



# **Freedom of the press: a right with no limits?**

by

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# Abstract

How can we bind journalists to certain ethical duties in the light of press freedom and freedom of expression? Can any attempts to limit journalists' freedom be justified? If so, how? Many times the right to press freedom and the right to freedom of expression are referred to as being two sides of the same coin. A philosopher who can be seen as a great defender of these rights, John Stuart Mill, seems to justify these rights on the same grounds. But in this thesis I will argue that, in following Onora O'Neill's work, it is mistaken to regard these freedoms as being practically the same. Both freedoms call for a different justification and different limits. If we fail to do this, we will harm our social and cultural life and endanger democracy. O'Neill, therefore, argues for three duties for the press to prevent harm to society and to care for democracy. I think O'Neill is right in claiming this as these duties are necessary to protect these domains, but I will continue this thesis by arguing that these duties are not sufficient. I end this thesis by defending one more duty which I derived from the work of Margaret Kohn.

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# Preface

This is what is interesting about such journalistic clichés as the press “being a fourth branch of government” or a “watchdog on the government”; a free press (or units thereof) has no reason to consider itself either of these. Press units of a free journalistic system are whatever they want to be; they might even decide to be government supporters and apologists. So be it.<sup>1</sup>

The International Federation of Journalists, but also, more locally the Dutch Association of Journalists, the Dutch Public Broadcaster (NPO) and many news papers, have tried to bind journalists to certain ethical rules and duties, which are anchored in different journalistic codes. But can these codes ever be justified in the light of press freedom and freedom of expression? If journalists have the right to these freedoms, how can any code that restrict their freedoms be justified? In these codes, the role of the press as a watchdog for democracy is often emphasised. Duties for the press are also formulated in line with this idea. The journalistic code of the NPO states that its journalist should be impartial, unbiased, independent and trustworthy. But a press that should function like this is not free. A free press that must serve democracy, therefore, is a logical contradiction, but we do not want to let go of these two concepts either. We think an unfree press is bad, but we think a free press that does not serve democracy is bad too.

So, how can we get to a point where the press is free but democracy is not undermined? Is that possible? More specifically, can we justify any duties for journalists in the light of the right to press freedom and freedom of expression? In order to give an answer to this question, we first have to come to a better understanding of what journalism is, who a journalist is and what the press is. Secondly, we have to explore how a right to the freedom of the press and freedom of expression can be justified. I will do this by examining the work of a philosopher who can be seen as one of the greatest defenders of these freedoms<sup>2</sup>, John Stuart Mill. Thereafter, I will dive into the work of Onora O’Neill who argues that both of these freedoms differ substantially from each other and can therefore not be justified on the same grounds. The way in which she justifies freedom of the press provides ground to limit this freedom. In doing

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<sup>1</sup> John Calhoun Merrill, *The Imperative of Freedom: A Philosophy of Journalistic Autonomy* (New York: Freedom House, 1990), 66.

<sup>2</sup> David van Mill, ‘Freedom of Speech’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/spr2021/entries/freedom-speech/>.

so, she argues for three duties the press should meet. Lastly, I will argue that these duties are indeed justifiable but not sufficient. Therefore, I end this Master's Thesis with a fourth duty, based on the work of Margaret Kohn.

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Who is a journalist?

## 1.1 Introduction

In April 2022 the court of Amsterdam decided in summary proceedings<sup>3</sup> that the so-called ‘juice vlogger’ Yvonne Coldeweijer *is* in fact a journalist. This came not only as a surprise to her, but also to several journalists, jurists and professors. “She is not a journalist,” a professor in Information Law stated in a newspaper article<sup>4</sup> “this is just a bit of gossip.” But the court ruled otherwise and demanded the vlogger to rectify her publication in which she claims to have evidence that a Dutch celebrity used illegal weight loss drugs. However, the court’s decision to declare that Coldeweijer is a journalist turned out to be a windfall for her; it resulted in having the privilege not to reveal her sources. This journalistic privilege is “essential to safeguard the freedom of the press”<sup>5</sup>, the court stated, and since Coldeweijer is regarded a journalist, she may avail herself of this privilege.

On what basis did the court decide that Coldeweijer is a journalist? How come that many people are surprised by this decision? And what does this reaction show us about our understanding of the concepts of ‘journalism’ and ‘journalist’? Do we not really understand what is meant with these concepts? Are their definitions too vague to help us determine who is a journalist in these kinds of situations? How do we actually define these concepts? Most people would agree that newspaper articles are part of journalism, just like the evening news on television and the news on the radio. However, as we move further away from these more traditional forms of journalism, it seems that it becomes more and more difficult to find consensus on what falls under the concept of journalism and what not. Some documentaries, podcasts and television programmes can be considered journalism by some group of people while others disagree. For example, the popular Dutch television show ‘Zondag met Lubach’, a satiric programme on societal topics, is often regarded as a journalistic programme<sup>6</sup>. But the makers deny this and state that it is only satire; comedy.<sup>7</sup>

The fact that we not always agree with each other on what constitutes journalism, touches on an important issue: do we really know what journalism is? Why do we find it difficult to agree with the court that Coldeweijer’s gossip channel belongs to the realm of

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<sup>3</sup> ECLI:NL:RBAMS:2022:2347, Rechtbank Amsterdam, C/13/715828 / KG ZA 22-271 AB/LO, No.

ECLI:NL:RBAMS:2022:2347 (Rb. Amsterdam 29 April 2022).

<sup>4</sup> Mark Koster, ‘De “juice” van Yvonne Coldeweijer is volgens de rechter toch echt journalistiek’, NRC, 23 May 2022, <https://www.nrc.nl/nieuws/2022/05/22/juice-is-nu-ook-journalistiek-a4125078>.

<sup>5</sup> ECLI:NL:RBAMS:2022:2347, Rechtbank Amsterdam, C/13/715828 / KG ZA 22-271 AB/LO.

<sup>6</sup> Joep School, ‘Zondag met Lubach: satire met journalistieke middelen’, Vrij Nederland, 11 September 2018, <https://www.vn.nl/zondag-met-lubach-satire-met-journalistieke-middelen/>.

<sup>7</sup> ‘Arjen Lubach over Zondag met Lubach: “Journalistiek is een andere wereld”’, NU.nl, 1 May 2020, <https://www.nu.nl/media/6048580/arjen-lubach-over-zondag-met-lubach-journalistiek-is-een-andere-wereld.html>.

journalism while, on the other side, none of us would probably deny that the evening news belongs to this domain? If we want to have a substantial discussion on the ethics of journalism, it is of great importance to reach at a better understanding of these notions. Without such an understanding we would not be able to apply any rule, duty or responsibility to ‘a journalist’, as the apparent journalist would always be able to say: “I will not abide by any journalistic rule, code or whatsoever as I do not consider myself a journalist.” And we would not be able to contradict this. In the following chapters I will focus on what grounds we can justify certain journalistic rules, duties and responsibilities, and why it is problematic and even dangerous if journalists do not abide by this. But in order to do that we must first come to a clearer understanding of what journalism is, who a journalist is and what the press is. To whom would a certain journalism ethics apply?

## **1.2 A legal definition?**

In Coldeweijer’s summary proceedings, the plaintiff’s claim was that the juice vlogger had to reveal her sources on which she had based her false gossips. But because the court of Amsterdam decided that Coldeweijer is a journalist, she was granted the journalistic privilege of source protection. How did the court make this decision? What definition did the court use? Is this definition useful to us too? Within the legal domain, the judge must be able to determine who is a journalist in order to grant or withhold the journalistic privilege of source protection. However, a clear cut legal definition, at least here in the Netherlands, does not exist. This is because such a definition would impair the legislator's intention to make sure that not only journalists but also other kinds of publicists would be able to invoke this right.<sup>8</sup> So, where did the court base its decision on? In order to grant Coldeweijer this journalistic privilege, the court of Amsterdam followed the European Court of Justice’s provision that journalistic activities are those activities that are concerned with “the publication of information, opinions or ideas to the public.”<sup>9</sup> Coldeweijer is indeed involved in an activity in which she publishes information to the public (taken into account that she has more than 700.000 followers on her social media account), but is this really a valid way to define journalism and determine that she

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<sup>8</sup> Ministerie van Justitie en Veiligheid, ‘Aanwijzing strafvorderlijk optreden tegen journalisten (2020A002) - Beleid en Straffen - Openbaar Ministerie’ (Ministerie van Justitie en Veiligheid, 9 June 2020), <https://www.om.nl/onderwerpen/beleidsregels/aanwijzingen/specialistisch/aanwijzing-strafvorderlijk-optreden-tegen-journalisten-2020a002>.

<sup>9</sup> ECLI:NL:RBAMS:2022:2347, Rechtbank Amsterdam, C/13/715828 / KG ZA 22-271 AB/LO.



is a journalist? Should anyone who publishes information, opinions or ideas to ‘the public’ be regarded a journalist?

If we were to adopt the European Court’s definition of journalism, many activities and products that we intuitively would not consider journalism would fall under this term. Successful recipe books would fall under this definition of journalism, just as theatre performances, fiction books and maybe even paintings as one would be able to argue that paintings are a way to share information, ideas or opinions. Would everyone who publishes information, ideas or opinions to the public like theatre makers, book authors and painters, have to stick to the same rules as the people we intuitively call journalists? Are book authors, theatre makers and painters engaged in the same kind of activity as people who write for newspapers? I would like to argue that journalism differs substantially from other activities in which people publish information, ideas and opinions to the public. Therefore, I think the legal definition is too vague to apply in this paper.

