically different views of freedom of speech.)


Sadurski, W. (2001) Freedom of Speech and Its Limits: Boston: Springer. (This book attempts to resolve the conundrum of a law that seeks to prevent harm and protect expression, ultimately advocating a strategic use of speech acts to neutralize hate speech.)

Salaita, S. (2008) “Curricular Activism and Academic Freedom: Representations of Arabs and Muslims in Print and Internet Media,” Arab Studies Quarterly 30(1): 1–14. (A prescient article on the rights of academics, by a scholar who would himself become the victim of a university’s attempt to censor by appealing to the rhetoric of decorum and civility.)

References


