THE THREE WISE MONKEYS VISIT THE MARKETPLACE OF IDEAS

CENSORSHIP IN A FREE SOCIETY

Stephen Sedley

On 3 May 1817 William Hone was arrested at the corner of Fleet Lane and Old Bailey, in the City of London, by two constables armed with a warrant issued by the Chief Justice, Lord Ellenborough, and backed for bail in an impossible sum. He was charged with having published three blasphemous libels, *John Wilkes's Catechism, The Political Litany* and *The Sinecurist's Creed.* These had attracted "the great displeasure of Almighty God", said the Attorney-General at his trial later that year, taking care not to mention the even greater displeasure of the Prince Regent's ministers and their placemen at being lampooned in a series of political parodies.

Arraigned before the Chief Justice, Hone refused to plead until he had a copy of the three informations on which he had been arrested. The prisoner's right to see the charges was one which John Lilburne had fought for and established in the course of the Civil War, but by Hone's time the authorities had decided that this did not prevent them charging £30 a copy. Refusing to pay, Hone was committed to the King's Bench prison, where, with the help of the radical tailor Francis Place, he was able to go on writing and editing his journal. It was called the *Reformist's Register*, for Hone was no revolutionary. An honest, self-educated man from a dissenting family, short, spherical (if Cruickshank's drawing of him is to be relied on) and with a receding chin, he had repeatedly

rejected the incitements of government *agents provocateurs* and the politics of Jacobinism in favour of a campaign for honest government on a broad franchise.

Hone was not tried until the week before Christmas. The prosecution was conducted by the Attorney-General, Sir Samuel Shepherd; the judge was Mr Justice Abbott. Abbott's career as a barrister had been distinguished, according to Lord Campbell (whose acidulous biographies of his fellow judges were to become known as one of the new terrors of death), by "the most marvellous inaptitude", resulting in his almost always losing the verdict. As a judge he had reputation for moderation; but his politics were solidly and avowedly Tory.

Hone, who had no money to employ a lawyer, knew very well that his only hope lay in the jury, to whom, since the passing of the 1790 Libel Act, not only the question of publication but the question of libel or no libel had been confided. So he opened his defence by describing to them how they had been handpicked by the Master of the Crown Office. When the judge tried to stop him, one of the jurors insisted that the judge should let him continue.

Hone had brought with him into the dock (the law forbade him to give sworn evidence but allowed him to argue his case) a row of books, the purpose of which soon became apparent. The first indictment concerned a spoof catechism for placemen, attributed to John Wilkes but of uncertain authorship, which Hone made no secret of having published:

> What is your name?
> Lick Spittle

> Who gave you this name?
>
> My Sureties in the Ministry … wherein I was made a member of the Majority, the Child of Corruption, and a Locust to Devour the good Things of this Kingdom.

The Decalogue included the commandments:

> Thou shalt not call starving to death murder.
>
> Thou shalt not say, that to rob the Public is to steal.

And the concluding prayer, addressed to "our Lord who art in the Treasury", ended:

> Give us our usual sops, and forgive us our occasional absences on divisions; as we promise not to forgive them that divide against thee. Turn us not out of our places; but keep us in the House of Commons, the land of Pensions and Plenty; and deliver us from the People. Amen.

Hone had insisted at the start of the trial that the indictment, which by law had to set out the entire publication, be read out by the clerk of the court in full. This was enough to make it obvious to the jury that what Hone was being prosecuted for was not parodying the catechism but attacking abuses of public office. In the course of a six-hour address, Hone rubbed it in by citing a succession of other parodies of the catechism which had not been prosecuted: an anti-Catholic parody of the Lord's Prayer delivered by the Dean of Canterbury; an anti-French parody of it published not many years before in a government newspaper. Abbott, compelled to denounce them all as profane, told the jury that in his view

Hone was guilty. The jury returned after fifteen minutes' retirement with a verdict of not guilty.

