Is Communication a Basic Human Right?

An Intellectual History

By

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ABSTRACT

Claims about communication as a basic, available-for-all, and "taken for granted" human right as stated in various declarations raise many problems and controversies in practice, such as hate speech, propaganda, and even claims for publishing criminal diaries and pornography. This study begins with an examination of the nature and context of these various declarations, followed by a provisional conceptualization of the concept 'right'. The study then examines the position of different thinkers from Milton, Locke, and Voltaire to Dewey and Habermas. The study concludes that a possible solution for these problems would build on the validity proposed by Jürgen Habermas, where a possible right to communicate would be related to a specific type of communication. This type of right-based communication would be characterized by pureness, truth, and sincerity on the one hand, and the existence of a relative relationship between a claim of a right to send and the responsibility towards receivers on the other.

DEDICATION

If I were to dedicate this academic work and this effort to someone, it would be to the only person who believed in me, my beloved husband *Mahmoud Eid*. Pervasive in my life, the influence of his support, love, belief, and encouragement have always enhanced my work, my study, and my personality with more strength, challenge, and love in our shared future. I am deeply indebted to his close involvement in every step of my academic life, and the supportive atmosphere that he provided me with before and during the preparation of this thesis. If I can't dedicate to him a thesis, at least I am dedicating to him my effort.

To my children *Yomna*, and *Ahmed* who tasted daily my anxiety and worries throughout my preparation of this thesis. I hope I can fill some of the emptiness that I have caused due to my studies, and more importantly, teach them the high appreciation and esteem for knowledge in their future.

As always, I am deeply inspired by *my parents*. For me, they are symbols of morals and ethical principles. They taught me and planted in me the seeds of the feeling of duty against any violation of any right. I know that they have waited so long to see me achieving my goals in my life, particularly in this subject. I want to thank them very much for their love and continuous prayers, and hope to make them more proud.

Aliaa Ibrahim Dakroury

Ottawa, July 2003

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Allaa Ibrahim Dakroury

Ottawa, July 2003

My Lord! Increase me in knowledge.

(20: 114)

*Glory be to You, we have no knowledge except what
you have taught us. Verily, it is You, the All-Knower,
the All-Wise.*

(2: 32)

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PREFACE

Is communication a basic human right?

This question reflects my desire, beyond the time spent in writing this thesis, to respond to what I have always perceived as an increasing need in the field of communication studies: a new direction to conceive the importance of 'communication,' coupled with my unique perspective of combining the fields of communication and human rights.

One of the reasons behind this desire, that I am all too familiar with, stems from the daily complaints that I am exposed to through mailing lists; ones that most would just delete, or maybe put in the spam and junk mailbox! Who cares about a Chinese lawyer that have been jailed for three years for just forwarding an email about freedom of speech in China, which he received from an American friend? Who cares about American air force that bombed the Iraqi television headquarters? Who cares about these laws and regulations in many places in our world that forbid newspapers to publish their own opinions for the sake of political stability and good relationship with 'friend' countries, or because they are owned by conglomerate media that interfere in their editorials?

These strong words of 'electronic colonization,' 'technological imperialism,' 'western domination,' 'imbalanced flow of information,' etc., are also among the triggers in realizing the importance of this topic. They motivated me to question and induce a desire to know WHY? Why did people complain about these cases? One can certainly say that the freedoms of speech, expression, and thought are not food, or air, or water, but they are undoubtedly necessary for our existence.

A strange and unscientific reason that perhaps sparked the idea behind this thesis, was one of the various conversations and discussions with my supervisor, in which he told me that his daughter was sometimes complaining about following the

rules, and kept asking him, "why should I go to sleep early? I have a right to watch television late!" This conversation forced me to think that the concept of a 'right' is in fact one of our daily discourses, and perhaps it would be valuable and interesting to clarify just what is a right, and why it is so desirable for human beings. And would it be *more* valuable and interesting to know if communication could be one of those rights?

Perhaps the reader questions what is so special in my interpretation of intellectual history; since tens, hundreds, or maybe thousands of scholars have dealt with philosophers, such as Milton, Locke, Mill and even Habermas. I believe that I have brought to light important features of communication that have not been sufficiently discussed, through the historical foundation of the concept of communication as a human right. In our increasing modernization and development of the communication media, it becomes increasingly important to conceptualize a 'right' and to pay greater attention to an individual's and society's responsibility toward it.

I view my effort as a primary and a small academic clarification of dealing with communication as a human right. Unless we can get a clear intellectual and philosophical understanding, it can hardly be possible to navigate successfully through the waters of the daily practices of communication. These fundamental questions are necessary to answer in order to achieve this understanding: What are the practices that could be 'rights,' and deserve to be backed by the various declarations? What are those others that are not considered as 'rights'?

I have divided this thesis into five main parts. In the first part, I describe and analyze the historical declarations that support the international recognition of the concept of the 'right to communicate,' such as the American Declarations, the French Declaration, the Universal Declaration of Human Rights, and the UNESCO Media Declaration. I then propose a provisional conceptualization of a 'right,' by

questioning its creation, causes, and possibilities. Following this, I point out the great controversies that emerge and problems that are raised from treating this right as universal and absolute, given to all human beings without qualifications. In the fourth part, I am proposing a historical clarification of intellectual contributions to this concept, and what could they possibly offer to answer the core question of the thesis, starting from the seventeenth-century thinker, Milton, up to the German philosopher Jürgen Habermas. Finally, the aim of part five is to discover the different cases we commonly encounter with dealing with communication in real life that vary from an extreme authoritative type to a responsibility model.

For me, as a scholar coming from another culture, I have seen the experience of writing an academic thesis with this kind of interpretation as an extraordinary intellectual exploration that I have the fortune to be taking part in. The constant support, elaboration, constructive criticism from my supervisor was indeed a great motivation for me to extend my future academic studies in the same topic, with more critical perspective without fear of attacking great philosophers.

Chapter 1

Historical Context of the Formal Declarations of the Right to Communicate

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

American Bill of Rights, 1789

The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he is responsible for the abuse of this liberty, in cases determined by the law.

Declaration of the Rights of the Man and of the Citizen, 1789

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

Universal Declaration of Human Rights, 1948

Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

International Covenant on Civil and Political Rights, 1966

As illustrated above, communication, or some aspect thereof, has often been included in formal declarations of human rights. In such cases, moreover, its status as a basic human right has been considered as "unproblematic," "taken-for-granted," and "unquestionable." Before examining some of the problems that actually arise from according communication this status, it will be helpful to consider the nature and context of some of the most important of these formal declarations of communication as a human right; in particular, the American Bill of Rights, 1789, the Declaration of the Rights of the Man and of the Citizen, 1789, the Universal Declaration of human Rights, 1948, the International Covenant on Civil and Political

Rights, 1966, and the UNESCO Media Declaration, all of which “state” that communication is, universally, one of the “basic” human rights.

During the eighteenth century, America’s (followed by France’s), formal declarations of human rights actually served more as a tool for limiting the power of legislatures and legal institutions than for expressing inherent liberties and freedoms. Reid has observed, “rights in the eighteenth century were thought of as restraining arbitrary government rather than as liberating the individual. . . . [The] concept of rights was torn between the ideal of freeing human subjectivity and the reality of confining human subjectivity within the mores of a customary society” (1986, p. 73).

The American Revolution and Human Rights

Drawing from the language of eighteenth-century philosophy, the *Virginia Declaration*, June 12, 1776, the *Declaration of Independence*, July 4, 1776, and the *American Bill of Rights*, 1789, appeared to place great emphasis on freedom through the use of phrases such as ‘by nature free,’ ‘inherent rights,’ ‘enjoyment of life and liberty,’ ‘no men be deprived of this liberty,’ ‘unalienable right,’ and ‘pursuit of happiness.’ For example, Article 1 of the *Virginia Declaration* stated

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life, liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

In Article 12 from the same *Declaration*, the following was added:

That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

And finally, Article 1 from the *American Bill of Rights* specifies the freedom of the press as part of the basic rights:

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

The ambiguity surrounding rights was, and still is, one of the controversial issues that is raised when we discuss the right to communication historically, especially the freedom of the press. Obviously, these articles conclude that the freedom of the press was one of the basic "legal" rights that are enforced and maintained by the American Congress, rather than consider it as an absolute "right" to communicate. In other words, legal judgment and constitutional laws bind the freedom of the press, and the goodness of freedom is determined by their consequences, for example, whether they are good or bad for the status quo. Therefore, individuals do not have the full liberty to exercise communication the way they want, but according to what the laws permit them to do.

Consequently, it can be argued here that in eighteenth-century America, despite the prevalence of liberalism, communication (in the sense of freedom of the press) was a regulated activity—following laws and constitutional regulations more than expressing autonomous individual rights. The following summary defines how the American revolutionaries understood the freedom of the press:

The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications . . . to forbid this, is to destroy the freedom of the press; but if [an individual] publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity [T]o punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment.

(Reid, 1988, p. 118)

This historical context leads to the assumption that the American Declarations are not the basis of a right to communicate, but rather they can be merely considered as

"statements" of some legal enforcement and protection of the 'freedoms' of speech and press, as types of communication.

Even if historically the American Revolution precedes the French, many scholars argue that, in many ways, the French Revolution represented a more radical social change than the American, especially for the realization of the ideals of democracy and freedom as well as for the realization of the right to communicate and its embodied freedoms of speech, expression and so on. This idea may be due to the radical changes effected by the French Revolution on the beliefs, structures and policies of the society. The Declarations spawned by the American Revolution are conceived as extensions of the Magna Carta and the English Bills of rights; as a former British colony, America's main aim in the Revolution was independence from British sovereignty. Costas Douzinas, in *The End of Human Rights: Critical Legal Thought at the Turn of the Century*, clarifies the distinction: "The aim of the American documents was to legitimise political independence from Britain, while that of the French, the overthrow of the social order of the *ancien régime*" (2000, p. 87). Moreover, Douzinas mentions that even the French parliament acknowledged the American Revolution in August 1789, but with "a sharp distinction between the two Declarations" (2000, p. 88).¹

The French Revolution

French historian, François Furet, argues that it is important to recognize the genuine difference or contrast between the French and the American Revolutions. The American Revolution, he writes, was the "*nonrevolutionary* establishment of democracy" (1998, p. 68), as America had been settled by European immigrants who built a new society and rejected sovereign rule from afar to establish their own form

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¹ See also Casey Harison who observes that the negative image of the French Revolution in the United States was the result of the American effort to "demonstrate the superiority of the American Revolution" (2002, p. 137).

of government based on the realization of the Enlightenment principles of individual rights and the sovereignty of the people.

The American revolutionaries, it is true, also had to fight a certain number of their compatriots who rallied to the English cause. But the American republic, once it became independent, possessed only a single history, which served as a source of pride and unity.

(Furet, 1998, p. 68)

In contrast, the aim of the French Revolution was to achieve a utopian ideal, and that purpose was characterized by its insistence on changing the old order – *l'ancien régime* – to create a new society, which was chartered in 1789 in *La Déclaration des Droits de l'Homme et du Citoyen*. Habermas, in his 1974 *Theory and Practice*, confirms this idea by arguing that, in the American Revolution, "it is a matter of setting free the spontaneous forces of self-regulation in harmony with Natural Law, while in [France, the Revolution] seeks to assert for the first time a total constitution in accordance with Natural Law against a depraved society and a human nature which has been corrupted" (quoted in Douzinas, 2000, p. 89).

In fact, some scholars considered communication to be one of the primary motivators of the French Revolution. Baker, who adopts one perspective, argues that there was an interaction between three major competing political forces or discourses: firstly, the discourse of 'justice,' the language of the French parliament and monarchic power; secondly, the discourse of 'will,' the language of the public's desire for freedom and political reform; and finally, the discourse of 'reason' and the legitimizing language of the Enlightenment ideology. In the end, the discourse of public will defeated the other two discourses, resulting in the French Revolution and democratic reform (2001, pp. 70-74). Affirming this opinion, one could see that the type of communication that existed during the French Revolution played a significant role in asserting the discourse of public will. Jill Maciak (2001), for example, reveals that the written media such as tracts and newspapers, along with the oral

communication that reached the non-educated people in the villages and countryside through postmen, messengers from King, and rumours, played a key role in forming political public opinion during the French Revolution.

Furthermore, looking at the circulation of ideas and discourses in the context of the history of communication, it can be noted that the publications (including journals, published books, pamphlets, and so on) played also a fundamental role in forming the public sphere and public opinion during the French Revolution; and that the transmission of philosophical, political and scientific texts had a powerful impact on the discourses of that time. Baker (2001, pp. 64-65), looking at books as neither 'objects,' nor 'isolated ideas,' stresses the importance of the study of the pre-revolution circulation of texts and ideas within which the 'political discourse' existed. He notes that society in that period was 'unified' by the kind of written materials being circulated.

In his *The Forbidden Best-Sellers of Pre-Revolutionary France*, Darnton discusses the 'Livres Philosophiques' as fanning the flames of the spirit of freedom and the need to reform, and fueling the desire to attain freedom of thought, speech and expression. These books, written by various philosophers and intellectuals such as Voltaire, Rousseau, and Mercier, among others, were extraordinarily popular. Darnton cites some opinions of that time that express the public's thirst for those texts:

Never has one seen so many forbidden works as today. . . . No one is ashamed to be occupied with a bad book. . . People are bent on getting them [forbidden books], no matter what the price.
(2001, p. 116)

In addition to the books and periodicals, pamphlets were commonly used during that time as an easy and accessible medium of communication. Pamphlets not only criticized the government but also defended it, thus serving as a way to air the advantages and disadvantages of a given policy during that time, such as taxes. Like

the books, pamphlets were extremely popular: "The pamphlets, too, were *libelles* - shorter, sharper, and more up-to-date versions of the stories that had circulated in book form for the last fifteen years" (Darnton, 2001, p. 137).