However, other countries have tried to adopt a legal definition of ‘journalist’ that defines the term more narrowly than the European Court has done. But these definitions are problematic too. In Germany, the legal definition proclaims that persons who “berufsmäßig mitwirken oder mitgewirkt haben” to the “Vorbereitung, Herstellung oder Verbreitung von periodischen Druckwerken oder Rundfunksendungen”<sup>10</sup> are journalists. But, as you can see, this definition is not future-proof since it does not take into account newer (electronic) forms of journalism. Moreover, this definition is limited to persons who engage in the activity of journalism professionally. It leaves out the ones who publish voluntarily. And in Belgium, a legal definition was presented that only reckons someone to be a journalist who “contributes on a regular basis to the collection, editing, production or distribution of information for the public through a medium”<sup>11</sup>, which excludes persons who occasionally engage in journalistic activities. Korthals Altes notices that in the U.S. similar attempts to come up with a strict definition lead to the same sort debates. Indeed, does someone have to get paid in order to rightfully be seen as a journalist? And does this person have to work on a regular basis? Is that really necessary? Moreover, if we are to use these legal definitions, we still have to reckon book authors, theatre makers and painters as journalists. In fact, we have to consider really anyone to be a journalist who contributes to bring whatever sort of information to the public through some kind of medium as long as they get paid for it (in Germany), or as long as they

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<sup>10</sup> W. F. Korthals Altes, ‘Een Wettelijke Definitie van “Journalist”? Geen Oplossing Voor Het Journalistiek Privilege’, *Mediaforum* 20, no. 5 (2008): 213.

<sup>11</sup> Korthals Altes, 213.

do it on a regular basis (in Belgium). The legal definitions of journalism are thus quite unsatisfactory. The definitions are too broad, too vague and maybe not even right.

### 1.3 Answers from academia?

Within the field of journalism studies, scholars have written endless research and discussion papers on journalism ethics. However, a clear answer to the question what journalism exactly is, is missing. One of those scholars, Ivor Shapiro, notices this literature gap as well as he writes in his article<sup>12</sup> that “a clear definition of what constitutes journalistic activity remains elusive.”<sup>13</sup> Some journalism scholars, however, did try to find an answer to the question ‘What is journalism?’. They held surveys among journalists all around the globe, but their conclusions remain unsatisfactory too: no consensus was found when asking journalists the question what journalism is according to them. Other authors defined journalism in terms of what journalism means according to themselves, based on their own intuitions or experiences. By doing this, definitions of journalism being “the organized and public collection, processing and distribution of news and current affairs material”<sup>14</sup>, or being a way to “provide a truthful account on the contemporary world” and to “report information that is new about that world, whether in terms of fact or opinion based upon that fact”<sup>15</sup>, or to serve the public by giving “people the information they need to be free and self-governing”<sup>16</sup>. But if we only define journalism in terms of what it means according to this or that scholar, this or that journalist, consensus is rarely met. And I think a little more consensus is necessary in order to be able to determine to whom journalism ethics would apply.

Not only journalism scholars have a hard time to come up with or agree upon a clear definition, scholars from other fields such as sociology, history and ethics define journalism in distinctive, sometimes even contradicting terms as well.<sup>17</sup> So, the question remains: what *is* journalism? Philosophers are known for their excellent work in analysing, abstracting and distilling phenomena. Unfortunately, the available philosophical literature does not give an

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<sup>12</sup> Ivor Shapiro, ‘Why Democracies Need a Functional Definition of Journalism Now More than Ever’, *Journalism Studies* 15, no. 5 (3 September 2014): 555–65, <https://doi.org/10.1080/1461670X.2014.882483>.

<sup>13</sup> Shapiro, 555.

<sup>14</sup> Barbie Zelizer and Stuart Allan, *Keywords in News and Journalism Studies*, 1. publ (Maidenhead, Berkshire: Open Univ. Press, 2010), 62.

<sup>15</sup> Martin Conboy, *Journalism Studies*, 1. publ, The Basics (London: Routledge, 2013), 2.

<sup>16</sup> Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect*, Revised and updated third edition (New York: Three Rivers Press, 2014), 12.

<sup>17</sup> Barbie Zelizer, *Taking Journalism Seriously: News and the Academy* (Thousand Oaks, California, 2004).

indisputable definition of journalism we are looking for. It seems that we have to change course and put our analytical glasses on ourselves.

#### **1.4 Analysing the concepts**

What is most basic to the act of journalism? What is it that every single journalists does? I would like to propose that the first and most basic feature of journalism is that it is a form of communication. Stevens and Garcia seem to agree as they dedicate a big part of their book ‘Communication History’<sup>18</sup> to the history of journalism. So, if we can agree upon the idea that journalism is part of the discipline of communication, what does communication entail? In its most basic form, Stevens and Garcia define communication as “an integrated system of components”<sup>19</sup> that includes “a sender, a message, a channel, and a receiver”<sup>20</sup>. But is that all there is to say about the definition of journalism? Is journalism just a form of communication? Do we then have to speak of an ethics of communication instead? And does that mean that everyone who communicates has to stick to such an ethics? Or is journalism more than that?

If we assume that journalism is just a form of communication, then we should call everyone a journalists who communicates. Because if I talk to someone, I am the sender, what I say is my message, the channel I use is speech and the receiver is the person who hears what I am saying. But we do not consider everyone who communicates to be a journalist, and not every form of communication to be journalism. So, if it is right that journalism belongs to the discipline of communication, we might have to take a deeper look at the components journalists use in their communication. Is the way journalists use the components ‘sender, message, channel and receiver’ distinctive from other forms of communication? Let us first start with the channel, or medium, as our most traditional understanding of journalists is that they communicate through newspaper articles. Is the way journalists make use of a certain channel particular to the phenomenon of journalism?

##### *The channel*

Channel, in the way Stevens and Garcia use the term, can be understood as the type of medium used to transmit the message. Newspapers and the written word are perhaps the best known channels journalists use to communicate. However, times are changing and new media types

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<sup>18</sup> John D. Stevens and Hazel Dicken Garcia, *Communication History*, Sage Commtext Series, v. 2 (Beverly Hills, Calif: Sage Publications, 1980).

<sup>19</sup> Stevens and Dicken Garcia, 8–9.

<sup>20</sup> Stevens and Dicken Garcia, 9.

have emerged. We no longer see newspapers as the sole form of journalism and the written word as the only way through which journalists communicate. There are forms of communication that make use of electronic media instead of paper, and audio or audio-visual techniques instead of the written word which we now do consider to be journalism. Certain radio programmes, websites, apps, podcasts or television broadcasts for example belong to the realm of journalism too. So, what does this say? I would like to propose that for communication to be reckoned as journalism, the communication must be a form of *mediated* communication, like the Belgian legal definition of journalism prescribes too. People who communicate by speaking to us in a direct manner (such as a teacher in a classroom, a cashier in a store, people on the streets) are not the ones whom we tend to call journalists, even if their message is similar to what a journalist communicates in a podcast, newspaper article or news broadcast, or even if they turn out to be a journalist. Therefore, another feature of journalism is that it is a form of *mediated* communication.

However, to call everyone a journalist who communicates indirectly through some sort of medium is not very convincing. A child who writes a love letter to his classmate should be reckoned a journalist in that case. A schoolteacher who writes on a schoolboard, a mother who writes a message on WhatsApp to her son and a neighbour complaining about noise nuisance via a note in your mailbox should be journalists as well. Thus, indirect communication does not turn someone directly into a journalist. What is it that particularly belongs to the way journalists communicate? Is there a channel, a medium, that is specific to journalistic communication? Do journalists only communicate through those media that we now find specific to journalism such as newspapers, television, radio and the Internet? It might be tempting to agree on this, however, as the German legal definition made clear, such a definition is not future proof. There is a great chance that new forms of journalistic channels emerge in the future which would force us to redefine our notion of 'journalistic media types'. Moreover, it is too simple to state that everyone who communicates through what we now understand as journalistic media types are journalists. Take for example news papers, we do not consider everything that is written in there to be journalism. Because if we do, we have to acknowledge that companies' advertisements, obituaries, horoscopes and the like are part of journalism. But we are not inclined to agree upon that. For television, secondly, we do not reckon everything we see on the screen to be a journalism either. We watch movies, series, amusement shows and quizzes on television, however, we do not call these kinds of shows journalism either. Thirdly, for radio, we also do not count everything we hear on this medium as journalism, such as

advertisement, songs and phone calls with listeners. And lastly, for websites, we do not count everything on the Internet as journalism as well. Not by a long shot, one could say.

What we can conclude thus far is that the channels newspapers, television, radio and the internet do not exclusively contain journalistic content. Moreover, it is very plausible that journalism is not exclusive to these media. The future will tell. Ugland and Henderson<sup>21</sup> therefore argue that journalism “has never been understood as residing in a particular medium, so for any definitions and categories to be useful, they must move beyond these structural features to consider the ways in which the medium is being used.”<sup>22</sup> Whereas in the past, the domain of journalism was limited to newspapers, and thereafter the journalistic domain was extended to radio and television, the advent of the Internet blurred the boundaries of journalism even more. The debate about whether blogs are a form of journalism arose when the internet made it possible for anyone to write something and put it online, without working for a (respected) media company, Ugland and Henderson explain. The emergence of new ways to communicate made it even harder for us to be able to define journalism in terms of channels or medium types. Ugland and Henderson even argue that we should abandon the idea that there is such a channel or medium that is specific to journalism. We should pay attention to *what* is being communicated, instead of *what medium* is being used. This brings us to the next part: the message.