As the court emptied, the exhausted Hone learned that he was to be tried on the second indictment the next morning. This time the judge was to be the Chief Justice, Lord Ellenborough, a religious and political conservative whose principal legislative achievement had been to introduce ten new capital offences in a single Act. There were only six special jurors left from the handpicked panel, so six had to be fetched in from the street. Hone again insisted that his *Political Litany*, indicted as seditious as well as blasphemous, be read out in full to them:

"O Prince", the clerk of the court intoned,

> "have mercy upon us, thy miserable subjects.
>
> O House of Lords, hereditary legislature, have mercy upon us, thy pensions-paying subjects.
>
> O House of Commons, proceeding from corrupt borough-mongers, have mercy upon us, your should-be constituents.
>
> ……..
>
> From a Parliament chosen by only one-tenth of the taxpayers; from taxes raised to pay wholesale butchers their subsisidies; … from conspiracies against the liberty of the people; and from obstacles thrown in the way of our natural and constitutional rights,
>
> Good Prince, deliver us."

The Chief Justice had to call in the sheriffs to suppress the cheering with which this was greeted from the public part of the court.

Hone's defence was the same as the day before. He read out instance after instance of the Litany being parodied for respectable political purposes. When Ellenborough tried to stop him he replied: "I am to be tried, not you." The outcome was the same: Ellenborough told the jury that he considered the *Political Litany* "a most impious and profane libel" and suggested that anyone who thought the contrary must be an atheist. The jury returned a verdict of not guilty.

The Attorney-General's response was to announce that the exhausted Hone would be tried next morning for publishing the *Sinecurist's Creed.*

> "Whosoever will be a Sinecurist: before all things it is necessary that he hold a place of profit.
>
> …..
>
> For there is one Ministry of Old Bags, another of Derry Down Triangle and another of the Doctor.
>
> But the Ministry of Old Bags, of Derry Down Triangle, and of the Doctor, is all one; the folly equal, the profusion co-eternal…."

Practically everyone in court will have known that Old Bags was Vansittart, the Chancellor of the Exchequer; that Derry Down was the second Viscount Londonderry, Lord Castlereagh ("I met Murder on the way - He had a mask like Castlereagh"[1]); that the triangle was the instrument of torture used in Dublin Yard on any of his tenants who stood

[1] Shelley, *The Mask of Anarchy.*

up to him; and that the Doctor was the Home Secretary, Lord Sidmouth, with his quack remedies.

Ellenborough having told them that this was the most impious and profane of all Hone's libels, the jury were back within twenty minutes with a third verdict of not guilty.

Every Anglican on Hone's three juries will have been required as a child to memorise and repeat the Church's catechism and creed and to follow the liturgy. They may well have heard and repeated schoolboy parodies of them. The format was a vessel into which anything could be poured, and it was obvious that Hone was being prosecuted not for the religious form but for the political content of his parodies.

I have spent time on William Hone not only because his is a story of personal courage, supported by an independent-minded jury, in the face of a heavy-handed attempt to censor criticism of a corrupt government, but because in some measure all censorship involves the imposition of one set of beliefs on another. Prosecutions like that of Hone may be obsolete in Western, though not in Islamic, societies; but every time our own society suppresses, or attempts to suppress, what someone wants to say, Lord Ellenborough's ghost stands by.

Fast forward to the twentieth century, by when the received definition of obscenity has become matter tending to corrupt and deprave those likely to come in contact with it. That is how Lord Cockburn defined it in 1868, excising from the Obscene Publications Act 1857 the intent to corrupt

morals which its mover, Lord Campbell, had assured Parliament was the Bill's sole target, and substituting whatever a jury decided to make of the book.