La Déclaration des Droits de l'Homme et du Citoyen

La Déclaration des Droits de l'Homme et du Citoyen, or the Declaration of the Rights of the Man and of the Citizen was undeniably a turning point – especially in the history of the idea of treating communication as a basic human right – as it synthesized from the Enlightenment thinkers the concepts of 'freedom,' 'liberty,' and 'fraternity' in expressing opinions and attitudes. It was the first formal realization of the right to "unrestrained" communication as a 'sacred' right of human beings.

Before analyzing this declaration and its articles, it is interesting to mention here some historical facts that help to recognize how close the American and French Declarations' languages were, despite their previously introduced historical and political differences. French Declaration had been written by Marie Joseph Paul Yves Roch Gilbert du Motier Marquis de Lafayette (1757-1834), known as The Marquis de Lafayette², and was adopted by the French National Assembly in August 26th, 1789 (which had been occupied by Lafayette then). The Marquis de Lafayette was a French military leader who fought with the colonists during the American Revolution, as a volunteer. This is the reason behind his famously known title, 'the hero of two worlds' – America and France. After his service in America, he was deeply affected by liberal thoughts and became one of the great French advocates for social reform. He supported the ideas of equality, liberty, and freedom, including the freedom of the press. Lafayette wrote the following in his memoirs:

At the age of nineteen, I gave myself over to the liberty of man and the destruction of despotism . . . I left for the New World, impeded by all and helped by none . . .

(Lafayette, quoted in Bernier, 1983, p. 196)

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² It is interesting to mention here also, that he is the creator of the French modern flag.

In January 1798, Lafayette wrote the first draft of the Declaration of Rights, and then showed it to his friend, American Ambassador in France at the time, Thomas Jefferson (1743-1826), who was responsible for writing the American Declaration of Independence. Lafayette acknowledged Jefferson's contribution in this process in his memoirs:

I also wrote a Declaration of Rights which Mr. Jefferson found so excellent that he demanded it be sent to General Washington; and that declaration will just about become the new catechism of our country.

(Lafayette, quoted in Bernier, 1983, p. 196)

The French Declaration combined the rights of both 'man' and 'citizen,' in other words, civil and political rights. Examining first the preamble of this declaration, we find an indication of morality in noting the words, "the following *sacred* rights of men and citizens," and in Article 1 that illustrates the idea of natural rights:

Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

In Article 2, the focus is on different aspects of freedom, liberty, and equity:

The end of all political associations is the preservation of the natural and imprescriptible rights of man; and those rights are liberty, property, security, and resistance of oppression.

It is important to mention here that, it is very obvious that there exists an ambivalence in conceptualizing 'rights.' First, Article 2 states clearly that rights are "imprescriptible," then, in the same line "states" and "prescribes" them, as the rights to liberty, property, and so on, which is clearly contradictory! Also, the Declaration formally states in Article 11 the importance of an "unrestrained" and "free" communication for every man and citizen. It also mentioned different formats of communication (opinions and attitudes, etc.) and different media (speaking, writing, etc.):

The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he is responsible for the abuse of this liberty, in cases determined by the law.

Obviously, the same contradiction exists between the exact words of this article. For example, while stated in the beginning that communication should be 'unrestrained,' the same article sets up some preconditions for this type of communication; that it should be limited to the legal formats and framework!

It is interesting to mention here some historical facts and examples that refute, to a great extent, what is language to be an "unrestrained" communication. Consider first Olympe de Gouges's contribution (1748-1793), in cognizance of women's rights in France through her *Déclaration des Droits de la Femme et de la Citoyenne*, 1791. She was a feminist writer during the French Revolution, who published her declaration to criticize and object to the claims of 'universality,' and 'absoluteness' in the *Declaration of the Rights of Man and the Citizen*, pointing out that these principles were not applied to women, and thus, in practice, the *Declaration* was contradictory and lacking in these principles. Moreover, even if the French's advanced realization of rights is considered, the underestimation of the female's role and her equal rights to communication as a human being must also be analyzed. This fact was confirmed in the French National Convention in 1793, which declares that: "children, the insane, minors, women, and prisoners, until their rehabilitation, will not be citizens" (quoted in Brems, 2001, p. 18). In other words, it is clear that the 'sex' of the citizen was a significant barrier in applying French Declaration's principle concerning the 'unrestrained' communication, representing a contradiction of the principles of the Declaration as well as highlighting the exclusion of women from the French public sphere during that time, as women were not allowed to be active participants in the public debates. Joan Wallach Scott argues that:

The outcome of the French Revolution was contradictory: a universal, abstract, rights-bearing individual as the unit of national sovereignty, embodied, however, as a man. . . . [w]omen [have] to claim their political rights to be active citizens and, when denied them in practice, to protest against exclusion as unjust, a violation of the founding principles of the republic.

(2001, p. 213)

Interestingly, in addition to equal rights to free speech and communication for men and women, de Gouges also claimed in her declaration for additional rights for women. Article 11 of her Declaration illustrates this point:

The free communication of ideas and opinions is one of the most precious rights of woman, since this liberty guarantees that fathers will recognize their children. Any Citizen (citoyenne) can thus say freely: I am the mother of your child, without being forced by barbarous prejudice to hide the truth.

(Scott, 2001, pp. 222-225)

A staunch defender of human and women's rights, and a political activist whose writings and works were presented by the *Comédie Française*, Olympe de Gouges was sent in 1793 (even after the French Revolution and its Declaration) to the guillotine for plastering the walls of Paris with posters "urging that a federalist system replace Jacobin centralized rule" (Scott, 2001, p. 234). Finally, the following was published to commemorate her:

Remember that vigaro, that woman-man (cette femme-homme), the impudent Olympe de Gouges, who abandoned all the cares of her household because she wanted to engage in politics and commit crimes. . . . This forgetfulness of the virtues of her sex led her to the scaffold.

(quoted in Scott, 2001, p. 234)

Collectively, scholars confirm that, during this period, society was mainly male centered and women were neither included as human beings nor as 'men' who have rights. Instead, only men represented humanity in the Declaration. Douzinas (2000) quotes Joan Scott in *Only Paradoxes to Offer: French feminists and the rights of man*:

Maleness was equated with individuality, and femaleness with otherness in a fixed, hierarchical, and immobile opposition (masculinity was not seen as femininity's other). The political individual was then taken to be both universal and male; the female was not an individual, both because she was non-identical with the human prototype and because she was the other who confirmed the (male) individual's individuality.

(1996, p. 97).

A second example of the 'unrestrained' communication is the case of 'freedom of clothes' as one of the communication media. Adopting an interesting and unusual perspective, Cissie Fairchilds explores, in a recent study, the freedom of expression during and after the French Revolution (after languaging the French Declaration that "states" the free and unrestrained types of communication) through an examination of fashions and clothes. She tells us that before the 1793 French Convention of the Freedom of Dress, the 'right to free dress or outfit' was mainly a 'privilege.' Moved and inspired by the spirit of the Enlightenment principles and the philosophy of 'natural rights,' French citizens used their dress and outfits to express their opinions and attitudes, especially during the 1770s and 1780s. At that time, Fairchilds notes, dress no longer represented the social class; rather it expressed positions on political issues that were the subject of great debate during the revolution period. Some examples of this kind of creative expression were "hairdos depicting the Battle of Saratoga . . . [and in the] 1780s, for example, followers of the Duke d'Orleans, who favoured an English-style constitutional monarchy, proclaimed their allegiance by wearing English-style riding coats" (2000, p. 422).³ Paradoxically, while the 1793 Convention 'states' clearly that freedom of dress is one of the basic human rights: "Everyone is free to wear whatever clothing and accessories of his sex that he finds

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³ Cissie Fairchilds quotes from one of the French Newspapers published during this period (Journal Du Soir, 30 April 1789) that supported the cancellation of mandated costumes: Don't they know what influence exterior distinctions have on opinions . . . ? Don't they know yet that every time a man wears a uniform, he believes himself obliged to have opinions conforming to the dress that he wears . . . ? (2000, p. 423)

pleasing" (quoted in Fairchilds, 2000, p. 419). The second article of the same Convention contradicts this right, and oddly requires French people to wear the same clothes: "The requirement that all French citizens wear a red, white and blue cockade in public" (p. 419). This case is an example of the explicit contradictions of what is stated in this declaration, and what is really practiced in real life. Finally, clothes, after 1797 France, and until recently, are not a method to distinguish man from citizen, but have become simply a personal freedom and a communication medium.

In summary, the American and French rights of freedom of speech and of the press, as representative of the right to communicate during that time, can be summed up by the motto, "You are free to say what you want unless it is harmful or dangerous for the system." Interestingly, this idea is clearly language in the French *Declaration*, specifically in Article 4, and affirmed in article 5:

Political liberty consists in the power of doing whatever does not injure another. The exercise of rights of every man has no other limits than those which are necessary to secure to every *other* man the free exercise of the same rights; and these limits are determinable only by the law.

...

The law ought to prohibit only actions hurtful to society. What is not prohibited by the law, should not be hindered; nor should anyone be compelled to that which the law does not require.

The Universal Declaration of Human Rights, 1948

The adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations on December 10, 1948 is considered to be the birth of the international recognition of human rights, including the right to communicate. Here, the main focus is on tracing to what extent this document has language the right to communicate, through a brief discussion of the languaging process, with a particular emphasis on Article 19, followed by a discussion of the current and important debate over the right to communicate.

First, it is useful to note that one of the most important purposes of the United Nations, as stated in the UN Charter of 1945 (preamble # 2), is that it seeks to affirm its "faith in fundamental human rights"; and in article 55(c) that it promotes a "universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (quoted in Brems, 2001, p. 20).

How the Universal Declaration of Human Rights came to be conceived and languaged during the first half of the 20th century as a reaction to the events of pre- and post-World War II, and the heart-wrenching violations of human rights of that period, is a good starting point for the following discussion. The two worst mass human rights violations in history were arguably carried out before and during WWII by the Nazis⁴, first by their genocide policy, and second by their denial of communication as one of the basic human rights. Different media such as newspapers, movies, cinemas, theatres, etc., were used by totalitarian regimes to disseminate ruling party ideology and propaganda, and to crystallize and polish the public image of the regimes and their leaders. Media were forced to present only the 'super heroic image' of their leaders. Moreover, violating freedom of communication on the inter-personal level, these states forbade all types of communication between members of the public, i.e. no freedom of expression, no discussion of public policies, no exchange of views or opinions, no meetings, no expression of opposing

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⁴ Humphrey explains that prior to WWII, there was no legal awareness in the international community concerning human rights in general, and that these kinds of issues fell under the protection of national, state, or domestic law. The main reason for the 'sudden concern' for human rights issues, he says, was "the traumatic experience through which the world had just passed. One of the causes of the Second World War was the cynical, studied and wholesale violation of human rights in and by Nazi Germany. This . . . was a war to vindicate human rights" (Humphrey, 1984, pp. 5,12).

views, no protests, etc.⁵ At the same time, books and other cultural materials were sanctioned; for instance, the Nazis burnt huge piles of books – including the works of Sigmund Freud – a situation that led many German writers, philosophers, and thinkers, especially those of Jewish origin, to leave Germany. Also, the Nazis burned many works of art, including paintings by Picasso, Van Gogh, etc. Briefly, communication, using any individual or mass media, was heavily censored without any consideration for the right to know, or the right to information. Instead, Palumbo declares, the “population was fed a steady diet of propaganda” (1982, p. 65).

Languageing the Universal Declaration of Human Rights

First, and from a transcultural scholar’s perspective, the Universal Declaration of Human Rights, 1948, represents a largely Western cultural and philosophical perspective, not only in the reflection of Enlightenment ideals, but also in that the establishment of the Universal Declaration of Human Rights was mainly a reaction to President Franklin Roosevelt’s speech in 1941 calling for the protection of “the four essential freedoms: freedom of speech and expression, the freedom of worship, the freedom from want, and the freedom from fear” (Morsink, 1999, p. 1). “Drafters of the Universal Declaration wrote these freedoms in their Preamble,” Morsink tells us, as a “tribute to this American president and his ideals” (1999, p. 1).

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⁵ It must be noted here that even though democracy and liberty is practiced around the world in the twenty-first century, at least theoretically, the same violations of rights exist in many countries in particular circumstances, such war, crisis, or under emergency law. In many countries, emergency, and exceptional laws are enacted for many years, a situation that has given rise to many advocates for the freedom of expression (among them IFEX, *International Freedom of Expression Exchange*, Index on Censorship, and Amnesty International, among others) appeal and demand to end this status and allow the process of free communication to occur. For more detailed documentation on the violations of freedom of expression around the world, see www.ifex.org.

The drafting of the Universal Declaration of Human Rights is a story that involves many players⁶, roles, circumstances, debates, histories, and backgrounds. In order to relate this story, it is necessary to begin with the background, that is, the impact of eighteenth century ideals and views, where, it is argued here, the roots of communication as a human right can be found. Then, the contributions of the key players in the story, the drafters of the Universal Declaration of Human Rights, can be highlighted. Finally, the discussion centers on the debate over the languaging of the Declaration, and the narration of universality.