### *The message*

Even though journalists can make use many different media, what makes one form of communication to be journalism and the other not? Ugland and Henderson argue the message makes the difference: for something to be journalism, the message must always be “a source of news”<sup>23</sup>. This sounds plausible. If we look at the website of The New York Times for example, which presents itself as a journalistic platform, we do not think everything on this webpage belongs to journalism. We intuitively filter out the parts on their privacy and cookie policy, the colophon, and advertisements for example. Most people would agree that those parts are no journalism, because, following Ugland and Henderson, we do not consider these types of information to be a source of news. Thus, as Black<sup>24</sup> explains as well, journalists are “public

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<sup>21</sup> Erik Ugland and Jennifer Henderson, ‘Who Is a Journalist and Why Does It Matter? Disentangling the Legal and Ethical Arguments’, *Journal of Mass Media Ethics* 22, no. 4 (29 October 2007): 241–61, <https://doi.org/10.1080/08900520701583511>.

<sup>22</sup> Ugland and Henderson, 255.

<sup>23</sup> Ugland and Henderson, 255.

<sup>24</sup> Jay Black, ‘Who Is a Journalist?’, in *Journalism Ethics* (New York: Oxford University Press, 2010).

communicators who disseminate *newsworthy information* to others”<sup>25</sup>. But what do we mean with news and newsworthy information? And does the journalist’s message really always have to be a source of news?

If you ask journalists what ‘news’ is, you get answers like “I know it when I see it”<sup>26</sup> because they have “a nose for news”<sup>27</sup>. It seems that journalists know what ‘news’ is, but they have difficulty explaining it to others.<sup>28</sup> Therefore the question remains: what is news? When is something newsworthy? Some authors explain news as “the ongoing provision of information about current events”<sup>29</sup>, as the “production and dissemination of recent public information through the generic form of “news stories””<sup>30</sup>, or as “breaking events and the actions of public officials”<sup>31</sup> and newsworthiness as “the values that establish the worth of an event to be reported as news”<sup>32</sup>. What these authors agree on is that news, or the message, must have something to do with things that are happening now or happened recently. As Halberstam<sup>33</sup> puts it: “News is about events, not states of affairs.”<sup>34</sup> According to him news is aimed at current events “rather than past or future events”<sup>35</sup>, and is news “the report of an event, not the experience of an event.”<sup>36</sup> These authors might be right in defining what news is in a strict sense, but one could still wonder if the message must always be a source of news to be seen as journalism. Is a story on the experience of an event no journalism? I tend to disagree as stories of journalists who are in warzone and describe their experiences can be considered journalism too.

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<sup>25</sup> Ibid., 110 (my emphasis).

<sup>26</sup> Tony Harcup and Deirdre O’Neill, ‘What Is News?’, *Journalism Studies* 18, no. 12 (2017): 1470.

<sup>27</sup> Barbie Zelizer, ‘Definitions of Journalism’, in *Institutions of American Democracy: The Press*, by Geneva Overholser and Kathleen Hall Jamieson (New York: Oxford University Press, 2005), 68, [https://repository.upenn.edu/asc\\_papers/671](https://repository.upenn.edu/asc_papers/671).

<sup>28</sup> Zelizer, 67.

<sup>29</sup> Zelizer, 66.

<sup>30</sup> Jelle Mast and Martina Temmerman, ‘What’s (The) News? Reassessing “News Values” as a Concept and Methodology in the Digital Age’, *Journalism Studies* 22, no. 6 (2021): 689, <https://doi.org/10.1080/1461670X.2021.1917445>.

<sup>31</sup> Anthony Nadler, ‘Bringing Marketing into the Newsroom: U.S. Newspapers and the Market-Driven Journalism Movement’, in *Making the News Popular, Mobilizing U.S. News Audiences* (University of Illinois Press, 2016), 55, <https://www.jstor.org/stable/10.5406/j.ctt18j8wqx.6>.

<sup>32</sup> Helen Caple and Monika Bednarek, ‘Rethinking News Values: What a Discursive Approach Can Tell Us about the Construction of News Discourse and News Photography’, *Journalism* 17, no. 4 (2016): 438, <https://doi.org/10.1177/1464884914568078>.

<sup>33</sup> Joshua Halberstam, ‘A Prolegomenon for a Theory of News’, *International Journal of Applied Philosophy* 3, no. 3 (1987): 63–71, <https://doi.org/10.5840/ijap1987333>.

<sup>34</sup> Halberstam, 63.

<sup>35</sup> Halberstam, 63.

<sup>36</sup> Halberstam, 63.

So, if the message must not solely be a source of news in the way the authors described it above, what makes one message to be journalism and the other not? Why are we still not inclined to accept that gossips are part of journalism (even though one could argue that gossips are a source of news)? If we again take a look at the journalistic privilege of source protection in The Netherlands, the Explanatory Memorandum states that one can be reckoned a journalist if this person “makes a substantial contribution to the public debate and the media's informing and monitoring function.”<sup>37</sup> Cookie policy's, obituaries, horoscopes, advertisements and the like generally do not make a substantial contribution to the public debate. This might be the reason why we filter out these parts from the newspaper if we are to talk about journalistic messages.

Still, it is questionable if gossips do make a substantial contribution to the public debate. Harcup and O'Neill tried to find out in their article *What is News?*<sup>38</sup> what the news values are that turn stories into news. They have found a couple of news values that regularly can be found in news stories. Stories are about ‘the power elite’ like powerful individuals or organisation, celebrities, groups or nations that are influential or familiar to the audience or stories about some form of conflict like strikes, fights of warfare are likely to turn into news.<sup>39</sup> What this article shows us is that the message of journalism might not always be a source of news in the most strict sense, but that it always contains something the audience finds interesting, important or shocking. It always has a link with the audience's interest, whether it is sports, the economy, politics, celebrities, conflicts or the environment. The newsworthiness of this information, then, refers to the journalist's ability to determine what information the public would find important; his ‘sixth sense’, as Barbi Zelizer writes.<sup>40</sup> Hence, the idea that ‘news’ is what turns a *message* into journalism stems from the public's need to be informed about ‘important’ happenings that interests them.

### *The sender*

Now that we have a better picture of what kind of *message* belongs to the realm of journalism, the question we did not yet cover is who the journalist is. This brings us to *the sender*. Is it as easy as to say that the sender is the journalist? Is the one who communicates newsworthy information to the public the sender and are we able to call that person ‘a journalist’? In

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<sup>37</sup> Veiligheid, ‘Aanwijzing strafvorderlijk optreden tegen journalisten (2020A002) - Beleid en Straffen - Openbaar Ministerie’.

<sup>38</sup> Harcup and O'Neill, ‘What Is News?’

<sup>39</sup> Harcup and O'Neill, 1482.

<sup>40</sup> Zelizer, ‘Definitions of Journalism’, 68.

Zelizer's definition this seems to be the case, as she writes that the thing every broadcast journalist, Internet blogger and columnist have in common when they are considered a journalist is that they "convey authentic news of contemporary affairs to a general public"<sup>41</sup>. However, not all journalists work individually and bring the information to the public themselves. Shapiro<sup>42</sup>, therefore, defines the journalist not specifically as the author of an article or as the reporter you see on the news, but as the one who seeks information and seeks to publish it.<sup>43</sup> Shapiro shows us that we have to gain a better understanding of all the persons who contribute to a journalistic product, because, as we will see in the following chapters, if we want journalists to act responsibly, we should not solely focus on the news reporters and the newspaper authors, but on all the people who are involved in making the journalistic product. We need to have a better understanding of all the people who contribute to journalistic products, they together form *the sender*. A news item on television or a newspaper article is almost never created by one person alone, let alone that they are responsible for the publication and distribution of the story. We should not focus on journalists alone, but also on the editors, printers, publishers, reporters, and researchers. We should see *the sender* as the whole press, which is, according to Merrill "a "thing" and not a person; it is a social institution or organism composed of people dealing with people"<sup>44</sup>, an institution that consists of people "who determine what to print or not to print; they are the determiners of editorial content; they are the "news managers"; they are the ones who (...) make their editorial decisions."<sup>45</sup> Therefore, it makes more sense for us to talk about the press rather than journalists, because we need to focus on all the actors responsible for journalistic products.

### *The receiver*

The last component of the definition of journalism is the receiver. For something to be journalism there must be a receiver. Because without a receiver, there is no communication. And as we have seen, journalism is a form of communication. So the question is, who is *the receiver*?

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<sup>41</sup> Zelizer, 67.

<sup>42</sup> Shapiro, 'Why Democracies Need a Functional Definition of Journalism Now More than Ever'.

<sup>43</sup> Shapiro, 560.

<sup>44</sup> Merrill, *The Imperative of Freedom*, 64.

<sup>45</sup> Merrill, 65.



According to Elliot and Ozar<sup>46</sup> the receiver is the one whom journalism serve: the public. It is not just the one who accidentally reads, listens or views the information in the various print and electronic media by which journalists communicate. However, ‘the public’ is still a very broad term. So what do the authors mean when they speak of ‘the public’? With their communication journalists do not aim to reach every single person on the globe or persons living in the future. Journalists aim to reach a “whole group of people living in a particular society in a particular time”<sup>47</sup>, the people of *their* society “insofar as those people are involved in public matters.”<sup>48</sup> This is also what distinguishes journalism from, say, a company that communicates a news message internally or from a teacher who communicates information on current affairs to his students. Both the company and the teacher do not aim to reach its society, but a particular, almost private audience. Even if it turns out that a teacher’s audience or the group of readers of a company’s news message is much bigger than the group of people the journalist effectively reached, the difference is that a journalist always aims to serve the society, Elliot and Ozar argue.<sup>49</sup> For this reason, Elliot and Ozar state that journalists who aim to serve only a particular company, or a group of students, would be unprofessional and even unethical.<sup>50</sup> Shapiro seems to agree with Elliot and Ozar when he writes that journalism is not meant for “insider-to-insider communication within organizations and closed communities” and states that “journalism is not private.”<sup>51</sup>

### 1.5 A preliminary conclusion

So, is it right that the court of Amsterdam decided that Yvonne Coldeweijer is a journalist? According to the definition we came up with, the decision might be true. Coldeweijer did communicate indirectly, the message can be seen as newsworthy information that she sent to her public which is not a private audience. Seen in this way, Coldeweijer might be regarded a journalist. But if she is, we ideally see her behave in a way we want journalists to behave. Hence, if we are to think of Coldeweijer as a journalist, we also expect her to behave in some sort of ethical way. But can we justify this? Can we really argue that journalists should behave according to certain rules? Isn’t it their freedom to write or say whatever they like to say?