What then were corruption and depravity? Lord Birkett, an advocate of long experience, took it be "the deliberate excitation of sexual feelings". Sir Thomas Inskip KC, as Attorney-General, opening the case against Heinemanns for publishing a novel about a woman who worked as a prostitute purely because the money was a lot better than factory wages, said: "This book deals with what everybody will recognise as an unsavoury subject – gratification of sexual appetite". Mervyn Griffith-Jones QC, remembered as the advocate who asked a jury whether they would want their servants to read *Lady Chatterley's Lover*, was once asked by a colleague how he advised the DPP on obscenity prosecutions: "Oh, I don't know a lot about literature," he said. "I just read what the Director sends me, and if I get an erection we prosecute."

This was not as jejune as it now sounds. Punishing others for what excites the punisher is familiar enough to anyone who has endured an English public school education, and a number of other of forms of education too. But the syndrome goes far wider than the suppression or gratification of prurience by the enforcement of prudery. The basis of most censorship is not the consequentialist reasoning by which it is commonly justified but the unadmitted anger or embarrassment of the censor – a human enough emotion which every parent encounters, but not an entirely sound basis on which to send people to prison. Yet are there not instances where consequentialism is justified?

Discussion of the permissibility of limiting freedom of speech travels over vast theoretical tracts[2]. Rather than even attempt to survey them, let me limit myself to two points.

One is that, while most governed societies place a premium, sometimes a very high one, on the freedom of individuals to say whatever they think, all of them accept the need for a limit. Even the First Amendment, as we all know, does not permit you to shout "Fire!" in a crowded theatre. A universe nevertheless separates such a free-speech culture from that of, say, China, where the state is currently constructing its Green Dam Youth Escort firewall to keep unofficial ideas away from its millions of internet users, or of Islamic states where blasphemy is widely defined and cruelly punished. But you don't need to look back very far back to see a time when the First Amendment gave no worthwhile protection to political dissent[3]: in 1907, almost a century after William Hone's three trials, the US Supreme Court upheld the conviction of a Colorado newspaper for publishing a cartoon attacking political corruption, along with the trial court's refusal to let the publisher prove that it was true[4]; and as recently as the 1950s neither the First nor the Fifth Amendment did much for the victims of the House Un-American Activities Committee. One looks back, beyond that, to a Europe in which heresy meant torture and execution. The location of the line between free speech and censorship has shifted massively over time and can be expected to go on doing so as political and moral cultures go on changing.

---

[2] Most recently and impressively surveyed in the 2007 Cambridge conference papers collected in *Extreme Speech and Democracy*, ed. Ivan Hare and James Weinstein, OUP, 2009.
[3] See in particular Zachariah Chafee jr. *Free Speech in the United States* (1964).
[4] *Patterson v Colorado* 205 US 454 (1907).

My second, and related, point is that within our own lifetime we have exchanged one form of consequentialism for another. Whether by choice or under the pressure of changes that we can't control, western societies have pretty well abandoned the notion that letting people read and see sexually arousing or politically radical material will cause them to degenerate morally or become civically disaffected. If in spite of this we draw a strong line at child or violent pornography, it is because it is inexorable that children or vulnerable adults have to suffer in order to produce it. The overt incitement of violence remains another agreed taboo.

What has come to be substituted for the idea that the consumers of undesirable material will become morally corrupted or politically disaffected is the quite different idea that in a democracy everyone, however marginalised, is entitled to respect. This is arguably another version of consequentialism. Its premise is that every human being is of equal worth - an idea that less than a century ago was quite alien even to developed societies, which were quite ready to understand mankind in terms of racial genotypes and to see it managed by segregation and eugenics. It accepts correspondingly that individual choices, however unwelcome to others, and personal autonomy, however eccentric, are entitled to be respected. Political scientists and historians probably have a better take than jurists like myself on the synergy between economic liberalism and human rights, and perhaps too on the prospects for the latter as the former implodes and the state is recalled from retirement into action as a firefighter. But the margins of toleration still depend on a paradigm of cause and effect: interference with individuals' autonomy and choice diminishes the respect which society owes them; abstention from interference maximises their own and society's potential. This is

both the case for toleration of unpopular speech and the case for forbidding hate speech.