First, it is important to consider the impact of the Enlightenment, and in particular, the idea that all human beings are born 'free' and that no one should restrain or violate this freedom or right. These principles were stated first in the Virginia Declaration, 1776, the Declaration of Independence, 1776, and the French Declaration of 1789, and now are enshrined in the Universal Declaration of Human Rights, 1948. A strong reflection of these ideals is found in the words 'freedom,' 'equal,' 'inalienable,' 'all,' 'justice,' 'natural,' etc. in the preamble of the declaration, which are, as previously discussed, expressions that are found in the same language in the preambles of the three earlier declarations:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

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⁶ From the key drafters of the declaration: Eleanor Roosevelt, the widow of former U.S. president Theodore Roosevelt and a prominent figure and the chairman of the International Committee for drafting the Universal Declaration of Human Rights, Humphrey wrote in his diaries that she "was one of the greatest personalities ever to be associated with the United Nations, and her great prestige was one of the chief assets of the Human Rights Commission in the early years" (1984, p. 4). René Cassin, winner of the 1968 Nobel Peace Prize and the chief delegate of France, was another noticeable figure and an active participant in this process. Dr. Charles Malik, the head of the Lebanese delegation, a professor of philosophy at the American University in Lebanon, had received his Ph.D. from Harvard University where he was a student of the philosopher Martin Heidegger. Malik was one of the most active and influential contributors to the Universal Declaration of Human Rights drafting, thanks to his training in western philosophy and his belonging to a non-western culture.

Moreover, the constant use of the term 'everyone' in the thirty articles of this Declaration was another point of contention, as many delegates felt that the concept of 'everyone' represented Western ideas and the belief in individuality, but not the social reality or collectivity of other cultures or their philosophies.

Article 19

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

Phrasing the 'right to communicate' – as stated explicitly in Article 19 of the Universal Declaration of Human Rights – was subject to many efforts, proposals, and amendments, each represented by a different party with a different perspective and ideology. Among these efforts was the creation of a Sub-Commission, drawn from the Human Rights Commission, which was devoted to the discussion of freedom of information. This was especially important after WWII, considering the huge amount of propaganda that had been published from totalitarian regimes. In fact, one of the most important debates that occurred during the drafting of the Universal Declaration of Human Rights was raised by the USSR delegation⁷, who questioned whether the Nazis had the right to communicate or not, considering that Hitler, after coming to power, abolished the constitutional laws and ruled instead through 'emergency decrees' that were nothing but a series of human rights violations, including the violation of the freedoms of speech, movement, life, and property, among many others. These decrees empowered the government to "shut down the

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⁷ Another position was taken by the Soviets, who clearly opposed upholding the 'right to communication' for Fascists and Nazis, who, in their opinion, had manipulated the public using various media, including the press. Therefore they argued that "the world had just emerged from a terrible war, the objectives and scope of the press had changed and it was necessary to set limitations to the liberty of the press if it were used as a vehicle of war propaganda and exhortation to revenge;" and claimed that the medium of the press, or any other media, should not be channeled by 'anti-democratic' regimes that used propaganda.

presses of the left-wing parties . . . to break up campaign rallies, to arrest opponents at will, . . . [and] also annulled almost all the basic rights guaranteed by the constitution" (Morsink, 1999, p. 65). They asked the Committee, therefore, to state this limitation and to include it in the Article. The Soviet delegation added: "The freedom of speech and the press should not be used for purposes of propagating fascism, aggression and for provoking hatred as between nations." The drafting commission rejected all these amendments that would deny full rights of communication to the Nazis with a vote of 23 to 10, with 13 abstentions. In the final wording of Article 19, the phrases "from sources wherever situated" and "to all channels of communication" were replaced by "through any media and regardless of frontiers" at the end of the article.

What happened in the final moments of languaging the right to communicate is worth considering here. Humphrey says that on the night of December 10, 1948, the Ambassador of Soviet Union, Andrei Vishinsky, gave a speech explaining the reasons for his country's abstention. One of these reasons was related to Article 19. The Declaration had failed to articulate this right in a such a way as to solve the problem of the usage of communication during wartime according to fascist principles, he stated, and argued further that

there could be no freedom of information unless the workers had the means to voice their opinions, and that meant having at their disposal printing presses and newspapers; the right to demonstrate in the streets should have been guaranteed; there were no guarantees that scientific research would not be used for war purposes; and there were no provisions protecting the rights of minorities.

(Humphrey, 1984, p. 72)

The preceding discussion of the Universal Declaration of Human Rights, its importance and language, can be summarized here in the words of Mrs. Roosevelt from her speech on the occasion of the introduction of the Universal Declaration of Human Rights to the UN. Here she affirms the synthesis of the historical origins of

the Declaration -- the contributions of the great English, French and American Declarations:

We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind, that is the approval by the General Assembly of the Universal Declaration of Human Rights recommended by the Third Committee. This Declaration may well become the international Magna Carta of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries.

(Quoted in Glendon, 2001, p. 166)

The Right to Communicate Beyond the Universal Declaration of Human Rights

In the second half of the twentieth century, many changes occurred in the world, starting from the rise and development of modern media technologies, especially in the field of information and communication. Most significant, however, was the change in the social, economic, and political relations around the world, beginning from the founding of the Second World with the socialist countries, decolonizing many countries and the creation of the developing countries, or the Third World, and the existence of the developed countries or First World.

Here, the discussion focuses on an essential and relatively recent issue, that is, the concept of the 'Right to Communicate' beyond the Universal Declaration of Human Rights. The origins of this right are illustrated first, followed by an explanation of the process of formal international languaging. To end with, the discussion includes the debate over this right that lead up to its inclusion in the UNESCO media declaration of 1978.

For its origins, the concept of the 'Right to Communicate,' like the Universal Declaration of Human Rights, is the legal child of the international legal bodies, the United Nations and UNESCO. The basis of the international recognition of

communication as a human right, at least in language, was first stated in Article 19 of the Universal Declaration of Human Rights in 1948. It was then included, with slightly altered wording, in the International Covenant on Civil and Political Rights (ICCPR) in 1966, which entered into force ten years later:

Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

There is a notable difference in the wording of this article, eighteen years after the Universal Declaration of Human Rights: many new technologies had emerged since the post-WWII era in the world of communications, and “any other media of his choice” implies the future developments in this area. It is often argued that the two Covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—are two important international documents that complete the recognition of basic human rights. Their advantage lies in their statement of procedures for reporting and enforcing on human rights’ status. From a communication standpoint, this covenant “receives greater weight than the . . . declaration, especially because [it] introduces essential specification to the freedom of information concept as understood in the Universal Declaration” (Nordenstreng & Hannikainen, 1984, p. 134).

Renewed interest in the terminology describing the rights of freedom of expression and access to information was initiated by Jean d’Arcy⁸ in 1969, when he argued that the Universal Declaration of Human Rights along with the ICCPR were not sufficient to implement and inform what he termed the ‘right of man to communicate’:

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⁸ Jean d’Arcy was the Director of Radio and Visual Services during the 1960s in the Office of Public Information at the United Nations in New York. President of the International Institute of Communications until his death in the 1980s, he was among the greatest advocates for the right to communicate. The article that sparked renewed debate was his 1969 “Direct broadcast satellites and the right to communicate” (*European broadcasting Union Review*, 118, pp. 14-18).

The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down twenty-one years ago in Article 19. This is the right of man to communicate. This is the angle from which the future development of communications will have to be considered if it is to be fully understood.

(1977a, p. 1)

It is useful here to present a brief chronological history of the right to communicate concept, as one of the basic arguments for treating 'communication' as a fundamental and absolute human right. In fact, the history of this concept, which begins in the first half of the 1970s, as Richstad, Harms, and Kie explain, was initiated by the pioneering efforts of Jean d'Arcy who launched his claim for the 'right of man to communicate' with a currently famous article published in the EBU Review in August 1969. Though Richstad, Harms, and Kie argue that he "did not specify in detail what he meant by the Right to Communicate, . . . [his article] inspired others to attempt formulations over the following years" (1977, p. 114).

The Canadian Broadcasting Act, 1968, was the next formal effort towards the realization of this right, especially the contribution of Henry Hindley, the director of Telecommission Studies, who believed strongly, as the Act states, that "all Canadians are entitled to broadcasting service in English and French as public funds become available" (quoted in Richstad, Harms & Kie, 1977, p. 115). Following this Act, communications departments produced a number of reports and studies regarding the issue of the right to communicate most importantly the Instant World Report, 1971, that clearly defines the right to communicate:

Freedom of knowledge and freedom of speech are among the most valued privileges of a democratic society. The rights to hear and be heard, to inform and to be informed, together may be regarded as the essential components of a 'right to communicate'

(quoted in Richstad, Harms & Kie, p. 115).

UNESCO Media Declaration, 1978⁹

Certainly, from 1974 the right to communicate debate occupied a core part of the annual debate and argument of the International Institute of Communications. As L. S. Harms (1982) documents, this concern led UNESCO to pay close attention to this concept and stress its importance in its programs, and in May 1978, the first official effort to language the right to communicate took place in a meeting of experts in Stockholm (p. 1). Among the important facts that have influenced these international resolutions in general and this declaration in particular, is that 70 former colonies were decolonized during the 1960s, which brought about major political changes in power relations, with the existence of the non-aligned movement on the political side and the intellectuals' academic sphere on the other side. This change was among factors that played an important role in the 1969 UNESCO meeting of Experts on Mass Communication and Society in Montreal, Canada, which was followed by the Cologne, Germany, 1975 conference of the International Institute of Communications (IIC) where the following resolution was adopted:

Everyone has the right to communicate. [Communication] is a basic need and is the foundation of all social organization. It belongs to individuals and communities, between and among each other, the right has been long recognized internationally and the exercise of it needs constantly to evolve and expand.

(Nordenstreng & Hannikainen, 1984, p. 294)

After this conference, there were several events where strong arguments were made for the importance of communication as one of the basic human rights and it was recognized that a full, international, and legal formulation was needed to uphold and enhance this right for the whole world.¹⁰

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⁹ The UNESCO Declaration on Fundamental Principles concerning the contribution of the Mass Media to strengthening Peace and International Understanding, to the promotion of Human Rights and to Countering Racism, Apartheid and Incitement to war.

¹⁰ See, for example, the 1978 UNESCO Report on the right to communicate from the conference in Stockholm, another meeting in Manila 1979, the UNESCO 1980 Belgrade Conference, the 1981 conference in Strasbourg that adopted a resolution on the right to communicate, also the UNESCO General Conference in Paris 1983 (Nordenstreng & Hannikainen, 1984, pp. 293-301).

The UNESCO Media Declaration, 1978, is considered in many ways to be the true turning point¹¹ in realizing and acknowledging that 'communication' is a human capacity fundamental to our very existence.¹² This declaration was adopted by the 146 UNESCO member states without any dissenting votes. The occasion was described as "not just another event of routine diplomacy but indeed a historical move" (Nordenstreng, 1984, p. 1). A close examination of this declaration reveals some reinforcement of the articles concerning free speech and communication previously proclaimed in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, as well as other rights that are specific to this declaration. For instance, the Preamble states the following:

Recalling the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and particularly Article 19 thereof, which provides that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'; and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966, Article 19 of which proclaims the same principles. . . .

And Article 11 declares

For this declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

In addition to the communication rights that are addressed in the passages above, new issues began emerging during the 1970s, such as the New World Information

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¹¹ Nordenstreng & Hannikainen observe, "It is a diplomatic miracle that such an outcome was possible in a case which had caused more controversy in UNESCO" (1984, p. 1).

¹² It cannot be claimed that this declaration, though addressed to the media of communication, included all types of communication (i.e., inter-personal, personal, group, etc.); moreover, it concentrated mainly on the practice of journalism and problems of communication technology.

Order, the Free Flow of Information, and journalists and media professional practices. As an example, Article 9 states the following:

In the spirit of this Declaration, it is for the international community to contribute to the creation of the conditions for a free flow and wider and more balanced dissemination of information, and of the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media. UNESCO is well placed to make a valuable contribution in this respect.

As we have seen, chronologically, communication has been 'stated' or 'proclaimed' in various declarations and treatises from the eighteenth-century until recent years, as a human right. The main question proposed here is: Does 'stating' that communication is a basic human right make it a 'right'? Also, are there any possibilities of the existence of some problems that stem from treating communication as a 'basic,' 'unproblematic,' and 'taken-for-granted' right? Accordingly, the next step here is to explore or investigate the existence of, and define the major problems and difficulties facing the absoluteness of 'communication as a right.'

Chapter 2

Problems and Conceptualization

The importance of keeping the conception of a right (or claim) and the conception of a privilege quite distinct from each other seems evident; and; more than that, it is equally clear that there should be a separate term to represent the latter relation. No doubt, . . . it is very common to use the term 'right'; indiscriminately, even when the relation designated is really that of 'privilege.'

Wesley Hohfeld

Problems and Difficulties with the Absoluteness of the Right to Communicate

Here, it is argued that, despite the previously discussed formal declarations and international treaties recognizing communication as one of the basic human rights, one could not deny that there are some difficulties and problems in applying this right on a universal and absolute scale. The following questions illustrate some of these problems. Do the Nazis have the right to communicate their racist political message? Does Salman Rushdie have the right to publish *The Satanic Verses* even though was deemed to be harmful to Muslims' feelings and beliefs? Is the production of and access to pornography included in the right to communication that is "stated" in these declarations? What approach should be taken to hate speech on the Internet? Should the demand of the child murderer Clifford Olson to publish his criminal memoir be considered on the basis of his right to communicate? And finally, how do journalists defend their right to free speech in the age of giant conglomerate media ownership, if communication is considered one of their human rights?

It is apparent from these questions that, even though phrased in the language of universalism, the Universal Declaration of Human Rights fails to address some important issues. At the same time it is important to recognize that if the right

to communicate is to be considered as an “inalienable” human right, it must be noted that under specific circumstances, it is considered to be neither absolute nor universal. For example, in certain situations, such as the necessity of self-defense, a fundamental human right to life may be permitted to be violated (Fisher, 1982, p. 17). To address these problematic questions, the following discussion considers whether the right to communicate is a basic, absolute, and primary human right available to all human beings at all times under any circumstances, as proclaimed in the international declarations and covenants; or whether it must at times be limited?