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<sup>46</sup> Deni Elliott and David Ozar, ‘An Explanation and a Method for the Ethics of Journalism’, in *Journalism Ethics: A Philosophical Approach*, by Christopher Meyers (Oxford University Press, 2010), 9–24.

<sup>47</sup> Elliott and Ozar, 11.

<sup>48</sup> Elliott and Ozar, 11.

<sup>49</sup> Elliott and Ozar, 12.

<sup>50</sup> Elliott and Ozar, 12.

<sup>51</sup> Shapiro, ‘Why Democracies Need a Functional Definition of Journalism Now More than Ever’, 560.

In the next chapter I will dive into the question how certain journalistic rules, codes and responsibilities can be justified in the light of press freedom and the freedom of expression through J.S. Mill's justifications of these freedoms. After that, I will be focussing on Onora O'Neill's view on why it is important in the light of democracy and a healthy society that the press should stick to such an ethics. The idea is that the press is a very powerful institution and can do more harm than individuals when they make use of their freedom to express themselves. The press' power and ability to do harm to a society bound them to certain restrictions, I will argue. Press freedom is not an unlimited freedom. Therefore, if indeed we see Coldewijer as a journalist, she must not be able to spread whatever rumour she wants to spread.

2

A free press, a happy society?

## 2.1 Introduction

If we would agree upon the definition of journalism of the former chapter, what we understand by the notion journalism is that it is a way to communicate newsworthy information via different media to the society. Seen that way, one could argue that journalism fulfils a particular need of the public to receive information about (mostly) current events that interests them as it affects their lives in one way or another. Journalism, then, can be seen as a way to serve the public. If it is, we, the public, would probably want journalists – or the press – to serve us well. We could think of various ethical standards we would like to impose on the press. For example that it always report truthfully and that the information is trustworthy and factual. But is this really the right way to define journalism? Have we not already gone a step too far in arguing that journalism is a way of meeting the public's desire to receive information about current events and topics that interests them? One could say: 'The informational function of the press is a nice idea, but there is no way to really justify this. The press probably fulfils a need of many citizens, but that is no good reason to state that journalism *should* fulfil this role.'

Indeed, why should it? We often ascribe to journalists the right to freedom of expression and call it 'the freedom of the press'. However, if the freedom of expression is really applicable to journalists, why would they have to commit to any ethical code at all? If journalist are allowed to exercise the right to freedom of expression, like you and me, this even permits journalists to report untruthfully, as it is their freedom to do so. Why, then, would the press have to stick to certain ethical standards I do not expect my neighbour to adhere to, while they both exercise the same freedom?

In this chapter I will argue that it is mistaken to see press freedom and the freedom of speech as one and the same. I will follow Onora O'Neill's view in this and state that freedom of expression cannot be justified on the same grounds as freedom of the press. Freedom of expression is meant for individuals, while freedom of the press is meant for institutions. Therefore, they cannot be justified on the same grounds. Moreover, both rights require different duties, as O'Neill argues. That is why the press should be bound to different ethical standards than my neighbour. Why, then, do we so often think that the right to both freedoms are practically the same? O'Neill assumes that the influential 19<sup>th</sup>-century utilitarian philosopher John Stuart Mill (1806-1873) played an important role in confusing these two rights.<sup>52</sup> In his influential book *On Liberty* Mill stated that the freedom to *publish* opinions, "being almost of

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<sup>52</sup> Onora O'Neill, 'Vertrouwen en gemedieerde communicatie', in *Wij en de media: kritische reflecties over media, waarheid & vertrouwen*, ed. Paulus Van Bortel, trans. Marie-Jeanne Bellen, 1st ed. (Kalmthout: Pelckmans, 2013), 47.

as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from [the freedom of expression].”<sup>53</sup>

In what follows here, I would like to show that (1) today we still see the right to freedom of expression and the right to freedom of the press as one and the same freedom, and (2) that Mill is one of the reasons why we have come to believe this. However, (3) I will argue that Mill was wrong in claiming that both freedoms are ‘almost of as much importance to the liberty of thought’ as he is unable to prove this on utilitarian grounds, because (4) the way he justifies these freedoms is not utilitarian at all, which makes that both of these freedoms call for different justifications.

## 2.2 Mill’s legacy

In modern democratic societies it is common to regard journalism as a form of freedom of expression, many times referred to as freedom of the press. In the United States, freedom of expression as well as freedom of the press are anchored in the First Amendment<sup>54</sup> and in many other democracies the right to these freedoms are enshrined in the constitution as well. The human rights movement highly values both these freedoms too. Organisations like Amnesty International and Free Press Unlimited fight for the protection of the right to freedom of expression for journalists all over the world. But what do we understand with this freedom? What is meant with ‘expression’? Are there limits to this freedom? And is journalism really a form of freedom of expression? J.S. Mill is well known for defending a very radical form of freedom of expression and freedom of the press, and his ideas are still cherished in liberal societies today.<sup>55</sup> In short, Mill argues for a more or less unlimited form of freedom of expression and freedom to publish expressions. How does he do so?

Mill belongs to a group of influential 19<sup>th</sup>-century liberals and utilitarians. In his famous book *On Liberty*<sup>56</sup> Mill claims that human liberty should be guaranteed and protected in order for human beings to flourish and be happy. However, Mill does not argue for guaranteeing and

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<sup>53</sup> John Stuart Mill, *On Liberty*, Cambridge Library Collection - Philosophy (Cambridge: Cambridge University Press, 2011), 26, <https://doi.org/10.1017/CBO9781139149785>.

<sup>54</sup> The First Amendment goes: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Cited from: ‘Constitution of the United States: First Amendment’, Constitution Annotated, accessed 16 June 2022, <https://constitution.congress.gov/constitution/amendment-1/>.

<sup>55</sup> Onora O’Neill, *A Question of Trust*, 5. printing, The BBC Reith Lectures 2002 (Cambridge: Cambridge Univ. Press, 2010), 92.

<sup>56</sup> John Stuart Mill, *On Liberty*, Cambridge Library Collection - Philosophy (Cambridge: Cambridge University Press, 2011).

protecting all kinds of human liberties one could possibly think of. He for example does not want to protect the freedom to flout traffic rules, or the freedom to be able to determine one's own gross income.<sup>57</sup> Instead, Mill only wants to guarantee and protect a set of *basic liberties*; liberties that – once protected and guaranteed – maximise utility. He divides these basic liberties into three domains: 1) liberties of conscience and expression, 2) liberties of tastes, pursuits and life-plans and 3) liberties of association. The first domain is of special importance to us. With this domain Mill means the domain of “absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological”<sup>58</sup>, what we now understand as the freedom of expression. Mill claims that if people live in a society in which this domain of liberty is protected, happiness increases among the members of that society. And a law that warrants this freedom maximises happiness too, is Mill's line of thinking. In this way, Mill justifies a *right* to freedom of expression on utilitarian grounds.

This is how Mill justifies a right to freedom of expression. But what did Mill say about the freedom of the press? In *On Liberty* Mill first claims that the freedom of expression and the freedom to publish expressions are two different things and thus “fall under different principles”<sup>59</sup>. Yet, he immediately suggests that these two forms of liberty are of practically the same importance to the first domain of liberty, and therefore both freedoms should be warranted the same protection. Taken into account how influential Mill was and still is on this topic, this could be the reason why we came to think that both of these freedoms are more or less the same, and can be justified on the same grounds.

### **2.3 Harm is the limit**

Before we dive deeper into the question how Mill exactly proved that both freedoms are of equal importance, I first want to take a better look at what Mill exactly had in mind with the freedom of expression and the freedom to publish expressions. How do these rights unfold in practice? Did he think of any limits to these freedoms? As been said, Mill defends a very radical type of freedom of expression. He defends all of his basic liberties with a simple, very famously quoted principle, also known as the Harm Principle:

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<sup>57</sup> David Brink, ‘Mill's Moral and Political Philosophy’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2018), <https://plato.stanford.edu/archives/win2018/entries/mill-moral-political/>.

<sup>58</sup> Mill, *On Liberty*, 26.

<sup>59</sup> Mill, 26.

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.<sup>60</sup>

Hence, a person's basic liberties may only be suppressed if that person does or is likely to cause harm to others. Only in those specific cases will it be justifiable to limit one's freedom, Mill argues. This sounds very clear, but once one starts to think more thoroughly about the concept of harm, one has to admit there is quite some complexity in this principle. In fact, there is still a debate going on around the question what Mill exactly had in mind with the concept of harm.<sup>61</sup> Some argue that with 'harm' Mill meant an action that violates the rights of others. Others claim that the Harm Principle should be understood as mere physical harm. The principle becomes even more complex when it is associated with the freedom to express oneself and the freedom to publish expressions. Am I able to do harm to others by expressing myself? If we would regard harm as mere physical harm, it seems very difficult to argue for any limitation to the freedom of expression and the freedom to publish expressions. It would mean that everyone is able to say and publish whatever he wants to say no matter how insulting, offending, racist, discriminating or untrue it is. Is such an unlimited form of press freedom and free speech really what Mill had in mind when writing *On Liberty*?