Wherever the boundaries are for the time being set, they are patrolled by the three wise monkeys. These belong, as it happens, to an endangered species, the Japanese snow monkey[5]. One of them covers its eyes, one its ears and one its mouth, enjoining us to see no evil, to hear no evil and to speak no evil. In some versions of the image there is a fourth monkey, whose message is to do no evil. He conveys this by covering his private parts. He is of course the censor's incubus, but he is also the law of the land. At a point of our cultural history where we are free to see, hear and say almost anything, the fourth wise monkey can still stop us doing it, and I have no quarrel to pick with him in principle, though a number in practice.

As for his three better-known companions, they illustrate perfectly what most moral censorship is about: keeping from others what embarrasses the censor. The consequentialist assumption commonly deployed in support of it – of which the ability of literary works to corrupt and deprave their readers is the classic but by no means the only example - tends not only to be casuistic and intellectually dishonest but, worse, to obscure occasional serious issues about real consequences.

The attorney-general's characterisation of William Hone's political parodies as blasphemies is one of the purer instances of intellectual dishonesty as the handmaiden of censorship. More common is the

[5] The immediate source is a 17th century carving over a door of the Tosho-gu shrine in Nikko, but the origin probably lies in Confucian philosophy.

psychological confusion of the censor. Among the effects of the judge who conducted the trial of Lady Chatterley, Mr Justice Byrne, was found his copy of the book in which, to ensure that he drew them all to the jury's attention, his wife had marked every arousing passage. The downside of such a strategy was that a conviction depended on enlisting the jury's own embarrassment, which by the end of the trial could no longer be counted on.

Probably the only certain thing about moral censorship is that the censor will sooner or later make a fool of himself. The Lord Chamberlain, during the 231 years for which he and his office exercised a microscopic control of what could be said and done on the London stage, managed to ban or bowdlerise a range of scenes to which only the most bizarrely prurient mentality could have taken exception. In 1961, a year after the jury's verdict had allowed *Lady Chatterley's Lover* to be published unexpurgated, the script for a stage production was submitted to the Lord Chamberlain's office. It had already been purged of four-letter words, but this did nothing to placate him. Connie was not allowed to put on her slip on stage: she must be fully covered throughout. Mellors was not permitted to appear bare-chested: he could appear in his shirt and bare feet only if his underpants were visible below the hem. Neither he nor Connie was to put on their drawers on stage. In no circumstances was it even to appear that the two of them had been together in bed with nothing on. One can only begin to guess at the mind which devised such requirements, but it must have held the unshakeable conviction that making love unclothed was an idea that must not get about.

Playwrights and directors in turn set out to make a fool of the Lord Chamberlain. One of those who managed to do it was Brendan Behan, who in *The Hostage* had a nun asking the Lord to “Save our souls”, and the cast in unison piously repeating the last two syllables.

Slowly the tide turned in Britain, first with the acquittal of Stanley Kauffman’s *The Philanderer* in 1954 after a liberal and literate summing-up from Mr Justice Stable, and eventually and decisively in 1960 with an Old Bailey jury’s acquittal of the adulterous Constance Chatterley. We had come a long way to reach this point - the point of time to which Philip Larkin ascribed the beginning of sexual intercourse; though it was not until 1968 that the Home Secretary took away the Lord Chamberlain’s functions as theatre censor (leaving him with the no less individious task of compiling the guest lists for Palace garden parties). In 1888 there had been a successful prosecution in London of the publisher Henry Vizetelli for issuing in English translation Zola’s *La Terre*, Flaubert’s *Madame Bovary*, Daudet’s *Sappho*, Maupassant’s *Bel Ami* and Gautier’s *Madame de Maupin.* In the United States the First Amendment had not prevented the banning of Theodore Dreiser’s *American Tragedy,* Lilian Smith’s *Strange Fruit,* Edmund Wilson’s *Memories of Hecate County* and Eskine Caldwell’s *God’s Little Acre.* Among the four thousand or so books on the Vatican’s *Index Librorum Prohibitorum* have been works by Hobbes, La Fontaine, Locke, John Stuart Mill, Victor Hugo, Balzac and Pascal; Gibbon’s *Decline and Fall of the Roman Empire*, Larousse’s *Grand Dictionnaire Universel*, Montaigne’s *Essais*, and Taine’s *History of English Literature*.