Totalitarianism and Propaganda

It is immediately obvious that acknowledging the right to communicate as an absolute and universal right for everyone could give rise to many problems and difficulties, such as the use of communication for propaganda purposes. Historically, as explained in the previous chapter, one of the main reasons for the international need to language human rights in general, and the right to communicate in particular, had to do with the inhumane practices of totalitarian regimes. It is clear that these regimes recognized the importance of the communication media in transmitting their propaganda and principles to the public. Yet, given Article 19 of the Universal Declaration of Human Rights, the question must be asked, Do the Nazis have the right to communicate, to ‘seek,’ ‘receive’ and ‘impart’ information and ideas through ‘any media’ and ‘regardless of frontiers’?

This case is very problematic, for if these or similar contemporary regimes possess this right, then the field of communication will be in chaos, subject to manipulation, and potentially harmful or dangerous to many people. It is interesting in this context to highlight and analyze the conception of communication according to some previous totalitarian regimes. For instance, Benito Mussolini, in one of his

speeches, rejects the morals and ideals of the Enlightenment to assert the higher purpose of 'collective will' over individuality, and attacks the concept of 'natural law':

Fascism sees in the world not only those superficial, material aspects in which man appears as an individual, standing by himself, self-centered, subject to natural law which instinctively urges him toward a life of selfish momentary pleasure; it sees not only the individual but the nation and the country; individuals and generations bound together by a moral law, with common traditions and a mission which suppressing the instinct for life closed in a brief circle of pleasure, builds up a higher life, founded on duty, a life free from the limitations of time and space, in which the individual, by self-sacrifice, the renunciation of self-interest, by death itself, can achieve that purely spiritual existence in which his value as a man consists.

(quoted in Palumbo, 1982, pp. 173-174)

More interestingly, he also asserts the importance of the practice of these concepts through the media of language, customs and records:

In the Fascist conception of history, man is man only by virtue of the spiritual process to which he contributes as a member of the family, the social group, the nation, and in function of history to which all nations bring their contribution. Hence the great value of tradition in records, in language, in customs, in the rules of social life. Outside history man is a nonentity. Fascism is therefore opposed to all individualistic abstractions based on eighteenth-century materialism; and it is opposed to all Jacobinistic utopias and innovations. It does not believe in the possibility of 'happiness' on earth as conceived by the economic literature of the XVIIIth century, and it therefore rejects the teleological notion that at some future time the human family will secure a final settlement of all its difficulties.

(quoted in Palumbo, 1982, p. 174)

From these passages it can be seen that the main principles of Fascism deny individual rights and freedoms as championed by the thinkers of the Enlightenment. Hence, how can it be claimed that Fascists have an equal, absolute right to communicate? In fact, the international community has endorsed an anti-propaganda position since the ratifying of the Universal Declaration of Human Rights, and the United Nations specifically has language more than one resolution in the attempt to condemn the communication of propaganda. Among these is the UNESCO draft declaration of fundamental principles covering the use of the mass media (January

23, 1974). The excerpts of this report introduced below support certain limits on the absolute right to communicate. For instance, in the preamble it is written the following:

Recalling that the freedom of expression, information and opinions are fundamental human rights and that the free interchange of accurate, objective and comprehensive information and of opinions, both in the national and in the international spheres, is essential to the cause of peace and the achievement of political, social, cultural, and economic progress. . . .

Also, Article 3 declares

The right to seek and transmit information should be assured in order to enable the public to ascertain facts and appraise events . . .

In Article 5 the publication of propaganda is addressed directly:

The dissemination of false reports harmful to friendly relations among nations or inciting to war or to national, racial or religious hatred should be avoided.

Hate Speech: The Case of Salman Rushdie

Can it be claimed that, on the basis of one's absolute right to communicate, one has the right to voice hate speech? There is a conflict here between the values of tolerance and respect for human dignity on the one hand, and the value of free speech and the right to communicate on the other—a conflict that is reflected in various contemporary practices that, although seen to be derived from this right, express intolerance for, and cause harm to, certain social groups or societies.

Salman Rushdie's book *The Satanic Verses* represents one of the greatest problems of absolute free speech. In 1988, Rushdie published a story about a character named "Mahound"--which means false prophet . . . a prophet-like figure who is also an unscrupulous, lecherous man (and in no way divine). [Muslims] were appalled by the idea that this figure would have included in the Koran the satanic verses suggested by the devil" (Lee, 1990, p. 73). Muslims around the world were

deeply offended and very angry as they felt that their Prophet and their sacred book had been denigrated and interpreted ironically, which was completely unacceptable to them. The Iranian leader at the time issued a *Fatwa* calling for the killing of Rushdie for his blasphemous deed, displaying a high degree of intolerance. When Rushdie was confronted with these angry reactions to his book, he said, claiming his right to communicate and free speech: "Everything is worth discussing. There are no subjects which are off limits and that includes God, includes prophets" (Rushdie, quoted in Lee, 1990, p. 74).

Opponents of Rushdie's claim for free speech in such a case argue that it is not only Muslims who feel that their sacred book or religious beliefs should not be subject to misrepresentation, defamation, or denigration. Lee points out that in Christianity¹³ the same idea exists, the Church of England Group, for example enforces the idea of the 'sensitivity' towards sacred books and feelings:

It is often not so much what the law specifically says as the general underlying attitudes and values which it is held to express that are of importance for social well-being. . . . Feelings for the sacred should not be undermined . . . we feel that the public debasement of Christian imagery, besides being deeply offensive to many Christians, may lead to a blindness to the things of the spirit and be seen as a corruption of the mind with regard to what we believe to be the most important features of human life.

(quoted in Lee, 1990, p. 85)

These two opposing positions, which question whether communication is a basic and universal human right or not, are significant to the core of this thesis. Rushdie's argument, which he believes is backed by the Universal Declaration of Human Rights and other international treaties, is that he holds an absolute freedom to express his opinions and thoughts even though in doing so he might contradict and defame Muslim religion and beliefs. The counter argument claims the opposite, that Rushdie

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¹³ Simon Lee refers to the English Commission for Racial Equality and Interfaith in his discussion of this particular story, especially in regard to the history of blasphemy in the English Law (1990, pp. 75-93).

has crossed the line in aggressively portraying sacred texts and revered personalities without regard to others' feelings or thoughts, which could be seen as a kind of hate speech. Which party has the right to communicate, Rushdie or those who would draw the line?

Hate Speech via the Internet

Another issue that must be addressed here concerns the vast and diverse quantity of information available via new technologies such as the Internet, and the facility to access and disseminate all kinds of information rapidly, including indecent, offensive, or harmful material such as child pornography. Although access to information on the Internet is currently unrestricted, there is some question as to whether or not those who disseminate or access offensive material can claim the protection of the law on the basis of their right to communication. Breckheimer (2002), quoting the US Supreme Court¹⁴, who observed that "the content of the Internet is as diverse as human thought" (p. 1494). This statement points to the complexity of the Internet, where the entire spectrum of humanity is represented, including groups who create Websites¹⁵ to "not only encourage intolerance, but also to promote violence" (Breckheimer, 2002, p. 1494). Can this type of communication

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¹⁴ Reno v. ACLU, 521 U.S. 844, 870 (1997).

¹⁵ Breckheimer gives many examples of Websites that encourage 'hate speech,' for example, the anti-Women, anti-White, anti-Gay sites that not only disseminate words or action but also provide interactive hate games and hate music (2002, pp. 1494-1495). It is worth noting here that as a result of the increase in amount and types of hate speech around the world, many countries, such as Germany, have undertaken legal procedures to regulate the use of communication channels for hate speech. Canada is among the countries who have taken some minor measures to restrict hate speech under special conditions. Section 2 of the Canadian Charter of Rights and Freedoms defines the right to free speech, but with what Breckheimer (2002) calls a "spirit of balance" between "individuals' free speech rights" and "societal equality interests" (p. 1514). The Canadian Supreme Court (*The Queen v. Keegstra*, 1990, S.C.R. 697, 743) however, states that in the "uniquely Canadian vision of a free and democratic society . . . the suppression of hate propaganda is incompatible with the guarantee of free expression" (quoted in Breckheimer, 2002, p. 1514).

be a universal right? Can an absolute right to communicate support offensive language, which provokes violence in society?

Offensive Signs

Is the right to communication limited to verbal expression, such as speech and written texts, or could it also include signs and non-verbal communication which could be claimed as forms of free speech? The case of *Cohen versus the State of California*, 1971, is an interesting example of the recognition of the individual's right to free speech, even though the particular expression may be offensive to many. In this case, the Supreme Court judged that it was not right for the State of California to convict Cohen because he wore a jacket emblazoned with the phrase "Fuck the Draft," a sign of vulgar discourse, in a corridor of the Los Angeles Courthouse, where many children and women were present. The Supreme Court reasoned,

How is one to distinguish this form from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us . . . for, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.
(quoted in Smolla, 1992, p. 47)

Pornography

Can pornographers or pornography providers claim legitimacy for their activities based on their right to communication and free speech? This question targets another controversial area of the application of the universal rights set out in the Universal Declaration of Human Rights. But do these rights apply to this issue? In fact, some consider pornography as one type of communication that obtains its legitimacy from and is protected under the declarations pervasively discussed that 'state' an absolute right to communicate. Others take the opposite view. In fact, Lee (1990), taking into account the feminist arguments in this matter, argues that

pornographic communications discriminate against women and demonstrate contempt of them. Furthermore, these arguments were heard in North America, and in Canada in particular, where a Royal Commission recommended that materials that abominate and despise women be categorized in the same way as materials depicting violence against women (pp. 36-37). Barron and Dienes argue that one cannot always apply the absolute right to communicate and free speech as stated in the First Amendment, as there are certain cases where the application could be problematic:

[I]t is clear that not all acts can generate a persuasive case to First Amendment protection. . . . [A] couple engaged in intercourse on a public street cannot claim first amendment protection as a defense to criminal prosecution, even if in their view they are communicating their belief in a new sexual morality. . . . [W]hat protection does the First Amendment afford to the "topless" dancer who claims a constitutional dimension to her artistic expression.

(1979, p. 190)

Invasion of Privacy and the Right 'Not' to Communicate

Another questionable situation stems from the possible contradiction between the right to communicate and the right to privacy. The right to privacy is proclaimed and 'stated' in Article 12 of the Universal Declaration of Human Rights:

No one shall be subjected to arbitrary interference with his privacy . . . or correspondence.

An interesting and recent example that portrays this contradiction in Canada is found in the Report of the House of Commons Standing Committee on Human Rights and the Status of Persons with Disabilities of April 1997. This report discusses privacy as one of the basic human rights, and, at the same time, as a social value that characterizes the Canadian way of life. In the words of the Committee Chair, Sheila Finestone, privacy is

[A] core human value that goes to the very heart of preserving human dignity and autonomy; it is a precious resource because once lost, whether intentionally or inadvertently, it can never be recaptured.
(1997, p. 6)

Thanks to modern technology, the right to privacy is often invaded in certain public places for security purposes, for example, the use of video surveillance in banks, stores, etc. The claim against the use of these monitoring devices is that they violate people's right to communicate freely and in privacy as they wish. While it is recognized that everyone has, according to the international declarations, a right to communicate and to privacy, at the same time society has to ensure security for the public at large. So how can this problem be solved?

Considering the right to communicate as absolute and universal raises another important question: If everyone has the right to communicate, does this right also include the right not to communicate, or the right to privacy? D'Arcy raised this question first, in his discussion of Article 19 of Universal Declaration of Human Rights and given the 'horizontal' flow of information, he questions if "the right to communicate includes the right not to communicate . . . [as] better suited to extricating the discussions on information flow from the deadlock in which they have remained for thirty years," (1982, p. 7) in his study included in the MacBride Commission Report. René Cassin, head of French delegate in the UN, as Harms and Richstad interpret, says that by combining the statements included in both Article 19 and 20, that proclaim the right to "seek, receive and impart information and ideas" and the right to a "peaceful assembly and association," one finds the basis of the communication interaction (p. 97). They add that by looking to the second section of Article (20) which states that, "no one may be compelled to belong to an association," another question is raised, that is, Is there a right not to communicate, and is this right languaged or not, or acceptable or not? (Harms & Richstad, 1977, p. 97). This is an important dimension in realizing how can an absolute right to

communicate influence the right to privacy, especially in terms of communication rights of cultural minorities. Harms presents, in this context, the Indian Philosopher Ghandi's perspective -- that some cultures have the right to produce their own values and information from their own culture, and therefore they could proclaim their right "not to communicate" (1982, p. 5).

The Criminal Diaries of Clifford Olson

Consider the case of child-murderer Clifford Olson, who was sentenced to 25 years in prison without parole. Recently he sought to publish a personal memoir, a request he thought should be granted to him on the basis of his right to freedom of speech and communication. He had in fact applied for, and received, a copyright on a series of 12 videotapes of him discussing his terrible crimes.¹⁶ Can a claim be made for his right to communication?

Olson's case could be discussed in relation to the "clear and present danger" principle, which represents a necessary limitation of the free speech principle under certain conditions. Greenawalt (2002) gives us the historical background of this concept in law, specifically, the *Schenck versus United States* case of 1919. Schenck was convicted of violating the Espionage Act of 1917 during World War I. At his trial the presiding judge argued:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends on the circumstances in which it is done . . . the question in every case is whether the words used are used in each circumstance and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.