Mill did not really specify his idea of the Harm Principle to the freedom of expression, which makes that the meaning of the principles remains rather vague. However, Warburton claims that it was not Mill's intention to provide a principle that can give easy and simple answers to the question if one's liberty can be rightly restricted; it was rather meant to illustrate what kind of justifications are appropriate.<sup>62</sup> But Van Mill claims there are good reasons to believe that Mill thinks that something can only count as harm if someone's rights are violated.<sup>63</sup>

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<sup>60</sup> Mill, 21–22.

<sup>61</sup> van Mill, 'Freedom of Speech'.

<sup>62</sup> Nigel Warburton, *Freedom: An Introduction with Readings*, 1. publ (London: Routledge, 2001), 53.

<sup>63</sup> van Mill, 'Freedom of Speech'.

For now, let us follow Van Mill's interpretation. If we would do that, we would have to protect and guarantee an almost unlimited form of freedom of expression. We would have to tolerate every single non-harming view to be published, even if it is false, as long as they do not violate other's rights. This is very drastic. But is Mill right? Is he right when he claims that the freedom to publish expressions can be justified on the same grounds as the freedom to express oneself? Is he even right when he claims that the freedom to express oneself and the freedom to publish those expressions maximise happiness? Next I will examine the arguments Mill gives to justify an almost unlimited form of freedom of expression, including the freedom to publish those expressions.

#### **2.4 Mill's evidence**

Mill claims that a world in which his *basic liberties* are met, there are far more beneficial consequences for society than one in which people's freedoms are limited because they are forced into a way of living. This is the case even if the coercion is aimed at the good of individuals, as in paternalism.<sup>64</sup> His utilitarian argument is grounded in empiricism; the validity of the argument is based on his own observations. This makes his argument a contingent fact, not a necessary truth; it must and can only be proved a posteriori, not a priori (if Mill is right at all). For the sake of this paper, we are not able to verify if a world in which these basic liberties are met indeed maximise utility. This belongs to empirical research which is not the focus here. But if we take a closer look at the way he justifies the right to his basic liberties, he comes with the following statement:

I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.<sup>65</sup>

According to Mill, the reason why protecting and guaranteeing his basic liberties lead to maximise utility is because man is a progressive being. His own observations confirm this statement, he claims. This requires further explanation. If we turn out to be progressive beings, as Mill claims, why would the right to freedom of expression and the freedom to publish those expression maximise happiness? According to Mill this is because an almost unlimited form

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<sup>64</sup> Warburton, *Freedom*, 50.

<sup>65</sup> Mill, *On Liberty*, 24.



of freedom of expression helps human beings pursue progress because such a freedom helps us to get closer to ‘the truth’. How does that work? And how exactly do these freedoms contribute in getting closer to the truth? Mill explains this in four arguments:

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground and preventing the growth of any real and heartfelt conviction from reason or personal experience.<sup>66</sup>

In short, what Mill is saying is that we get closer to the truth by not suppressing views. Getting closer to the truth makes us happier (it maximises utility) since we happen to be progressive beings. And so, Mill comes to the conclusion that the freedom to express oneself and the freedom to publish one’s expressions must be protected and guaranteed as this maximises utility. The question is: to what extent are his premises true? We can write out Mill’s line of thought as follows:

**Proposition: Protecting and guaranteeing the freedom of expression and the freedom to publish expressions maximise utility.**

- Premise 1: Man is a progressive being.
- Premise 2: Contested truths help us progress.

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<sup>66</sup> Mill, 95.

- Premise 3: We can reach and contest the truth by protecting and guaranteeing the freedom of expression.
- Premise 4: Progress makes us happy.

As been said, Mill claims that he proved his proposition on the basis of his own observations. But I do not want to blindly accept that his observations are true. Therefore, I will examine each of these premises and ascertain whether or not they are true.

*Premise 1: Man is a progressive being*

Mill claims that man is a progressive being, but how can he claim something so fundamental to human nature? How is he able to know that we are progressive beings? It is quite challenging to find hard proves of this premise in *On Liberty*. In his Introductory he mentions that man is a progressive being, but he does not give arguments to prove his point. If we look at his *Utilitarianism* (1861) Mill argues that “it is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied.”<sup>67</sup> This is because man, according to Mill, prefers to engage in those activities that “exercise his or her higher capacities”<sup>68</sup> like self-examination and practical deliberation. A fool does not make (ultimate) use of these capacities, whereas Socrates does. Hence, if a person practices his or her higher capacities, this results in a higher degree of happiness than the happiness resulting from the fool’s activities. Mill can be right in claiming this, however, Brink<sup>69</sup> rightly wonders how this exactly *proves* that we in fact are progressive beings. Brink gives it a try himself by looking at another work of Mill: *A System of Logic*.

In his discussion of responsibility in *A System of Logic* (SL VI.ii.1–4) Mill suggests that he thinks that humans are responsible agents and that this is what marks us as progressive beings. There he claims that capacities for practical deliberation are necessary for responsibility. In particular, he claims that moral responsibility involves a kind of self-mastery or self-governance in which one can deliberate about the appropriateness of one’s desires and regulate one’s actions according to these deliberations (SL VI.ii.3). If this is right, then Mill can claim that possession and use of our deliberative capacities

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<sup>67</sup> John Stuart Mill, *Utilitarianism* (Cambridge: Cambridge University Press, 2014), 14.

<sup>68</sup> Brink, ‘Mill’s Moral and Political Philosophy’.

<sup>69</sup> Brink.

mark us as progressive beings, because they are what mark [us] as moral agents who are responsible.<sup>70</sup>

This might sound reasonable, but how does the possession and use of certain capacities for responsible decision-making *proves* that we are as progressive beings? Is this not at best a way to state that we are, or that we can be, responsible agents? Is there reason to think that we should regard morally responsible agents as progressive beings? And was this really what Mill meant when he claimed that man is a progressive being? Moreover, if we are to accept this, a new problem of the same kind arises: how can you prove that man *is* a responsible being?

The difficulty here is that Mill claims to know something fundamental about human nature and this is, I think, impossible to either prove or to disprove, at least for the purpose of this paper. Mill claims to have found a universal truth but fails to either provide the required psychological or historical evidence that proves that we are progressive beings. As Gray<sup>71</sup> puts it: “If this conception is to be more than the expression of a particular cultural ideal it needs the support of an empirically plausible view of human nature and a defensible interpretation of history. Neither of these can be found in Mill.”<sup>72</sup> Why, then, did Mill come to think that man is a progressive being? Gray argues that it was Mill’s nineteenth-century Enlightenment’s Eurocentric interpretation of history as progress that made him think that man is a progressive being, which – according to Gray – is “the central and fundamental weakness of all liberalisms”<sup>73</sup>. Gray writes that Mill’s idea of progress “[reveals] its culture-bound particularity”. What Mill saw as progress in Europe in the time of the Enlightenment might not be seen as progress in other cultures, I would say.

Thus, the problem we have with Mill’s claim is twofold. The first problem is that Mill fails to provide the necessary historical or psychological evidence. And second, that Mill’s conception of progress is culturally determined, not universally accepted (I will come back to this when dealing with the fourth premise). Was Mill then completely wrong in claiming that man is a progressive being? Well, even though Mill does not give the required evidence, and even though his idea of progress was shaped by the zeitgeist of that moment, it is not completely unrealistic or unreasonable to think that we are progressive beings. He was just unable to prove it and failed to come up with a universally accepted idea of progress. But this does not mean

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<sup>70</sup> Brink.

<sup>71</sup> John Gray, ‘Mills Liberalism and Liberalism’s Posterity’, *The Journal of Ethics* 4, no. 1–2 (2000): 137–65.

<sup>72</sup> Gray, 137.

<sup>73</sup> Gray, 139.

that his claim is necessarily false. Let us for now suppose that we would be able to find the psychological or historical evidence to rightfully argue that man is a progressive being, are the other premises true too? Only then he can be right in claiming that the right to freedom of expression and freedom to publish expressions must be protected and guaranteed because this maximises happiness.

*Premise 2: Contested truths helps us progress*

In Mill's third and fourth argument, Mill argues for a radical form of freedom of expression as this freedom helps us to find the truth in such a way that we do not lose the urge to act upon that truth. In this way, Mill states, truth helps us progress. So, it is by contesting views that we can find out if the views are true, and in doing that we keep on feeling motivated to act upon those truths, Mill claims. If, on the other side, truths are being held by authority, this will lead to stagnation and decay as we lose the urge to act upon those truths. Therefore, views have to be contested; they have to be "fully, frequently, and fearlessly discussed"<sup>74</sup> to become a 'living truth' instead of a dead dogma.

Mill believes that if people (he takes 'the majority of Christians' in his day and age as an example) would have to defend their views and would have to tackle counterarguments, that this would help them to really act upon their beliefs and to make them 'practice what they preach'. I think we can agree with Mill here that by challenging views, this will contribute to feel motivated to act upon those views. In that sense, challenging the truth indeed helps us to act upon those truths. However, the question remains if you could consider 'acting upon views' as progress. If you think of progress as 'feeling continually motivated to act on what you believe to be true', Mill would be right in saying that contested truths help us progress. If you think this is not what progress is, then Mill only rightly claimed that contested truths help us to act upon those truths.