Ireland, I know, has its own history of official censorship which is not yet over; but a glance at the Censorship of Publications Board’s current list

reveals titles whose publishers would probably be offended if they were not included; and I am not here this evening to lecture you about your own affairs.

Ireland has, however, been among the unexpected beneficiaries of Anglo-Saxon prudery. Without the need of prosecution, British customs officers could – as they still can - confiscate anything they regarded as obscene, leaving it to the traveller to try to recover it by bringing proceedings in the magistrates' court. 1922 saw a rich haul of copies of *Ulysses*, newly published in Paris and bought by a large number of British tourists who spent the crossing grappling with the first chapter and were greatly relieved, when they reached Dover, to have the book taken off them by a customs officer.

Time and tide have made a farce of such censorship. But time and tide have brought in other views and other versions of the unmentionable. On the current list of the most objected-to books held by American libraries, number five is *The Adventures of Huckleberry Finn*. The ground of objection – racism – seems to me tragic. It supposes that the authentic use of the word "nigger" in contexts in which today we would say "black" or "African-American" has made the story racist. Yet the story of the white boy and the runaway slave is as humane and progressive now as it was when Mark Twain wrote it. It is only by reading it ahistorically that you can take offence at it.

The first book I learned to read was Helen Bannerman's *Little Black Sambo*, a book you will no longer find in any children's library in the UK or US, though since its first publication in 1899 it has been continuously in print. What chiefly gives offence in it is the name Sambo, used

formerly to patronise and today to insult. My seven-year-old granddaughter, who is of mixed race but knows nothing of this history, enjoyed the book; but she preferred Julius Lester's modern retelling of it, *Sam and the Tigers*, because it has more incident. *Sam and the Tigers*, beautifully illustrated by Jerry Pinkney, is only one of dozens of benign bowdlerisations and retellings of *Little Black Sambo*. But what is interesting about it is that Sam and his mother and father (in the original they were Black Mumbo and Black Jumbo, two more names fraught with adult prejudice), live in a place where everyone is called Sam, laying the story open to the "they all look the same to me" stigma, and are depicted by Pinkney as light-skinned people in respectable old-fashioned Southern dress - to a hostile mind unthreatening and untypical.

I have no quarrel with either the telling or the retelling. But they illustrate how time- and place-bound the perceptions of both innocence and experience are. They also underscore the argument that suppression is merely negative, whereas comprehension and criticism, while time-consuming and sometimes fractious, can be positive. You could make a perfectly good case, if you wanted to, for putting *Sam and the Tigers* on the list of disapproved books along with its progenitor *Little Black Sambo*. But to do either impoverishes both literature and culture. I want to be able to talk with my granddaughter about why both books are as they are.

I certainly do not want her to have to go into a library which, under organised pressure, has removed from its shelves *And Tango Makes Three*, a children's book about an orphaned penguin chick raised by two adult males, which until recently headed the American Libraries Association's list of most objected-to titles. Nor is one much encouraged

by the fact that the – at least - well-meaning objections to *Huckleberry Finn* are outnumbered by the orchestrated objections to the Harry Potter books because of their promotion of witchcraft. There is no bottom to this pit.

There comes a point, even so, at which a society is entitled to calculate that a malignant cause will have a malign effect. The suppression in most developed societies of publications intended or – far more important – likely to arouse racial or other forms of hatred is determined by this calculus, and I do not argue against it, even if it constrains public discourse. The UK's recent replacement of common law blasphemy by a statutory crime of incitement to religious hatred is a much more contentious shift. Wherever a democracy draws the boundary of free speech, it surely cannot be at a point which protects individuals or groups from offence or insult on account of their ideas: freedom to speak only within such limits is a form of bondage. But that is not to say that institutions – universities for example – may not demand a far higher degree of mutual respect and civility from their members than the general law insists on.