(p. 99)

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¹⁶ For the full story, see:

http://www.crimelibrary.com/serial_killers/predators/olson/20.html?sect=2.

From the above passage it is clear that 'the time' was a stronger reason for Schenck's condemnation than his actual activity, which was circulating anti-war posters to men called for military service. Judge Posner affirms the view that free speech may be limited according to time and circumstance. Hence, he proposes two models of conceiving of free speech: The first he calls 'instrumental,' by which he means, "freedom of speech is to be valued to the extent that it promotes specified goals, such as political stability, economic prosperity and personal happiness" (Posner, 2002, p. 121). The second is the 'moral' approach, that embodies the "proper moral conception of persons as rational creatures able to express their ideas and opinions freely and responsibly" (Posner, 2002, p. 121).

The concept of clear and present danger has been, Greenawalt (2002) argues, one of the doctrines used in interpreting the First Amendment in recent years. And he asks, "To what sorts of communications does the 'clear and present danger' test apply?" (p. 99), and can the Olson diaries represent such a danger?

Media Ownership and Control¹⁷

The problem of media ownership and control and its impact on the right to communicate has long been, and still is, one of the greatest barriers to the enjoyment of this right, and constitutes one of the basic arguments against its universality in practice. This was Jean d'Arcy's argument over two decades ago when complaints and problems arose due to media ownership and monopolies in the communication industry. He says: "Any power, religious, political or private, always knew that control over communication meant control over society. One of the titles of Caesar was 'Pontifex Maximus,' the builder of bridges. Control of bridges gives

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¹⁷ An example of recent complaints regarding the practice of some giant conglomerate media and their interference in the editorial policy of their newspapers chains, see The Canadian Journalists for Free Expression (CJFE) and the case of CanWest Global (<http://www.cjfe.org/specials/canwest/canwintro.html>).

control of roads and thus communications" (d'Arcy, 1977*b*, p. 49). In another study highlighting the impact of the many levels of 'powers' that can dominate and control the right of people to communicate freely, d'Arcy says clearly "that he who controls communications effectively controls society" (1977*a*, p. 2). What would d'Arcy have to say today about conglomerate media ownership as one of the basic impediments to the universal practice of a right to communicate?

Basically, the relationship between the field of communications and democracy can be effectively seen through the study of telecommunication (as one of the communication media) in recent years, particularly in the period since the rise of modern technologies. Nevertheless, the field of communication technologies cannot be separated from the socio-economic realm in which it operates, where democracy flourishes and maintains the development of technology and economics on the one hand, and, on the other, serves the public interest and supports related issues such as the debate over the right to communicate, freedom of speech and expression, the right to know, universal access, etc. The basic and most obvious trend in the field of telecommunications in recent years is 'convergence' between media and communication corporations; almost every day there is news of an alliance between giant media concerns. Therefore, it is not surprising that the ideal model of the information flow that enables people to enjoy their right to communicate is threatened and in some ways even denied.

In fact, it can be argued that the existence of conglomerates who own different types and genres of media in different fields, through their vertical and horizontal integration, affects the public in three different ways. First, conglomerate ownership limits the enforcement and application of the three forms of freedoms that constitute the right to communicate as stated in Article 19 of the Universal Declaration of Human Rights. Second, it represents a real threat to the expression of diversity of opinion, especially in the local media where these giant media own cable,

newspapers, television stations, etc. Finally, and considering the famous phrase of Marshall McLuhan, "the medium is the message," an important question arises: "Does the one who controls the medium control the content as well?" The answer would have to be yes, one can control the messages by owning different and powerful kinds of media, and this could be seen as a form of violation of Article 19. Therefore, one could see the problem of conglomerate media ownership as threatening at least the process of sending, receiving, and imparting information, if not more aspects of communication. Jean d'Arcy pinpoints this issue by claiming: "All these are but signs and symptoms veiling a profound revolution, for today we live a revolution of communication . . . the problem of the reception and interpretation of [the] message, is indeed at the heart of our major preoccupation; communication has become our task" (1977b, p. 47).

Are there any Possible Solutions?

What would be a good solution in the above-mentioned cases? The blind application of the international declaration of the right to communicate and freedom of speech? Or is the 'slippery slope' argument a possible solution? That is, in the pornography debate, if the banning of pornography is feared as the beginning of an unstoppable slide down the slope of increasing censorship, then is the solution to allow pornography as communication, leaving individuals free to make their own choice to accept or reject it? Or should these materials be banned for the protection of those who might be harmed by them? What other solutions are available? Here, it is proposed that in order to be able to answer these problematic questions, a better understanding of what makes 'anything' a 'right' is first needed. The following is a discussion and a trial to discover some clues for possible answers.

What is a Right?: A Provisional Conceptualization

Why do humans, from childhood to adulthood, claim that they possess certain rights? For instance, why does a young child claim the right to stay up late to watch television? What makes an activist believe that the struggle to publish a book on human rights in a totalitarian regime is worth imprisonment, or even death? What makes such rights desirable and worth the argument and pain that often accompanies the struggle to gain them? Several important questions arise in the context of this discussion, specifically, of the right to communication (RTC) and whether communication can be considered a basic human right. What is a right? Where do rights come from? What makes a right desirable? On what basis can it be argued that communication is one of these human rights? In fact, there are various answers to these questions, most of them having to do with issues of morality, ethics, freedom and equity.

Historically, the idea of a human right is thought to have evolved through three 'generations' of human rights. The first generation covers what are called the negative freedoms, mainly the basic rights of autonomy and security against arbitrary powers in society; England's Habeas Corpus Act of 1679 is a good example (Stoilov, 2001, p. 88). The second generation includes the economic, social and cultural rights that saw development and recognition particularly in the late nineteenth and early twentieth centuries. People at this time realized the importance of certain rights pertaining to the quality of their lives in developed and modern societies. The third generation, which evolved mainly in the twentieth century, emphasized rights to concepts such as a clean environment, development, and peace, which in earlier centuries were seen as 'luxurious' or 'undiscovered.' From this perspective, certain basic rights had been realized, and it then became possible to focus on other levels of rights. Stoilov argues that after the realization of these third generation rights, and given the continuous development in societies in recent years,

one could predict that new rights will eventually be included among the human rights (2001, pp.88- 89). In fact, many have argued recently in favour a fourth generation of human rights that would include, for example, gay and lesbian rights. These, in turn would include their right to marry, which is not covered by Article 16, section 1 in the Universal Declaration of Human Rights:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Defining the concept of a 'human right' is not an easy task for several reasons. The first pertains is the very breadth of rights that are recognized or proclaimed, which vary from fundamental, inalienable rights, to political, civil, cultural, and social rights. Secondly, because human rights are understood within the context of a set of social, political, economic and cultural concepts, they can be regarded, from different perspectives, as absolute and universal on the one hand or merely socially constructed on the other. In addition, different international, national, regional, and local treaties, conventions, and declarations have proclaimed a number of human rights. In this thesis, analysis and discussion are focused on the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the UNESCO Media Declaration, the international treaties that directly address the right to communicate.

Despite the difficulty in defining 'human right,' a number of scholars have offered various explanations from different perspectives. A good starting point in this context is Baehr's succinct characterization: "Human rights are not absolute" (1999, p. 1). By this he points, perhaps, to the fact that regardless the number of conferences held or treaties, regulations, declarations, and covenants enacted since the adoption of the original Universal Declaration of Human Rights after WWII, one can still claim that the fundamental human rights are neither universally nor

identically practised. That is, neither in every society nor in the same way, but instead, these rights are conceived differently according to the norms, values, traditions, culture, and so on of each society. Baehr's conception of human right, in fact, emphasizes agreement on values: "Human rights are internationally agreed values, standards or rules regulating the conduct of states towards their own citizens and towards non-citizens" (1999, p. 1). Donnelly's similar interpretation adds the dimension of social practices to the recognition of values: "Human rights are not just abstract values, but a set of particular social practices to realise those values" (1999, p. 79). This interpretation is significant in the context of understanding and explicating what a right is and proposes a distinct method for its realization in real life, not only theoretically or in language. It is undeniable that despite their various legal languages, human rights are still violated in many places around the world.

In this context, it is useful to clarify the difference between 'right' and freedom. Aldo Armando Cocca, Ambassador of Argentina and a member of the MacBride Commission during the 1970s, explains that, from a legal perspective, 'right' encompasses a broader scope than freedom: "'Right' has an extremely wide meaning, according to the different legislations and to the way in which it is exercised. It implies abiding by a norm, it is something to be complied without any qualifications, deviations or hesitations" (1982, p. 1). From this definition, it can be understood that a 'right' implies collectiveness or the exercise of a given freedom in a given society, while 'freedom' carries a sense of individuality or the possibility of options or choices beyond collectivity. Viewed in this manner, a right can initially have two main characteristics: the first is the power to exercise a given freedom; the second, the commitment of others not merely to respect this right but rather to allow its practice. For Cocca, freedom is "the implementation of universal laws in a given place and time," but, he says, "while 'freedom' implies the power of acting without

any interference, 'right' means that plus the obligation of others to allow that action" (1982, p. 1,2).

Other scholars view human rights from different perspectives, adding other dimensions to the concept. Cranston (1973), for example, offers a classic definition that concentrates on the 'universal morality' aspect:

A human right by definition is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human.
(quoted in Renteln, 1990, p. 47)

Also, Rendel, in his book *Whose Human Rights?*, asserts the importance of morality, but adds religiousness as an important dimension:

Human rights education has also a moral dimension, as well as a cognitive content. The values of human rights accord with many of the values of most religions, so that many traditional religious beliefs can be linked with at least some modern notions of human rights.
(1997, p. 179)

Alison Renteln offers yet another interesting perspective on the meaning of human rights. Focusing on the universality of this concept, he sees its content as based on a combination of four sources: (1) divine authority, (2) natural law, (3) intuition, and (4) ratification of international treaties. Renteln believes that none of these four bases provides full justification for all human rights; moreover, he opposes the natural theory of human rights. "The most misleading source has been natural law because there is an assumption that natural rights, which have become associated with human rights, are self-evident. The rights are held by all individuals simply by virtue of their status as human beings" (1990, p. 9). Andrew McNitt also discusses the universality perspective in his analysis of human rights. He holds that human rights should be treated as a multidimensional phenomenon, and that approaching the concept in this way will avoid the development of a single, narrow definition (1988, p. 99).

In light of the above discussion, it can be suggested that the concept 'right' exists in 'positive law,'¹⁸ that is, in an article, a clause, or a covenant that states a given right—for example, that everyone shall have a certain right to expression, or to movement, and so on. Taking the example of the right to freedom of speech, one finds that there are hundreds of regulations and various legal systems that state this right. From a critical perspective, it can be seen that this law does not discriminate against various persons or groups having the same right; at the same time, however, these laws spell out the violations of the right, such as hate speech or propaganda that might be defended by certain groups as their right to communicate (it could be argued that these practices are not typically communication).

Alternatively, rights could be categorized into two main types: moral and legal rights. The first type includes those socially independent rights that are sometimes perceived as natural or human, those claimed "just by virtue of our status as human beings" (Lyons, 1984, pp. 111-112). The second type of rights, legal rights--including both rights that are protected by the law and proclaimed during dealings with the different laws--require a degree of social recognition or enforcement. This is the Utilitarianism position that rights are never separate from the social context. In addition, conceptualizing 'rights' is not easy given a degree of normative nature, and the fact that even in the same society the standards of morality may vary among different groups. It is instructive to analyze the relationship between the concepts of right and duties -- that constitute the link between morality and rights. "The existence and irresolvability of diversity and

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¹⁸ There are two categories of rights: positive or legal rights and negative rights. Positive rights are enforced and maintained by different laws or regulations and require assistance from others. Negative rights, referring to the corresponding entailment of other persons for non-interference, may involve moral, natural or human rights. Raymond Geuss argues that the first category includes objective rights; the second, subjective ones. The difference between these two categories, in his opinion, is that one could claim an objective right with the expectation that other members of the society would respect and not violate it, and that a power exists in the society to guarantee and protect it. This is not the case with a subjective right (which might be shared with animals for instance) (2001, pp. 133-135).

disagreement in ethics," Waldron writes, "pose exactly the same difficulties for talk about moral rights—no more and no less—as they pose for talk about moral duties, rules, principles, and values" (1984, p. 5).

Perhaps the most comprehensible and plausible standpoint in conceptualizing a 'right' on the one hand, and helping to answer the core question of this thesis on the other, is the significant contribution of the American jurist Wesley Newcomb Hohfeld. Therefore, it may be useful at this point to explain Hohfeld's interpretation of what a right is. If it is unreasonable to assume that someone can claim that s/he holds a right and others, accordingly, are committed not to violate it, can a young child, then for instance, claim a 'right' to watch television all day and night?

In his landmark essay, "Fundamental Legal Conceptions as Applied in Judicial Reasoning" published in the Yale Law Journal, 1913, Hohfeld argues that 'rights' imply some corresponding duties on other persons, first not to interfere, and second to assist and cooperate. He says, as Kramer interprets: "Being endowed with a right (also conceived as a 'claim') consists in being normatively protected against someone else's interference or in being entitled to someone's else's assistance or remuneration, with regard to a certain action or a certain state of affairs" (1997, p. 15).

Therefore Hohfeld proposes 'the table of jural correlatives,' to refer to different concepts: Right, Privilege, Power, and Immunity as one axis, and No-Right, Duty, Disability, and Liability as the other. Figure (1) is created here to clarify his table of jural correlatives:

Figure (1): Hohfeld's Table of Jural Correlatives

The first correlative relationship is the '*Right-Duty*' relationship. If someone has a right--'claim-right' in Hohfeld's terminology--on the one hand, this is correlated with a 'duty' from others on the other hand. For example, if X is claiming for his/her right not to be tortured in a prison, it follows that the prison's officials Y have a duty not to torture him. Then, a question can be proposed here: If X is sending a letter to the editor of a daily journal, can he claim for his/her right to publish it, hence, implying that the editor Y has a duty to publish it? In other words, can communication be one of these strong claim-rights in the Hohfeldian perspective?