*Premise 3: We can reach and contest the truth by protecting and guaranteeing the freedom of expression.*

For now we are able to agree with Mill that opinions have to be challenged in order for us to feel the need to act upon apparent truths. He claims that it is by making sure that all opinions can and will be expressed that opinions will be challenged, that the truth is found and that we will keep on feeling motivated to act upon that truth. But can we also agree with Mill that

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<sup>74</sup> Mill, *On Liberty*, 64.

protecting and guaranteeing the freedom of expression is necessary to reach the truth? How does that work? According to Mill we can only find the truth if we censor no opinions at all. He explains this in his first and second argument; the ‘infallibility argument’ and the ‘partly true argument’. First, if we are to censor an opinion, there is a good chance that we censor an opinion that happens to be true. Denying this, Mill claims, is to assume that we never make mistakes. History certainly has proven us wrong; how many times did we condemn someone who turned out to be right? We thought Galilei was wrong when he claimed that the world turns, and more recently we thought we were right when we claimed that AIDS is a disease God created to punish gay men. And certainly you can think of some examples yourself of your own life in which a majority thought you were claiming something false while in fact you were right. We can never be one hundred percent sure of anything, that is why we cannot justify banning certain opinions because we think they are wrong. I believe we can agree with Mill on this. We are not infallible, we cannot know anything for sure.

Mill’s second argument, the partly true argument, states that, even if censored opinions turn out to be false, there is a great chance that it contains parts of the truth. Moreover, the prevailing opinion contains almost never the whole truth, Mill argues. It is only by allowing all opinions that there is a possibility to find the whole truth, he claims, because opposing or (partly) false views help us to reconsider and revise our true beliefs, and so it helps us to come closer to the whole truth. Mill’s second argument can be accepted on the same ground as his first argument; if you were to claim that you know for sure that a certain view is completely wrong, you would assume your infallibility. Hence, I would argue that this premise is true as well. We can only find the truth and be certain of that truth by allowing all possible views. However, merely allowing all views does not *de facto* lead to the truth. Consequently, this right has to be protected and guaranteed, as Mill claims. And I tend to agree with that too.

Of course, to accept this premise is to assume that ‘the truth’ exists and that we, human beings, possess the capacities that enable us to know (parts of) the truth. There is a great philosophical debate on this issue which is definitely interesting, but for the sake of this paper I will not dive into this discussion. Therefore, I will accept these two assumptions which function as axioms in Mill’s proposition.

#### *Premise 4: Progress makes us happy*

Mill, on its way to plead for an almost unlimited right to freedom of expression and publishing expressions, encounters a new obstacle. If we indeed are able to come closer to the truth by protecting and guaranteeing these rights, and if we indeed ‘progress’ because the right to these

freedoms enable us to constantly contest our opinions, does this progress really make us happy? Does knowing the truth and acting upon the truth really maximise happiness? If so, then indeed, letting miss Coldeweijer to spread rumours would make us happier as this would help us in getting closer to the truth and spurs us to action. We would even be grateful to her for spreading all those rumours because it would help us to become happier persons. But is Mill right in claiming this? If progress does not make us happy, his argument fails as he would not be able to justify that this freedom has to be protected and guaranteed on utilitarian grounds.

So, our concern here is if progress would maximise utility. We can only progress, according to Mill, by knowing the truth. However, Wolff<sup>75</sup> rightly asks the question if “it is always better to know the truth than to remain in ignorance?”<sup>76</sup> Will you be a happier person if you would always know what others think of you? Would we be happy if we had revealed all secrets of our existence? Does hearing what others really think of us really make us happier? Of course, many times achievements in the sciences contributed to more happiness. Thanks to finding certain truths, we know how to cure diseases, we are able to travel to beautiful places all over the world, and we can easily stay connected with family and friends who live all around the globe. But this does not mean that it is *always* better to know the truth.

If knowing the truth not necessarily lead to more happiness, maybe the progress that occurs after we have reached the truth leads to more happiness. The French philosopher Jean-Jacques Rousseau (1712-1778), who lived a century before Mill, criticised the consequences the Enlightenment had on civilization. According to Rousseau, human progress led to more unhappiness than happiness and had “corrupted public morals”<sup>77</sup>. This was not a popular opinion as, in Rousseau’s time, most people admired the fruits of the Enlightenment and the kind of civilization that emerged from it, as well as the developments in the modern sciences, literature and philosophy. Mill believed that the popular view was “nearer to [the truth]”<sup>78</sup> than Rousseau’s; progress, of the kind that was brought about by the Enlightenment, leads to more happiness. Is this really true? Seeing the Enlightenment as progress is very much culturally determined. Without giving an extended overview of all the negative effects of the Enlightenment to modern times, it is not very hard to come up with examples that show that the Enlightenment and the ‘progress’ that followed afterwards did not make us happier. Did the invention of the atomic bomb made us happier persons? Would we become happier if we

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<sup>75</sup> Jonathan Wolff, “The Place of Liberty”, in *Freedom: An Introduction with Readings*, by Nigel Warburton, 1. publ (London: Routledge, 2001), 149–66.

<sup>76</sup> Wolff, 153.

<sup>77</sup> Wolff, 153.

<sup>78</sup> Mill, *On Liberty*, 85.

would manage to change the genes of embryo's to our wishes? Does people's average screentime of 7 hours a day lead to more happiness? The consequences of this 'progress', the price of our welfare, like climate pollution, diseases of affluence and pandemics, do not really maximise utility. Many do, though not all.

*Conclusion: is the proposition true?*

Even though it is plausible that we can reach the truth by protecting and guaranteeing the freedom of expression and the freedom to publish those expression, it is not very likely that, if the truth helps us progress, this would really lead to more happiness. We can even argue that sometimes these liberties lead to unhappiness. Thus, if Mill is a true and consistent utilitarian, he must admit that the liberties he defends on utilitarian grounds cannot (only) be limited using the Harm Principle, but also if they lead to unhappiness. If, for example, Coldeweijer's juice leads to more unhappiness than happiness, Mill has to face it and state that it would be right to limit her freedom of expression. To conclude, Mill cannot defend a right to freedom of expression and to publish expressions on utilitarian grounds.

## **2.5 Liberty as something good in itself**

Was Mill himself not aware of this implication of his own theory? If coercion and force sometimes do maximise happiness, it can be justified to limit people's liberties. And if a public figure, like Coldeweijer with more than 700.000 followers on social media, minimise happiness by spreading gossips, this person's liberty should be suppressed. Nonetheless, Warburton does not detect any indication in *On Liberty* that makes us assume that Mill would give up his basic liberties in favour of the maximisation of happiness.<sup>79</sup> Critics, therefore, argue that in *On Liberty*, Mill seems to be defending values other than happiness, such as truth and freedom, not because these values maximise happiness, but because they are "good in itself"<sup>80</sup>, they are good despite the consequences. And that is, indeed, not utilitarian at all.

Does this mean we have to cancel Mill altogether? True utilitarians might will, but Warburton argues that – even though we cannot defend such a radical form of freedom of expression on utilitarian grounds – Mill gave us reasons to defend this and the other basic liberties on the basis of what human beings are: "beings who achieve their humanity most fully by being given space to make fundamental decisions about their own lives. We don't want our

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<sup>79</sup> Warburton, *Freedom*, 58.

<sup>80</sup> Warburton, 59.

lives to be lived *for us*; we want to be in the driving seat, even if the result is that we sometimes make decisions which make our lives go badly.”<sup>81</sup> Moreover, even though the Harm Principle remains a bit vague, it can still function as a useful tool to help us think about the limits of liberties.

What does this mean for the right to press freedom? If we agree with Mill that it is more important to value things like truth and freedom than to strive to maximise happiness at all costs, we should – in Mill’s eyes – give everyone the freedom to express themselves and to publish expressions except for those situations in which exercising these freedoms (are likely to) cause harm to others. If we are to agree with Mill, then, Yvonne, like any other journalist, can publish whatever she feels like, no matter how untrue or insulting it is, since we value that she has the freedom to express herself. And then that is just that. But I do not want to accept this. I want to argue, by following Onora O’Neill’s arguments, that we cannot use Mill to justify press freedom in the same way we now justified the freedom of expression. In the next chapter I will present O’Neill’s thoughts on this and argue that the freedom of expression and press freedom differ substantially from each other and, therefore, these freedoms cannot be justified on the same grounds.

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<sup>81</sup> Warburton, 59.



3

The power of the press

### 3.1 Introduction

True utilitarians would not be able to defend an almost unconditional right to freedom of expression which Mill had in mind. But if we value truth and freedom we have reasons to do so. However, to go from this to the justification of freedom of the press is quite a big step. If we value truth and freedom, can we rightfully argue for a similar unconditional right to press freedom? The British philosopher Onora O'Neill (1941) thinks we have sufficient grounds to reject this idea; if we value truth and freedom we have good reasons to limit press freedom and argue for journalistic duties. She is convinced that an unconditional freedom of the press is more likely to undermine truth and freedom.<sup>82</sup> According to her, the right to press freedom is fundamentally different from the freedom of expression and can therefore not be justified on the same grounds, as Mill seems to suggest. She argues for this in the following ways: (1) if we value freedom, it is because we value it for individuals, not for institutions like the press, (2) if we value truth, an almost unlimited freedom of the press is more likely to undermine truth, (3) the freedom of expression is primarily concerned with self-expression, freedom of the press with communication, and (4) the harm that can be done when an individual is expressing him- or herself is of a substantial different level than the harm that can be done by the media or other powerful organisations. Therefore, press freedom requires a different justification, restricted to different boundaries than the boundaries of self-expression.