Western societies, just as they have had to rediscover the need for mechanisms to control the anti-social tendencies of free markets, have repeatedly had to recognise that the marketplace of ideas, whatever philosophers and judges have grandly said about it, is likewise open to manipulation and abuse. The three wise monkeys, when they visit it, can keep their hands clapped firmly over their ears, eyes and mouths. The fourth monkey has more difficulty in maintaining his do-no-evil stance, for temptation is all around him and nobody is taking any notice of his

message; in fact they are laughing at him. Is there then a case for bringing into the marketplace of ideas the old crimes of regrating, engrossing and forestalling, created by the common law to prevent the cornering and distortion of markets but abandoned in the early 19th century under the influence of what the judges found it convenient to believe was Adam Smith's thinking? Is a free market of ideas really self-adjusting or does it too need regulation?

The *Protocols of the Elders of Zion* are a serious weapon in the battery of incendiary anti-Semitic material to be found in print and on the web. It matters hardly at all that this supposed record of the plans for world domination hatched by the leaders of world Jewry in Basle in 1897 are known to have been composed by a member of the Tsar's secret police, Pyotr Ivanovich Rachovsky, by plagiarising an episode in a French satire on Napoleon III, Maurice Joly's *Dialogue aux Enfers entre Montesquieu et Machiavel*. Not only did Joly's fiction have nothing whatever to do with world Jewry; in the earlier novel from which Joly himself had lifted the idea, Eugène Sue's *Les Mystères du Peuple*, the plot was the work of Jesuits. But the grand lie of the *Protocols* persists, and the physical dangers it helps to provoke persist with it.

Should the *Protocols* then be banned? The argument from consequences says they should. The law of unintended consequences says that it would backfire. The pragmatic argument is simply that it can't be done. But the moral argument is that it shouldn't be done.

The moral argument is at base a utilitarian argument. It is John Stuart Mill's much recycled contention that in the marketplace of ideas the true will eventually drive out the false, so that all ideas, however abhorrent

(indeed perhaps especially the abhorrent) are entitled to equal treatment. No thinking person who has lived through the twentieth century can seriously believe this. The capacity of the grand lie to mobilise enough prejudice and violence to overwhelm reason and opposition is one of the starkest object-lessons of modern history. It is only if you are prepared to hold that that which triumphs is by definition true that the philosophy still makes sense. If the ideology and practice of Nazism eventually failed Mill's test, it was not exactly in an orderly and self-regulating marketplace of ideas.

But there has in any case to be something wrong with any philosophy which would have accorded such an ideology legitimacy had Nazism succeeded. This is an arena in which societies are entitled to take sides. The three wise monkeys cannot stop people being prejudiced, but the fourth one can sometimes stop them making other people's lives a misery. That is one of the things I meant when I mentioned serious issues about real consequences. But the big issue is whether societies ought to limit their prohibitions to consequential acts or whether they are entitled, perhaps even obliged, to strike at the ideas that prompt them.

The difficulty about being tough on the causes as well as the manifestations of prejudice is that the causes are not so easy to get at. We need to guard ourselves against the mistake of carrying over into the sensitive area of equality and human dignity the suspect syllogism of embarrassment and causation. We need equally to beware of supposing that respect can be enforced by censorship or punishment. One of the real achievements of the British equality legislation, the 1975 Sex Discrimination Act and the 1976 Race Relations Act, followed more recently by the Disability Discrimination Act 1995 and the Human Rights

Act 1998, has been not what these laws forbid or penalise but what they have helped to make culturally unacceptable. Those who dismiss these changes in civility as no more than political correctness not only display a depressing degree of myopia but encourage the reversal of worthwhile gains in the acknowledgment of human dignity. They also make it simpler for the state to abandon the carrot and resort to the stick.