A duty or a legal obligation is that which one ought or ought not to do. 'Duty' and 'right' are correlative terms. When a right is invaded, a duty is violated.

(Hohfeld, 1913, reprinted in 2001, p. 13)

Correspondingly, one could see that a violation of right is certainly an omission of duties, as Kramer suggests: "anyone who violates a right has thereby failed to live up to the imperatives of a duty. When a person's neglecting of a duty becomes known, it ordinarily or as something more violently coercive" (1997, p. 16). The position proposed by Hohfeld can be understandable here especially with the acknowledgement of the continuous changes in societies and the time variable. If the '*Right-Duty*' relationship--or as may be modified in this thesis to be the '*Right-Responsibility*'--exists, humans will have considered a balance between their claims

for their rights and, at the same time, the responsibilities of others not to violate their rights, and probably to morally protect them.

Hohfeld was motivated by his belief that the concept 'right' has been misinterpreted--by lawyers, advocates of rights, and so on--and therefore caused many contradictions in understanding. Therefore, he proposes a clear distinction between the concepts of 'right' and 'liberty or privilege:'

The importance of keeping the conception of a right (or claim) and the conception of a privilege quite distinct from each other seems evident; and; more than that, it is equally clear that there should be a separate term to represent the latter relation. No doubt, . . . it is very common to use the term 'right; indiscriminately, even when the relation designated is really that of 'privilege.'

(Hohfeld, 1913, reprinted in 2001, p. 14)

The second correlative is the '*Privilege-No right*' relationship. This relationship is to refer to the absence of a 'duty.' Hohfeld clarifies that "a privilege is the opposite of a duty, and the correlative of a 'no-right'" (1913, reprinted in 2001, p. 14). When someone has a privilege to do something, this means that s/he is free from a duty to avoid it. At the same time, if privilege to refrain from doing something is freedom from a duty to undertake this action (Kramer, 1997, pp. 16-17).

To distinguish between these two concepts, right and privilege, let us consider two cases. First, if X has a privilege to worship what s/he believes in, this means that Y is under 'no duty' towards X in exercising his/her privilege or freedom and has no obligation to help X doing this action. Differently, if X holds a claim-right for a health care, for example, Y, the medical system in this case, is obligated to assist and provide X with health-care services. A timely question here can be: What about communication? Under which relationship can we classify its practice, the liberty or the claim-right?

The third relationship is the '*Power-Liability*' correlative. Power is a cooperative control that may be imposed on others. Therefore if X possesses a

power, s/he would possibly change or alter legal relations, thus others would be responsible to let X practice his/her power. Hohfeld clarifies that liability is not just a legal duty; it is simply a 'responsibility':

The words 'debt' and 'liability' are not synonymous, and they are not commonly so understood. As applied to the pecuniary relations of the parties, liability is a term of broader significance than debt . . . liability is responsibility.

(Hohfeld, 1913, reprinted in 2001, p. 27)

Central to the core question of this thesis, this point is crucial and may lead to insightful answers. It clarifies that 'liberty' is a sole or individual practice of X doing something, while both 'claim-right' and 'power' require a 'collective' performance by others, and accordingly, X can do what s/he wants. In this case, education, for example, can be considered a 'right,' ever since X cannot claim for his right to education unless others do not interfere with his/her choice to education, help him/her to practice this right, and express responsibilities towards him/her. Once again, is this case applicable to communication practices?

'*Immunity-Disability*' relationship is the fourth and final correlative in the Hohfeldian connection, where he argues that immunity occurs with the existence of changes in power relations and the freedom from legal power or control undertaken by others. For example, if X holds immunity against doing something, i.e., free from any legal power, thus, Y will be considered under a status of disability to control this freedom. Considering the case of taxes, if a person X, under specific conditions or for specific reasons, can obtain an exemption or immunity to pay taxes, therefore Y, Federal taxes officials in this case, will be disable to enact laws of taxes on X. Is there any possibility for communication to represent such a case?

Although Hohfeld's correlative relationships represent a powerful position on human rights, a minor objection of the 'claim-right' versus 'duty' relationship is introduced here. It is argued here that a 'duty' is sometimes expected even without a

'right' is claimed for. Consider the duties towards children or handicapped people who cannot claim for their several rights. Interestingly enough, some advocates for the rights of animals take the same standpoint. To explain further, there are two different theories about whether children or animals possess 'rights' even though they cannot claim them. First, the 'Interest Theory' confirms that: "Necessary but insufficient for the actual holding of a right by X is that the right, when actual, protects one or more of X's interests." Second, the 'Will Theory' proposes that: "The mere fact that X is competent and authorized to demand or waive the enforcement of a right will be neither sufficient nor necessary for X's holding of that right" (Kramer, 2001, p. 28).

Based on this argument, it is clear that, according to the 'Will Theory,' children, handicapped, incapable humans, and even animals do not possess any rights, as they are incapable of making decisions or expressing their preferences and wishes. In contrast, the 'Interest Theory' considers them, Kramer explains, as 'rights-holders,' that preserve their well-being and are superior than their exercise of their freedom of choice: "[The Interest theory's main focus is] on the preservation of well-being rather than on the exercise of choice enables it to leave open the possibility of ascribing legal rights to animals and dead people and mentally incapacitated people. . . In this respect, the Interest Theory is superior to the Will Theory" (2001, p. 30).

Accordingly, it is proposed here that one of the critical parameters in conceptualizing an action, whether to be a 'right' or not, is the reciprocal relationship between an 'interest' and a 'duty' or 'responsibility.' The child can claim for his/her interest to watch TV all day and night, meanwhile parents, both legally and morally, have a duty towards him/her not to let him/her watch TV endlessly. Legally, a mother is responsible for protecting and ensuring the mental and physical safety of her daughter or son and if she violates her daughter or son's rights to be fed, for

instance, she will be committed guilty by authorities. As well, she is morally responsible for keeping her daughter or son safe and healthy. Therefore, the mother's duty is superior on her daughter or son's interest in watching TV -- putting it in another way, the child's interest in fact what his/her parent performs rather than what s/he considers as best for him/her.

Contrary to the previously mentioned perspective, Mackie in his *Can There be a Right-Based Moral Theory?* argues that 'right' is more fundamental than duty:

Rights have obvious advantages over duties as the basis and ground of morality. Rights are something that we may well want to have; duties are irksome. We may be glad that duties are imposed on others, but only (unless we are thoroughly bloody-minded) for the sake of the freedom, protection, or other advantages that other people's duties secure for us and our friends, the point of there being duties must lie elsewhere. Duty for duty's sake is absurd, but rights for their own sake are not.

(1984, p. 171)

It is worthy here, in context of Mackie's conceptualization, to emphasize the significance of the 'interest' or the 'want' variable for him in determining whether an action can be considered as a 'right' or not. For him, possessing a right is more important than being obliged by a duty or responsibility. Saying that, Mackie takes an 'egotistic' position, especially when considering the social context and the more balanced Hohfeldian position. According to Mackie's statement, a daughter or a son can claim for her/his right to watch television all day and night, while a mother's duty and responsibility for her child's health and performance at school comes in a second level of importance. What if the persistent question of this thesis arises here again? Is it possible to consider the interest of X to publish pornographic materials claiming for his/her right to communication and predicting others to have a 'duty' to let him/her publish these materials? What can possibly be the appropriate position: Mackie's or Hohfeld's? Or, is there a third position?

In this respect, it is claimed that reviewing the literature confirms that the origins of the concept 'right,' especially with regard to the core theme of this thesis—communication, are extremely ambiguous and uncertain.

My right to life is not a right against anyone. It is my right and by virtue of it, it is normally permissible for me to sustain my life in the face of obstacles. It does give rise to rights against others in the sense that others have or may come to have duties to refrain from killing me, but it is essentially a right of mine, not an infinite list of claims, hypothetical and actual, against an infinite number of actual, potential, and as yet nonexistent human beings. . . . Similarly, the right of the tennis club member to play on the club courts is a right to play, not a right against some vague group of potential or possible obstructors.

(quoted in Feinberg, 1979, p. 90)

Inconceivably, McCloskey suggests that X claims for his/her right and considers his/her possession of this right is not against Y, or anyone. Theoretically, X may claim for his/her right without being against Y or anyone, such as the case of people's rights to education, health, marriage or having a family. However, putting the 'right' in this oppositional relationship is inappropriate. A better understanding can be derived from Hohfeld's correlative relationships, i.e., X can claim for his/her right to life, and accordingly Y is endowed by a duty to respect X's claim, not to interfere, to cooperate and support his/her practice of that right. Also, McCloskey's argument that a claim for a right is similar to playing tennis in a club is, again, a sort of undermining the importance of the 'right' concept. Basically, playing tennis in a club, requires a membership, therefore it is not a right for everyone, instead, it can be considered more as a privilege according to Hohfeld's theory. If X has a privilege to play tennis in a club, Y is not necessarily to be under a duty to assist him to play.

Still, Joseph Raz (1984) provides another comprehensible perspective on the nature and applicability of the concept of 'right.' He argues that a right may exist and claim its 'collectiveness' under three main conditions: First, a right should be in the interest of 'humanism', second, a right should be collective, shared and a 'public good' for all members of the group, and third, the interest of a single member of a

group justifies the other members being bound by duty to act in that interest, which explains why "though the existence of the right does not depend on the size of the group, its weight or strength does" (p. 194).

Drawing from the foregoing overview of scholarly conceptualization of right, the position adopted here is to suggest that both a claim to a right, and a duty, obligation or responsibility toward it, could be derived from many different sources. For example, the natural rights school believes in the natural origin of fundamental rights and freedoms: men are born by nature free. Similarly, there are other possible origins of right and duty, such as God or divine, utility, morality, positive laws, and conscience. As X can claim that God is his/her creator, God also gave him/her the right to free choices in his/her life, and nobody can take this right from him/her. Therefore, s/he can claim to free movement because the land is God's creation, claim for equality between him/herself and others as God creates all of humans equals. Furthermore, a claim to one right may be derived from another right, and it may also contain another sub-right, as Mackie suggests: "Rights can be derived from other rights in fairly obvious logical ways" (1984, p. 170).

To claim the right to publish a book, for example, one can argue that it is based on a right to impart and exchange information with other readers. At the same time, this right to publish a book includes other sub-rights, such as the right to freedom of expression. The reasons underlying an obligation towards others may be also one's conscience, or fear of God, or respect for the law, or fear of the punishment that may result from violation of the law, and so on. The activist who claims the right to publish a book on human rights builds his/her claim on conscience—his/her belief that it is important to help other violated peoples; or on his/her entitlement to publish as the practice of his right to freedom of expression. Wasserstrom says: "To have a right to anything is, in short, to have a very strong moral or legal claim upon it. It is the strongest kind of claim" (1979, p. 48).

Fundamentally, a right may exist even though there is a lack of liberties. Acknowledging, for instance, a right of a prisoner not to be tortured or humiliated does not deny the fact that s/he cannot practice other liberties, or sometimes face some constraints to these liberties: such as the liberty of movement. The main point to emphasize here is that a right not to be tortured does not weight in importance, at least practically, a right such as communication, unless every prisoner could claim for his/her right to have a telephone in his/her prison cell, just like his claim not to be tortured while s/he is in prison!

Furthermore, a right can exist also in different spheres or contexts, such as religious, legal, social, moral or political spheres. The bottom line of a claim for these rights is, as Shapiro suggests, "via mutual consent" (1986, p. 61) among individuals in a given society. In other words, a consensus among individuals on a right means that they are 'accepting,' 'respecting,' and consequently, and more importantly, 'obliged' to protect it from violations. For example, when a right to health care captures a wide-range consensus in a society, it is undeniable that everyone, including the state, is obliged to accept, respect, and protect this right from violation as well as to assist practicing it.

To come to the point, this study proposes a provisional conceptualization of a right and whether communication can be considered as one of these rights or not. Through adopting a Hohfeldian position, it may become clear that the reciprocal relationship between the right and the individual's duty to uphold the same right for others is important, the same as the right itself is. One could consider the following understanding of what responsibility is:

A man is responsible for his actions because in acting he acts in his won, unique situation, into which he may bring his fellows' interests, or he may not. He may withdraw from his place in society if he so desires, and thus his responsibility for what he does in society is a relation between his own situation and those of others who are affected by his actions.

(Roberts, 1965, p. 309)

In view of that, the following is an effort to find out, through a historical exploration of relevant texts, whether or not one can claim that all human beings, without any distinction, possess a right to practice communication, i.e., communication can be considered as one of the basic human rights or not. The next step is an investigation of the various and different philosophical and intellectuals' literature and positions, to figure out how they understand communication and whether they believe or not that it can be one of the basic human rights. More importantly, what do these philosophers and thinkers support: an absolute right to communicate, as 'stated' and proclaimed in the various declarations, whatever the results are; a restriction of some of these rights for 'good' reasons; or a different offered comprehensive and less problematic situation?

Chapter 3

Early Thought about Communication as a Human Right:

From Milton to Mill

If we think to regulate printing, thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to man. No music must be heard, no song be set or sung, but what is grave and Doric. . . And who shall silence all the airs and madrigals that whisper softness in chambers? . . . twenty licensors?

Milton

Freedom being the foundation of all the rest; as he that, in the state of society, would take away the freedom belonging to those of that society or commonwealth, must be supposed to design to take away from them every thing else.