If O'Neill's arguments turn out to be convincing, what are the implications of this for our Coldeweijer-case? In this chapter I want to argue that, by following O'Neill, we should not regard Coldeweijer's activities as an act of self-expression but as something that belongs to the realm of the press. The press has more responsibilities because it aims to communicate, it has the ability to reach large audiences and thus can cause more harm than individuals can bring about. Seen this way, Coldeweijer can rightfully make use of her right to source protection but that would mean that she also has to stick to an ethics of journalism that prescribe a set of rules and duties.

### 3.2 Why we should distinguish freedom of expression from press freedom

Why would valuing truth and freedom imply that we also have to value that everyone can publish whatever they feel like? According to O'Neill it is not only unreasonable to believe this, it is also dangerous. It is unreasonable because, first, we value freedom of expression for *individuals*, but the press is not an individual, it is an *institution*. And why should we value

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<sup>82</sup> O'Neill, *A Question of Trust*, 93–94.

freedom of expression for institutions like the press? We also do not value that other types of institutions are free to express themselves, such as the courts, the police, marketing agencies, universities or companies. We want them to stick to certain rules when they ‘express themselves’ because we know that if they don’t, they can abuse their power for their own profit. Moreover, it is also quite unreasonable to think institutions like the press are able to make use of the freedom of expression since, strictly speaking, institutions have no selves to express.<sup>83</sup>

Another reason O’Neill gives to distinguish freedom of expression and press freedom is that the press is not engaged in the act of expression but in the act of *communication*. This touches upon the definition we came up with in the first chapter: journalism is always a form of communication. Someone who only wants to express him- or herself may or may not succeed in communicating and that is just fine. Someone can express him or herself in the most unintelligible, puzzling, confusing or obscure way as he or she wishes, until it is likely to do harm to others. The aim of this freedom is to enable people to express themselves in any way they wish, not to make them communicate.<sup>84</sup> But if, on the other hand, someone is engaged in a journalistic activity, this person always aims to communicate. The press always tries to reach a certain audience. The press wants to transfer information, it wants its communication to succeed. Therefore, the press cannot just ‘express itself’, it is involved in the act of communication and thus, at least, has to stick to certain communication standards to make sure the communication succeeds.<sup>85</sup>

Thirdly, if we were to justify an almost unconditional press freedom we would underestimate the importance of power differentials, O’Neill states. We have to acknowledge that the press is almost always more powerful than my neighbour who makes use of his freedom of expression. It reaches large audiences which makes it quite easy to deceive, misinform, or even manipulate large groups of people.<sup>86</sup> This is what makes an almost unlimited press freedom far more dangerous than an individual who merely expresses himself. Coldeweijer, who has more than 700.000 followers on her social media accounts, therefore should not be granted the freedom of expression when communicating through her social media channels. And even though she does not aim to deceive, misinform or manipulate her audience, she has to acknowledge that she, like other journalists, has the power to influence and shape her audience’s ideas, opinions, preferences and prejudices, as the Belgian philosopher Bart Pattyn

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<sup>83</sup> Onora O’Neill, ‘Media Freedoms and Media Standards’, in *Ethics of Media*, ed. Nick Couldry, Mirca Madianou, and Amit Pinchevski (London: Palgrave Macmillan UK, 2013), 28.

<sup>84</sup> Onora O’Neill, *Speech Rights and Speech Wrongs* (Assen: Royal Van Gorcum, 2016), 51.

<sup>85</sup> Onora O’Neill, ‘Ethics for Communication?’, *European Journal of Philosophy* 17, no. 2 (2009): 167–68.

<sup>86</sup> O’Neill, *Speech Rights and Speech Wrongs*, 52.

argues in his book *Media en Mentaliteit*<sup>87</sup>, on a substantial different level than the power to influence people my neighbour has.

I think Onora O’Neill gives us sufficient reasons to believe that press freedom is fundamentally different from the freedom of expression, as she summaries it herself:

Media speech is distinctive because it is controlled by intermediaries who shape, reshape and organise its content, who may reach very large audiences, who aim (almost entirely) for one-way rather than reciprocated communication, and who often have distinctive powers and interests that individuals cannot match. It is therefore not obvious that free speech and media freedom should converge.<sup>88</sup>

These differences make that we have to look for another justification for press freedom, with limits different from those belonging to freedom of expression. However, one could still argue that an almost unlimited press freedom is needed because we value truth. And, as Mill showed with his ‘partly true’ and ‘infallibility’ argument, freedom of expression and the freedom to publish expressions contribute to truth-seeking. But O’Neill counters this argument by stating that protecting and guaranteeing these freedoms do not necessarily lead to the discovery of truth. If we want to reach the truth we, indeed, shall not suppress views. But merely providing these freedoms does not ensure that we find the truth. On the contrary, if we want to reach the truth, we have to commit the freedom of expression and press freedom to specific standards that support truth-seeking, in the way universities or other truth-seeking institutions do: “Truth-seeking needs careful process and safeguards; freedom to propose and challenge content, for example, but not freedom to neglect or travesty evidence.”<sup>89</sup> Thus, unrestricted freedom of expression and press freedom do not lead to truth-seeking per se, so the value of ‘truth’ is not a good ground to argue for such unrestricted freedoms either.

### **3.3 Other ways to justify press freedom**

If we value truth and freedom, this still does not give us enough reasons to defend press freedom. As we have seen, press freedom is anchored in various constitutions, but appealing

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<sup>87</sup> Bart Pattyn, *Media en mentaliteit* (Leuven: LannooCampus, 2014).

<sup>88</sup> O’Neill, *Speech Rights and Speech Wrongs*, 46.

<sup>89</sup> Onora O’Neill, ‘Conceptions of Press Freedom in a Globalising World’, Apollo - University of Cambridge Repository (Faculty of Philosophy, University of Cambridge, 10 January 2012), 2, <https://www.repository.cam.ac.uk/handle/1810/241043>.

to authority is not a good argument to justify something, O'Neill rightfully argues.<sup>90</sup> So, which arguments are convincing to defend press freedom? O'Neill discusses three well-known justifications of press freedom. And none of them can be used to argue for an as unconditional freedom as Mill's freedom of expression.

To begin, one of the common ways to argue for freedom of the press is that it is needed for truth-seeking. But, as I already have discussed briefly above, an unconditional freedom of the press does not necessarily contribute to truth-seeking. If we are to justify press freedom for the sake of truth, the press has to stick to certain standards of accuracy, truthfulness and for using evidence (think of norms for peer-reviewing, source references and fact checking). However, if we were to justify press freedom on these grounds, columns, satiric television programmes, horoscopes and even Coldeweijer's juice would not be permitted because they are not really aimed at finding the truth.

Second, it can be argued that press freedom is justified because the press *supports and enables* the right to freedom of expression, as stated in Article 10 of the European Convention on Human Rights and Article 19 of the Universal Declaration of Human Rights. Here, the press is not given an unconditional freedom either, but one that brings with it substantial duties and responsibilities such as the duty to provide individuals with information and ideas which allows them to form their own opinions.<sup>91</sup> Yet, this way of justifying press freedom still lacks a deeper justification as we once again invoke the authority of conventions and declarations.

The third, and in O'Neill's (and my) view the most convincing way to justify press freedom is because she values a flourishing social and cultural life and, above all, democracy<sup>92</sup>:

Free media enable citizens to learn and to judge what is going on in the world they inhabit, to discover what is being done in their names, and to assess social, cultural and public affairs. Without free media they are disempowered, social and cultural life may be damaged, and democracy will falter or fail.<sup>93</sup>

A free press enables citizens to know what is going on in their society, it is a way to receive and challenge others' opinions and to be able to know how political decisions will influence people's lives. According to O'Neill this function is what makes press freedom valuable.

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<sup>90</sup> O'Neill, 'Media Freedoms and Media Standards', 23.

<sup>91</sup> O'Neill, *Speech Rights and Speech Wrongs*, 47–48.

<sup>92</sup> O'Neill, 'Media Freedoms and Media Standards', 33.

<sup>93</sup> O'Neill, 33.

However, not an unconditional freedom. If the press is to serve social and cultural life and democracy, O'Neill thinks the press should meet three duties. First, as the press always aims to communicate to a certain audience, it has to make sure that what is communicated is *intelligible*. If it is not, the intended audience is not able to understand what is said, and communication simply fails. If a teacher, for example, does not adapt its communication to the level of expertise of his students, and speaks in terms the students do not understand, the communication fails. So too should journalists try to communicate in a way their audience can understand. They, of course, can not always know if everything they communicate is intelligible to their audiences, but they at least have to take their audience's level of knowledge into account and try to avoid complicated, technical jargon.

But an intelligible press is not the only duty the press should meet. O'Neill values social and cultural life and democracy in particular.<sup>94</sup> Actions that harm these domains are in her eyes morally wrong. Thus, it seems that O'Neill incorporates her own interpretation of the Harm Principle, even though she thinks of it as a "hopelessly inadequate way of determining what sorts of media and other public speech may be prohibited or restricted."<sup>95</sup> O'Neill, namely, proposes the duty of *truthfulness*, because inaccurate or untruthful communication is likely to misinform, disinform, mislead or even deceive the public and so does not serve a society and democracy, but damages it.<sup>96</sup>

The other duty O'Neill mentions is for the press to make its communication *assessable*. Assessable communication enables the audience to judge the trustworthiness of the information provided. If the press communicates in a way that is unassessable for its audiences, the audience is more likely to suspect that the press is not trustworthy and wants to misinform or even deceive the public. And even if this is not really the case, if the press communicates in an unassessable way this will contribute to a 'culture of suspicion', as O'Neill calls it. This is a society in which the citizens suspect a lot of actors important to a democracy, like politicians, the police and journalists, cannot be trusted. Such a culture can be damaging for a society's social and cultural life and for democracy, she argues in one of her works titled *A Question of Trust*<sup>97</sup>. If people think the press cannot be trusted, they will look for information by using other sources, such as social media, where a lot of conspiracy theories can be found that are presented as truths. This can endanger social and cultural life and democracy as these trolls

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<sup>94</sup> O'Neill, 33–34.