The stick has already replaced the carrot in parts of Europe in one historic sphere. The case for banning and penalising Holocaust denial sets a meaning upon legitimate discourse which excludes the grand lie. Such a case has first to show Holocaust denial (not about numbers, which because of their very magnitude are uncertain, but about the fact) to be such a lie. No-one familiar with the historical and human material has any serious difficulty about this, apart from those who are determined not to accept it; and here lies the difficulty. Whether believing whatever you want is regarded as a human right or simply as something that can't be prevented, it is not the simple repudiation of denialist beliefs but the potential consequences of such beliefs which have led not only Germany but Austria and France - states which have directly experienced the mobilising power of the grand lie - to outlaw Holocaust denial.

The case for doing the same in the United Kingdom is, in my view, different, weaker and more hazardous. I would much rather see the Holocaust argued over in my country, with all the bigotry that the argument exposes and generates, than have it declared a fact by law. As Ronald Dworkin has argued, if you intervene too far upstream by stifling argument, you undermine the legitimacy of the eventual laws – for example laws against the incitement of racial hatred – which a democracy is entitled to demand that everyone obey.

So far I have been talking about what everyone recognises as censorship: stopping people saying or publishing things that more powerful people object to. Let me turn to something I want to suggest is as potent a form of censorship as the blue pencil and the criminal prosecution : the use of mass media of communication to disseminate falsehood. I am not concerned here with brazen fabrications like the *Protocols of the Elders of Zion*. I am concerned with something you could call uncensorship – the uncontrolled misrepresentation of fact, not through simple error or incomprehension but through the wilful distortion and abuse of information. It is seen perhaps at its sharpest in what sometimes passes for science journalism.

Very little serious scientific research is either conclusive or easy to interpret. For this among other reasons the major scientific journals have press offices whose job is to publicise what they are publishing, and which to this end have been known to dumb down scientific work to the point of misrepresentation. Others use PR firms with no scientific credentials at all. With or without such encouragement, there is today a tally in the British press of supposedly scientific news stories which not only misinform or disinform but sometimes do demonstrable harm.

For example, the British public, because of what they have read in the press, believe that, because of poor hygiene, NHS hospitals are, or until recently were, infested with the antibiotic-resistant MRSA bacterium, a bug which has without doubt claimed many lives. The press's evidence of dirty hospital premises came principally from a single self-advertised

microbiologist who, it turned out, was effectively unqualified and worked in a garden shed. Finding that he alone was returning positive reports, in contrast to the reputable laboratories to whom they also submitted swabs, tabloid journalists started taking all their swabs to him. They then had to elevate him to "Britain's leading expert" on MRSA and to denounce as a cover-up every official attempt to refute him. They also repeatedly refused to publish scientific refutations of his reports. The consequent widespread belief that the NHS routinely neglects basic hygiene in its hospitals is proving hard to reverse.

On the scale set by the 20th century, the MRSA fabrication may not rank as a grand lie, but it was a sedulously managed falsehood designed to sell newspapers. It has a place in my present theme because the fabrication of public falsehoods is a form of censorship as unacceptable as the Ministry of Truth which represents the media's – and a free society's – ultimate nightmare. Like state censorship, it distorts or blots out known or knowable fact in pursuit of a private agenda.

From an endless supply of further examples[6] one can take the campaign of disinformation about the triple vaccine for mumps, measles and rubella – the MMR vaccine - now so strongly associated in the public mind with autism in young children that uptake of the vaccine has dropped to a level which is having perceptible effects on public health. In 1998 the *Lancet*, in a lapse from its usual high standard, published a paper reporting twelve cases of children referred to a single hospital with a combination of intestinal symptoms and behavioural problems suggestive of autism. Eight of them had not long before the onset of these problems had the triple vaccine. It does not take a scientist to see the impossibility of

[6] A striking collection is in Ben Goldacre's book (2008) and Guardian column *Bad Science.*

drawing any worthwhile factual inference about the vaccine, or indeed anything else, from such a sample, composed as it was of children who had been referred precisely because they had these particular symptoms.