Locke

I disapprove of what you say but I will defend to the death your right to say it.

Voltaire

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility.

Mill

The discussion in this chapter argues that the concept of a possible 'right to communication' is rooted in the ideas of certain thinkers of the so-called Age of Reason beginning in the seventeenth century. Through an analysis of the ideas of John Milton, John Locke, Voltaire, Montesquieu, Jeremy Bentham, and John Stuart Mill, I shall explore the development of the conception of the right to communicate.

John Milton: An early, uni-dimensional right to communicate

Before beginning any discussion of the core thinkers of the Enlightenment, it is helpful to look at the work of the seventeenth century English writer and poet John Milton (1608-1674). This thesis places him among those earlier thinkers who

claimed, at least, a limited or a uni-dimensional right to communicate. In his focus on pre-publication censorship as a violation of the right to communicate, he does not claim that this right is universal or "open and available for all." In examining his philosophy, two questions pertinent to this thesis come to mind: 1) Is freedom of the press or authorship the only kind of communication that could be assumed to be a right? 2) Is it only literate or educated person who can claim the right to communicate? If the answer to the second question is 'yes,' the question must then be asked, Was Milton against the 'universality' of this right? Below is a discussion of Milton's perspective on the right to communicate.

Milton was the most prominent thinker of his time to advocate freedom of the press and speak out against pre-publication censorship. Palumbo, in his exploration of the history of human rights, describes how Milton fought during the 1640s for liberty of the press and an end to government control over political and religious writings. For Milton, Palumbo says, "the right freely to seek the truth was absolutely fundamental to Christianity and human dignity, and it was totally mistaken to try to define it by law" (1982, p. 29).

Milton, in his landmark *Areopagitica*, published in 1644, explicitly conjoins communication and freedom of expression as an important right, for example, his connotation of the birth of ideas as the birth of a human being:

Till then books were ever freely admitted into the world as any other birth; the issue of the brain was no more stifled than the issue of the womb.

(*Areopagitica* 1644, reprinted 1951, p. 13)

In his speech addressed to the English Parliament, Milton defends several types of freedoms and liberties that combine a possible right to communicate, he says:

If it be desired to know the immediate cause of all this free writing and free speaking . . . it is liberty, Lords and Commons. . . liberty which is the nurse of all great wits; this is that which hath rarefied and enlightened our spirits like the influence of heaven. . . give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

(*Areopagitica* 1644, reprinted 1951, pp. 48-49)

Subsequently, he decries the 'violent,' 'physical,' hands of the licensor, pointing out that the licensor violates the author's human existence by attempting to constrain his mind through censoring the 'body' of the printed text-- the representation of his thought. Sherman explains:

The mind thinks itself into print, where its re-embodiment is the printed text. Physicality is conferred on agencies that would--unnaturally--turn the author back into a 'writer,' insisting upon his creating a manuscript that they can 'blot and alter,' disrupting the mind/press relationship. Such agencies attack the manuscript, redesignating the site of the authorial body from the printed text (where it should be, unmediated by hands), to an antecedent position coincident with manuscript production where there should be no body with no hands.

(1993, p. 325)

What Milton claims here, is one form of the right to communicate freely without frontiers, especially in his notion of the freedom to send ideas or messages from the mind through the media of the press and books -- the only communication media that existed during his time, an idea that refutes the accusations that Milton defended only 'printed' media of communication. The licensor as gatekeeper represented for Milton the frontier that stands between the human mind and the books or press as embodiments of the messages. That is why, as Sherman writes, "Milton demands that even though controversial books may be dangerous to the learned, 'those books must be permitted untouched by the licensor'" (1993, p. 326).

A closer look at two key passages in Milton's *Areopagitica* reveals how he conceives communication as a basic, even sacred, right:

I deny not, . . . to have a vigilant eye how books demean themselves, as well as men; and thereafter to confine, imprison, and do sharpest justice on them as malefactors; for books are not absolutely dead things, but do contain a progeny of life in them to be as active as that soul was whose progeny they are; nay, they do preserve as in a vial the purest efficacy and extraction of that living intellect that bred them I know they are lively, and vigorously productive as those fabulous dragon's teeth;. . . And yet . . . unless wariness be used, as good almost kill a man as kill a good book: who kills a man kills a reasonable creature, God's image; but he who destroys a good book, kills reason itself, kills the image of God, as it were, in the eye.

(*Areopagitica* 1644, reprinted 1951, pp. 5-6)

Not only the 'living intellect,' he declares, but all manifestations of human creativity alike would be regulated by pre-publication censorship. Here Milton is ironically questioning how a licenser can mute communication by his actions, through including different types of communication media, in addition to the books, such as music, dancing, and even windows and balconies:

If we think to regulate printing, thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to man. No music must be heard, no song be set or sung, but what is grave and Doric. There must be licensing dancers, that no gesture, motion, or deportment be taught our youth . . . And who shall silence all the airs and madrigals that whisper softness in chambers? The windows also, and the balconies, must be thought on; there are shrewd books, with dangerous frontispieces, set to sale: who shall prohibit them shall twenty licensors?

(*Areopagitica* 1644, reprinted 1951, pp. 23-24)

It is clear from these brief extracts that Milton equates the book with the highest function of the human mind, the faculty of reason; hence censorship, the physical control of the book, is equivalent in his view to violating the mind – a violation of the human right to freely exercise the God-given power of reason. It could therefore be argued that freedom of communication in the way Milton describes – the conception of communication as freedom of thought, freedom to disseminate and have access to information and ideas, and freedom from the discrimination of censorship -- were understood by him as an important human right.

But the question of universality in Milton must still be addressed. Willmoor Kendall makes a strong case that Milton did not believe in a universal or absolute right to communicate for all human beings. In *How to Read Milton's Areopagitica*, Kendall (1960) clearly argues, through a close reading of the *Areopagitica*, that although Milton supports freedom of thought and expression and rejects licensing, he does not reject censorship 'after' books are published.

A more important proof of Milton's non-universalistic stance on the right to communication in the *Areopagitica*, Kendall argues, is his differentiation between two

main categories of humans: the literate, learned and educated man like himself, who seek 'truth'; and the ordinary person who is concerned only with day-to-day affairs and problems, such as taxes. Kendall argues that we can understand Milton's true attitude by reading his texts more closely, between the lines. He takes Milton's famous phrase, "Give me the liberty to know, to utter, and to argue freely, according to conscience, above all liberties," and gives us the following reading: "Give me [that is, us] the liberty [what I want for myself, what I am prepared to do battle for, is my liberty and that of other learned men] to know, to utter, and to argue freely, according to conscience" (p. 447). Milton, Kendall explains, differentiates between individuals according to an important communicative criterion, that is, the mastery of rhetoric or public speaking. Moreover, Milton refers in many places in his *Aeropagitica* to "we" and Englishmen, and frequently to "England." Kendall suggests that Milton did not differentiate only between literate men and others within England, but considered the right to communicate to be exclusive to "literate English men."¹⁹

Furthermore, Milton is raising the 'book-burning principle,' that also distinguishes between a 'good book' and a 'bad book.' A good book for him is one that teaches what is good, truthful, moral, and right, while a bad book teaches the opposite, that which is bad, false, immoral, and wrong. The point is that it is the duty of society to realize this difference and to act towards eliminating these 'bad books.'

With Kendall's arguments above, and a careful reading of Milton's own words, we can find his argument is certainly more convincing and comprehensible. He says hereunder that people should allow any kind of books, 'bad' and 'good,' in society,

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¹⁹ Kendall describes Milton's aristocratic character through an analysis of one of his famous verses: This is true liberty when free born man
Having to advise the public, may speak free;
Which he who can, and will, deserves high praise,
Who neither can nor will, may hold his peace,
What can better juster in a state like this? (Milton, as Kendall quotes, 1960, p. 456). Look to the words (who can and will) to describe the (free man) who can advise the public, while the words (neither can nor will) to describe others who cannot. Here, Milton describes the man who can speak freely and publicly as representing the true kind of liberty.

just like allowing good and bad meat in the market. A 'True Christian' would be able then to choose and judge what is appropriate from these ideas and thoughts and what is not:

To the pure all things are pure; not only meats and drinks, but all kind of knowledge whether of good and evil; the knowledge cannot defile, nor consequently the books if the will and conscience be not defiled. For books are as meats and viands are; some of good, some of evil substance. . . . Wholesome meats to a vitiated stomach differ little or nothing from unwholesome; and best books to a naughty mind are not unapplied to occasions of evil. Bad meats will scarce breed good nourishment in the healthiest concoction; but herein the difference is of bad books, that they to a discreet and judicious reader serve in many respects to discover, to confute, to forewarn, and to illustrate.

(*Areopagitica* 1644, reprinted 1951, p. 16)

It is clear from this passage that he is claiming that all books have to be published 'uncensored,' but once it is determined they are 'bad,' they should be removed, burnt, or confined. Moreover, while he asserts the importance of having both bad and good books in order to have choices, then confining bad books, he is also demanding not to kill good books.

As for Kendall's argument concerning Milton's distinction between literate and ordinary men, it could be said first that he is mainly concerned with the idea of truth, just like any philosopher who seeks to achieve a high degree of morality in human action. This knowledge for him is therefore not available for all ordinary people, but only for those who appreciate and esteem wisdom. Moreover, he did not mention in his text that if the works of 'literate men' proved to be 'false' or 'bad', they should not be confined or burned. Secondly, Kendall's argument can be refuted logically by noting that Milton was simply addressing the English Parliament, hence, it is comprehensible to include in many places of his *Areopagitica* the notion of 'English men.' An assertion on these two points is hereunder, where he logically justifies his position against censorship of any kind, just like life that embodies evil and good, knowledge must provide humans by both kinds 'good' and 'bad':

Good and evil we know in the field of this world grow up together almost inseparably; and the knowledge of good is so involved and interwoven with the knowledge of evil, and in so many cunning resemblances hardly to be discerned, . . . It was from out the rind of one apple tasted, that the knowledge of good and evil, as two twins cleaving together, leaped forth into the world. And perhaps this is that doom which Adam fell into of knowing good and evil, that is to say of knowing good by evil.

(*Areopagitica* 1644, reprinted 1951, pp.17-18)

A final note concerning Milton contribution to the idea of communication as a human right is his early one-dimensional perspective of communication. Although, he defended freedom of thought, speech, press, and authorship, he regarded this right universal only 'before publishing' one's ideas and opinions on one phase, rather, on the post-publication phase. In other words, he allows communication to be censored, confined, or even burnt under specific conditions:

As for regulating the press, let no man think to have the honor of advising ye better than yourselves have done in that order published next before this, that no book be printed, unless the printer's and the author's name, or at least the printer's, be registered. Those which otherwise come forth, if they be found mischievous and libellous, the fire and the executioner will be the timeliest and the most effectual remedy that man's prevention can use.

(*Areopagitica* 1644, reprinted 1951, p. 55)

He illustrates the same idea of uni-dimensional right to communicate, setting up his appropriate punishment for 'bad' books, he says:

Had any one written and divulged erroneous things and scandalous to honest life, misusing and forfeiting the esteem had of his reason among men, if after conviction this only censure were adjudged him, that he should never henceforth write but what were first examined by an appointed officer, whose hand should be annexed to pass his credit for him that now might be safely read, it could be apprehended less than a disgraceful punishment.

(*Areopagitica* 1644, reprinted 1951, p. 32)

Milton's dedication to a 'spirit of free inquiry' led him to postulate a limited or a uni-dimensional right to communication. The following is a discussion on the philosophy of John Locke and what can he offer to the thought of communication as a human right.

John Locke: An absolute individual freedom

A key thinker, whose philosophy and ideas contained the seeds that flourished as the basic ideas of human rights in general, and the right to communicate in particular, was the English philosopher John Locke (1632-1704). Peter Schouls' *Reasoned Freedom: John Locke and the Enlightenment* (1992) explores the work of Locke, particularly his ideas of freedom, progress, rationality, and mastery, which represent core concepts in Enlightenment thought. Schouls, while acknowledging that Locke was indebted to the French philosopher René Descartes, one of the "Enlightenment's greatest forefathers," argues that Locke was "the Enlightenment's greatest progenitor" (1992, p. 3). For instance, Voltaire, one of this period's writers, wrote in his *Lettres sur les anglais*, acknowledging Locke and his contribution:

Never has there existed perhaps an intelligence so wise, so methodical, so logical. . . . Many philosophers have written romances about the soul of man. Locke appeared quite modestly and wrote its history. He has been the greatest influence since Plato.
(as quoted in, Nicolson, 1960, p. 274)

Generally, Locke's thought was influenced by different streams of thought that entered into his philosophy and ideas. Among these, were his religious faith and loyalty to Christianity, the political movement that concentrated on tolerance, sovereignty, and political power, and the impact of the modern liberal that concentrated on the rights and freedoms of thought, expression, speech and conscience (Creppell, 1996, pp. 232-233). His thought is mainly rooted in the area where religion and morality intersect. His understanding of morality is grounded firmly in the Bible, and he was skeptical about different opinions that could distort the practice of moral principles between humans. Creppell adds that the idea of liberalism arose initially as a way to resolve and overcome the religious intolerance and the resulting violence and oppression that were widespread during Locke's time (1996, pp. 200-201).

Many human rights theorists and thinkers believe that Locke's work constitutes the foundation of the modern conception of human rights. Historically, the idea of human rights, many scholars argue, is rooted in the Lockean principles of natural law and private property.²⁰ These principles, as seen hereunder, permeate Locke's work:

All men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, . . . the law of nature is . . . put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation.