<sup>95</sup> O'Neill, 29.

<sup>96</sup> O'Neill, 33–34.

<sup>97</sup> O'Neill, *A Question of Trust*.

will be able to turn the population against each other and against the government. To make the press more trustworthy, which will contribute to the idea that the press can be trusted, O'Neill argues that the press has to communicate in an assessable way. O'Neill thinks this can be met by through better transparency; reveal financial interests of journalists and media organisations, be transparent if the publication was supported by gifts or sponsors, mention the (lack) of expertise of the authors, use source references, correct mistakes once they are detected and be transparent about how much time the author worked on the publication.<sup>98</sup> If the press would meet these standards of assessable communication, the audience would have better means to judge its trustworthiness. I agree with O'Neill that assessable communication of the press is necessary to prevent harm to democracy and to our social and cultural life.

If we agree with O'Neill that press freedom is important to serve democracy, and social and cultural life, there is no way we could argue for an almost unlimited press freedom. A press with no responsibilities is very likely to do harm to a society as it would give the press the freedom to misinform, disinform, deceive or mislead the public. If the press sticks to the duties O'Neill proposes, it prevents social and cultural life and democracy from being endangered. Thus, if people can be seen or want to be seen as being part of the press (like Coldeweijer), there are valid reasons to expect them to adhere to the three standards O'Neill argues for.

### **3.4 Is this enough?**

If we value cultural and social life, and democracy, we do have reasons to defend a press freedom that is restricted through O'Neill's three duties. I think these duties are indeed necessary to prevent harm to these domains in life, but I would like to argue that they are not sufficient. The press can do a lot of harm to social and cultural life and to democracy and yet communicate in an assessable, intelligible and truthful way. Therefore, I want to argue for one more duty for the press: the duty of responsible representation. When the press fails to represent people and issues in a responsible way, this can have harmful consequences for society. I will argue so by following Margaret Kohn's article *Postcolonialism and global justice*<sup>99</sup> and by giving some examples of my own.

As O'Neill already realised, "the press has acquired unaccountable power that others cannot match."<sup>100</sup> The press has the ability to influence large groups of people, the press plays

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<sup>98</sup> O'Neill, 'Vertrouwen en gemedieerde communicatie', 52–53.

<sup>99</sup> Margaret Kohn, 'Postcolonialism and Global Justice', *Journal of Global Ethics* 9, no. 2 (August 2013): 187–200, <https://doi.org/10.1080/17449626.2013.818459>.

<sup>100</sup> O'Neill, *A Question of Trust*, 93.

an important role in the way we understand the world.<sup>101</sup> The press is not able to give an overall picture of what is going on in society; the press always has to select and, as we have seen in the first chapter, this is done on the basis of the ‘newsworthiness’ of the events. The newsworthiness of events depends largely on journalists’ ability to predict whether it interests their audience. But if the press repeatedly selects the same kind of events, from the same perspective, constantly representing certain people or groups in the same way, the press is likely to (partly) distort the public’s perception of reality even if it reports in an intelligible, truthful and assessable way, I would argue. If the press repeatedly represents people and events in the same way, the press will cause harm to society. I will now explain why.

Kohn argues that through the repeated use of what she calls ‘problematic narratives’, stories in which the dominant culture’s (implicit) biases about minority groups are confirmed, reinforced or even created, perpetuates the power relations between them. So, if the press repeatedly selects those stories in which people of Moroccan background are perpetrators of criminal activity because the majority of its audience is more likely to ‘click’ on these stories on the internet than stories in which people from the dominant culture are the perpetrators, this contributes to the dominant culture’s (implicit) bias that many Moroccan people are criminals. Kohn gives an example of the problematic narratives within domain of global justice:

(...) the narrative of human rights depicts Western countries and non-governmental organizations as saviors. People living in less developed countries are cast in one of the two roles: passive, helpless victims who must be protected from their own pathological culture, or barbaric savages who are responsible for violence and corruption. These metaphors are a way of framing contemporary politics that has the unintended consequence of dehumanizing the victims by portraying them as not fully capable of agency.<sup>102</sup>

According to Kohn, these problematic narratives can hinder global justice once the dominant culture is going to act on these beliefs. If they think that this is how things are and base their actions upon it, the dominant culture is likely to “delegitimiz[e] local forms of knowledge in poor areas and undermin[e] the mutual respect necessary for collaboration and deliberation.”<sup>103</sup> In this way, problematic narratives contribute to harm minority groups.

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<sup>101</sup> Pattyn, *Media en mentaliteit*, 11.

<sup>102</sup> Kohn, ‘Postcolonialism and Global Justice’, 192.

<sup>103</sup> Kohn, 193.



Thus, if the dominant culture is going to act upon the beliefs which are confirmed, reinforced or created through the repeated use of problematic narratives, harm is done to minority groups because the dominant culture acts on a distorted idea of reality. If the press, for example, overrepresents issues in which people from countries in the Middle-East are the perpetrators of criminal activities, the dominant culture's bias that Middle-Eastern people are dangerous is confirmed and maybe even reinforced. If, then, politicians decide that we should close our borders for Middle-Eastern people the press played an important role in supporting this distorted view of reality and thus contributed to do harm to a minority group. Moreover, in the first half of the 20<sup>th</sup> century the American press overrepresented cases in which men with a dark skin colour were the perpetrators of rape and women with a light skin colour were the victims. This contributed to justify violence against black men in those times.<sup>104</sup>

Even if the press reports intelligible, truthful and assessable, this does not mean no harm is done to certain groups in society. The press has the power to influence large groups of people and should, therefore, use its power responsibly. If it does not, and repeatedly uses those narratives that are likely to perpetuate the unjust position of minority groups in society, they are (partly) responsible for the harm that is done to these groups. Therefore, I think the press should meet the duty of responsible representation. The idea is not that the press is not allowed to report on certain issues, but that if it does, that this is done in a responsible way by placing those issues into context; clearly mention that this case is an exception, that one should see it in the bigger picture of the issue and bring nuances in. Moreover, responsible representation also calls for balance; a press that (almost) never reports on stories in which someone of the dominant culture is the perpetrator of sexual violence too, and other in which the (implicit) biases of the dominant culture are being challenged, that press cannot be called responsible. The press cannot hide behind the argument that those irresponsible representations are what the public wants; the press is king in turning information into interesting stories. So why not try to balance reporting and represent those stories that are less likely to harm minority groups?

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<sup>104</sup> Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* (New York London: Oxford University Press, 1992), 26.

## Conclusion

A press as free as individuals pursuing their right to express themselves in any way they want until they are likely to harm others is something any self-respecting society and democracy should avoid. We have seen that an attempt to defend a close to unlimited press freedom by valuing freedom and truth like Mill does, rather undermines these values than protecting them. It is not only dangerous to defend such a press freedom, as a certain freedom would also have to protect a press that misinforms the public, it is also quite unreasonable to do so as we value freedom of expression for individuals, not institutions like the press. We would underestimate the power of the press, a power with which it is far more capable to reach large audience and to influence them than individuals who merely exercise their freedom of expression in their personal lives.

A press that uses its power responsibly is able to serve society well; it will contribute to a flourishing social and cultural life and to a healthy democracy. If that is what we want to value, we cannot claim that a press should be free to report in any way it wants. An unconditional free press would be very likely to harm these domains and I think we all can think of examples that confirm this worry to be true. This does not mean that we should censor the press, not at all. A censored press would probably lead to even more problems and we are also not able to censor views as this would presume our own infallibility. What we should do to make sure society and democracy can flourish, is that the freedom of the press is limited in such a way that it prevents harm to society and democracy. A press that communicates in an intelligible, truthful and assessable way is not a press that but helps a society to understand, check and trust the press. But a press can still do a lot of harm if it meet these duties. Therefore, these duties O'Neill proposes are indeed necessary but not sufficient. To contribute to a society in which the democracy is healthy and cultural and social life can flourish, the press has to be aware of its ability to reinforce unjust power relations and undermine minority groups. Therefore, I think, we have reasons to argue that the press also has to meet the duty of responsible representation.

I think we have sufficient ground to think of Yvonne Coldeweijer as a journalist, as being part of the press. When communication through her social media channels, she is not an individual anymore who only wants to expresses herself. She is part of an institution that communicates to large audiences, that can influence its audience and, therefore, can do a lot of harm if she does not use her power responsibly. Is she wants to continue spreading gossips I think we have provided good reasons to state that she has to do so in an intelligible, truthful

and assessable way, and above all, that she represents people and affairs in a responsible way. She may avail herself the privilege of source protection, but should then also adhere to these duties. I think this is a fair deal.

Of course, this demands a lot of the press, but I think we have reasons to take the role of the press in society seriously. Giving the press too much freedom is too dangerous for the society and for democracy. However, one could rightfully wonder why other forms of media, such as reality programmes on television, movies, books and other forms of communication in which large audiences are reached shouldn't adhere to the same requirements the press is adhered to. Indeed, other forms of mass communication can harm society too. So, should all forms of mass communication meet these ethical standards too? Further research into this topic should lead us to a proper debate around this question which is, I think, of great significance if we take our social and cultural life and democracy seriously.

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