But a powerful segment of the press, seeing the opportunity for a story which combined anxiety about children's health with hostility to official wisdom, spun facts out of the research which it could not possibly support, again elevating the author of the paper into a maligned hero. An authoritative review of the entire MMR literature, demonstrating the absence of any solid evidence that the vaccine was unsafe, was uniformly ignored by the press. So was high-calibre research published in 2006 which went a long way to actually disproving the supposed link. Uptake of the triple vaccine in Britain has dropped to a level so low that measles (which can kill) and mumps (which can disable) are now reappearing in substantial numbers. I have urged caution about consequentialism in the field of morality, but a sequence of cause and effect is difficult to escape in the factititous MMR scare.

Not a week passes without another piece of junk science reaching the front pages as scientific fact. This summer we have had, as a fact, kidney stones affecting one adult male in four – a level of risk which might well send you to your doctor for preventive treatment, but which, it turns out, was made up by the PR firm which represents a pharmaceutical company with an interest in such treatment. Having been invented by, one hopes, a teenager on work experience, it was nevertheless dutifully reported as hard fact by the broadsheet press.

Then there has been the report of research showing that women who behave and dress provocatively are more likely to be raped. The

“scientists” to whom a broadsheet newspaper attributed this finding turned out to be a solitary MSc student who had put up a draft of her dissertation, which suggested no such thing, for discussion at an academic conference. The British Psychological Society’s PR agents had given it to the press, and the newspaper which ran the story had wholly falsified it.

Behind much of this, it is true, lies the depressed recognition of scientists and academics that if you try to explain the limits and the uncertainties of serious research, you will get no coverage, at least in Britain. Earlier this year the *New England Journal of Medicine* published two studies, one suggesting that prostate cancer screening could reduce deaths by as much as a fifth, the other indicating that screening made no appreciable difference. Elsewhere in the English-speaking world and in continental Europe, either both studies were reported in the press or the second one was headlined – justifiably, because the first, on examination, did not give very solid support to the death-reduction thesis. But in the UK the press, from top to bottom, went to town on the death-reduction story. Once again, the invention of fact took priority over the reporting of doubt.

It doesn’t end with medicine or science, of course. In a significant section of the British press, nothing goes wrong in the criminal justice system that is not the fault of the Human Rights Act, and nothing that upsets consumers is not the doing of the European Union. Again, what passes for fact is determined by editorial or proprietorial agendas. It is the sad downside of a press which, at its best, has a standard of investigative journalism and editorial courage which more than once in recent years has scoured the channels of our constitution.

Patterns of conduct like these are sometimes justified on the ground that fact is at base as negotiable and as contingent as belief. It is not. Those who find it convenient to assert it do not live a minute of their own lives by it. If the oncoming bus is a fact, they, like you and I, would be fools to believe that they do not need to stay on the pavement.

The entitlement to believe anything you choose is even so an inalienable human right, as all the global and regional conventions recognise. A right to unadulterated information – unadulterated in particular by what someone else considers it is best for you to know or not to know – is, by contrast, a latecomer to the human rights scene. But many of us would hold that it is none the less a fundamental right – as indeed do the media when it comes to giving *them* access to information – and one which, like most other rights, carries a package of correlative obligations. The first such obligation, I would argue, is the scrupulous segregation of fact from conjecture and of conjecture from belief. Each has its place, but its place is distinct from that of the others.

The censorship of fact by the ignoring or misrepresentation of rational inquiry is as heavy a handicap on our intellectual life and development as the press censorship against which Milton railed four centuries ago and the political censorship against which William Hone stood up. If the rolling back of official censorship of what we are allowed to say and hear has simply made way for an unofficial censorship of what we are allowed to know, we will not have come very far.