(*Two Treatises of Government*, 1690, reprinted 1940, p. 458)

Central to his philosophy is the concept of 'freedom,' the main focus of any discussion of human rights, that every human being is free to act reasonably according to his own will and belief. Included here is an adept example Locke's perception of the concept:

Freedom being the foundation of all the rest; as he that, in the state of society, would take away the freedom belonging to those of that society or commonwealth, must be supposed to design to take away from them every thing else.

(*Two Treatises of Government* 1690, reprinted 1940, p. 463)

Moreover, Locke applied this concept to many aspects of human life in his concern with human understanding and how individuals exercise 'freedom of the will' in their lives. Concerning the principles of freedom and equality, Locke writes the following:

Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.

(*Two Treatises of Government* 1690, reprinted 1940, p. 470)

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²⁰ See, for example, Donnelly, who writes, "John Locke's *Second Treatise on Government* . . . presented the first fully developed natural rights theory fundamentally consistent with later human rights ideas" (1999, p. 82). See also, Bob Chase in *John Locke and cultural relativism*, argues: "Locke is both a founding theorist of empiricism and a political thinker devoted to the rational defense of individual property rights" (1997, p. 61).

One should note the occurrence of the Lockean exact words of 'by nature,' 'free,' and 'equal' in the American and French Declarations, followed by the Universal Declaration of Human Right, as proof of the impact of his standpoint on the idea of human rights in general and the right to communicate in particular. In his *Of the Conduct of the Understanding* (paragraph 12) for example, he asserts the importance of the 'freedom of the understanding' for all people as 'free humans' and 'rational creatures,' and rejects the imposition of ideas not our own, which constitute constraints on freedom of thought, speech and expression:

It is conceit, fancy, extravagance, any thing rather than understanding, if it [freedom] must be under the constraint of receiving and holding opinions by the authority of any thing but their own, . . . This was rightly called imposition, and is of all other the worst and most dangerous sort of it.

(Locke, as quoted in Schouls, 1992, p. 7)

A second concept, which Locke emphasizes as one of the core human goals, is the idea of the personal 'mastery' of one's own mind, an idea that is reflected in the terminology of self-determination, personal will, and rationality that is employed by many of the Enlightenment philosophers. In many places in his writings, Locke asserts his belief in the power of human rationality and the individual's freedom to use and express that rationality without constraint by authoritative powers such as church and state. For Locke, freedom, rationality, liberty, and mastery could not be achieved without a given medium of communication, that is, the holding and exchanging of ideas and opinions. Hence, human liberty begins with mental freedom and the right to communicate, as clarified in his *Essay Concerning Human Understanding*:

The other fountain from which experience furnisheth the understanding with ideas, is the perception of the operations of our own minds within us, as it is employed about the ideas it has got; which operations when the soul comes to reflect on and consider, do furnish the understanding with another sets of ideas, which could not be had from things without; and such are perception, thinking, doubting, believing, reasoning, knowing, willing, and all the different actings of our own minds.

(1690, reprinted 1940, p. 355)

In addition, Locke conceives knowledge as attainable by humans through the exercise of the 'natural faculties' of the mind:

Careful reflection, thought, and attention by the mind is needed, in order that by argument and reasoning one may find a way from perceptible and obvious things into their hidden nature. . . . [H]uman beings besides are possessed of arms and hands with which they can dig these out, [gold and silver] and of reason which invents machines.
(*Essay on the Laws of Nature*, as quoted in Kramer, 1997, p. 110)

A closer investigation of Locke's work is needed to reveal his conception of communication, and his argument for communication as a basic human right. First, it is necessary to highlight the significance of communication, that is, the sharing of ideas between people, in Locke's philosophy. At the same time, communication for Locke also describes the exchange of ideas using different media:

The ideas we get by more than one sense are of space or extension, figure, rest and motion; for these make perceivable impressions, both on the eyes and touch: and we can receive and convey into our minds the ideas of the extension, figure, motion, and rest of bodies, both by seeing and feeling.
(*Essay Concerning Human Understanding* 1690, reprinted 1940, p. 363)

The important question here is whether Locke proposed freedom of speech? It is clear from his arguments for individual liberty and freedom of thought that he does; he would not separate freedom of thought from freedom of expression or sharing of thought, that is, communication; and that he would include both in the idea of the right to communicate. Locke defended individual liberty and freedom in many ways. In considering one's production of ideas, signs, and language in whatever form as property, then anyone who tries to control or eliminate this property can be considered as violating one's rights. Locke realized that individuals, and individuals alone, can preserve and maintain their own freedoms and rights: "Knowledge can serve as the basis of liberation: individuals see things as they are for themselves, not as they are painted by church, Crown, or custom" (Peters 1999, p. 82). In another part of his *Essay Concerning Human Understanding*, Locke clearly defends freedom

of expression and the right to communicate. As Peters explains (quoting Locke), "Language is 'the great instrument, and common Tye of society' that God gave to humans, so they could be sociable creatures" (1999, p. 83). Considering Locke's conception of freedom of speech and the right to communicate as discussed above, it is likely that he was also defending the free exchange of ideas using any medium in the society. In his words, "Language makes the inner life of ideas . . . publicly accessible" (as quoted in Peters, p. 83).²¹

Collectively, one could argue that Locke's true belief in human mastery, rationality, and will led him to advocate an absolute and universal right to communicate, he asserts that "general and universal belong not to the real existence of things; but are the inventions and creatures of the understanding, made by it, for its own use, and concern only signs, whether words or ideas" (*Essay on Human Understanding*, 1690, reprinted 1940, p. 410).

Montesquieu: A Legal Realization of Liberties

Among the contributors to the realization of a possible right to communication is the political thinker Charles de Secondat, Baron de Montesquieu (1689-1755). His philosophy is mainly embodied in his landmark *Esprit des Lois* or *The Spirit of Laws*. Initially, Montesquieu differentiates between two kinds of liberties, political liberty and philosophical liberty. First, political liberty for him needs a democratic legislature and a judiciary that would uphold 'positive laws' guaranteeing it for all citizens equally and without distinction. The starting point for him is the human will conjoined with reason to form a state of law that regulates freedom:

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²¹ A close examination of Locke's conception of 'language' in the *Essay* gives a sense of how he regards it as an important medium of communication: "Language is 'the great conduit'" (quoted in Peters 1999, p. 84). Other studies, such as that of Bob Chase (1997) argue in favour of the idea that Locke was a defender of 'linguistic relativism,' as he affirms first the non-divine origins of language, referring to 'man' as the 'language creator' on the one hand, and the individuality of language on the other. Therefore, Chase states, Locke is arguably implying the differences between humans in expressing their ideas through different 'linguistic' formats (p. 72).

In What Liberty Consists. It is true that in democracies the people seem to act as they please; but political liberty does not consist in an unlimited freedom. . . liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will. . . . *Liberty is a right of doing whatever the laws permit*, and if a citizen could do what they forbid he would be no longer possessed of liberty [emphasis added].

(*Esprit des Lois*, 1748, reprinted 1949, p. 150)

We can infer from Montesquieu's words that he rejected the political absolute freedom or liberty. In other words, it is necessary for him to regulate this kind of liberty to ensure that all citizens enjoy the same freedom, and not only those with power. This is the main idea of a positive law. At the same time, Montesquieu did not believe that it should be left to the judiciary alone to oversee human liberty. He insists on communication between the two most important powers in society, the 'legislative' and the 'executive,' to ensure that liberty is protected. Montesquieu proposes a social structure that would include democratically elected representatives of the people to monitor the legislative and executive powers. But, he cautions, in such a state it is essential that the practice of liberty is balanced by respect for the law. He adds that applying an extreme form of equality could be as dangerous as not applying it at all:

Democracy has, therefore, two excesses to avoid: the spirit of inequality, which leads to aristocracy or monarchy, and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.

(*Esprit des Lois*, 1748, reprinted 1949, p. 110)

Philosophical liberty is the second kind of liberty for Montesquieu, which may be representing a possible right to communication. Through using this kind of liberty according to Montesquieu, people express their own opinions and thoughts freely, but at the same time 'agreeably' to the social system, he explains:

Philosophical liberty consists in the free exercise of the will; or at least, if we must speak agreeably to all system, in an opinion that we have the free exercise of our will.

(*Esprit des Lois*, 1748, reprinted 1949, p. 183)

In this context, Montesquieu, defending the right to communicate, criticized arbitrary authorities that punish people because they exercised their freedom of speech in other words, he was supporting an absolute right to communicate 'philosophical' ideas and not 'political' ones. At the same time, he believes that freedom of speech could not include this degree of lack of consideration for the society and its members:

Nothing renders the crime of high treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to interpretation; there is so great difference between indiscretion and malice; and frequently so little of the latter in the freedom of expression.

(*Esprit des Lois*, 1748, reprinted 1949, p. 193)

Montesquieu clarifies also that the acceptance of the satirical and ironic methods of writings and criticism is a key determinant of a government's degree of democracy and freedom. As in monarchies, these methods of writings -- though according to Montesquieu as ways of expressing own wills -- are absolutely forbidden and are punished by immediate death:

Satirical writings are hardly known in despotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. [While] in democracies they are not hindered, for the very same reason which causes them to be prohibited in monarchies; being generally levelled against men of power and authority.

(*Esprit des Lois*, 1748, reprinted 1949, p. 195)

Here, Montesquieu is providing a reason of why people, when expressing their opinions freely, should remain within the social system's moral boundaries. For him, the human being is a social creature that has to respect social and moral rules in order to gain the acceptance of the public:

Man, a sociable animal, is formed to please in society; and a person that would break through the rules of decency, so as to shock those he conversed with, would lose the public esteem, and become incapable of doing any good.

(*Esprit des Lois* 1748, reprinted 1949, p. 30)

Hence, one could derive from the work of Montesquieu two important factors that contribute to the right to communicate: the existence of a given body of regulations that can protect and maintain equality, rights and freedoms; and the importance of a democratic environment where people can exercise the freedom to choose representatives who will in turn contribute to the law and the protection of liberty. Although acknowledging his contribution to this legal realization of the right to communication, one must criticize his differentiation between the two kinds of liberties (political and philosophical) and question why he allows thinkers to freely express their opinions and criticism in civil realm, while he regards the same freedom as breaking laws when criticizing political system.

Voltaire: An absolute right to communication

Voltaire's (1694-1778) skepticism offers a good explanation of diversity and normative standards in applying rules, as he initially questions everything rationally motivated by a sincere belief in the liberty of the mind and persons.

Voltaire is considered to be one of the greatest advocates for an absolute right to communicate. In one of his famous political writings *The ABC Dialogues: Seventeen* imaginary conversations occur between three persons of different mental and philosophical positions: *A*, the Englishman, free, but confident personality, *B*, may be Voltaire himself, and *C*, a Dutch man. These conversations dealt with the different 'controversial' topics that Voltaire usually considers. They covered conversations on law, religion, freedom, toleration, war, and legislations among others.

Here, two of these conversations require further analysis as they are found to be crucial in the right to communication debate proposed in this thesis. The first is the ninth conversation on the *serfdom of minds*:

B: What do you think about slavery of the mind?

A: What do you mean by slavery of the mind?

B: I mean that practice whereby the minds of our children are shaped just like Caribbean women knead the heads of their children; whereby their mouths are first thought to mumble nonsense which we ourselves ridicule; whereby they are made to believe nonsense as soon as they start believing . . . lastly, the practice whereby laws are passed stopping men from writing, talking and even thinking.

(Voltaire, 1768, reprinted 1994, p. 139)

It is clear from this except that Voltaire highly esteems freedom of the mind as the primary medium of communication. He is criticizing and attacking different forms of censorship and violations of the people's right to know, and communicate. He considers educating, speaking, and believing 'nonsense' as one form the violation of human mind. Then, he, contradicting Montesquieu, says that in order to have a certain right to communicate our own ideas, communication should not be subject of the laws that regulate authorship, printing, and speech among other communication media.

Evidently, in passages such as the following, Voltaire attacked those who argued for censorship of books that contained controversies and could threaten religion or political power:

In general, we have as natural a right to make use of our pens as of our tongue, at our peril, risk, and hazard. I know many books which have bored their readers, but I know of none which has done real evil. Theologians, or pretended politicians, cry: "Religion is destroyed, the government is lost, if you print certain truths or certain paradoxes. Never dare to think, till you have asked permission from a monk or a clerk. It is against the public welfare for a man to think for himself."

(Voltaire, in Salvadori, (Ed.), 1972, p. 64)

Regarding freedom of communication, one can argue that Voltaire was one of the greatest advocates of the liberty of the press during the eighteenth century, a conviction derived from his belief in personal liberty given by nature. For him,

freedom of speech is absolute. He believes that humans should enjoy speaking their ideas through their own will without any constraints. The conversation progresses:

C: But it's a good thing that everyone does not speak his mind. You should not insult by what you write, or what you say, those laws under whose protection you enjoy your wealth, your freedom, and all the comforts of life.

A: Of course not, and reckless traitors must be punished; but because writing can be abused, must men be forbidden to do it? . . . people are robbed in the streets, must they be forbidden from walking in them because of that? People say stupid and insulting things, but must speaking be forbidden?

(Voltaire, 1768, reprinted 1994, p. 140)

He continues highlighting his thoughts through his imaginary dialogue, arguing that people cannot simply justify censoring all kinds of communication as a result of some 'bad' practices. The same idea has been asserted by Milton before; where he argued that every true Christian has to make his own choices when all books are available, 'good' and also 'bad.' Importantly, Voltaire through his imaginary Dutchman C is raising the 'toleration' principle in communication:

C: Everybody can write what they think in my country at their own risk; it's the only way to speak to one's country. If it finds that you have spoken foolishly, it boos you; if seditiously, it punishes you; if wisely and nobly, it loves you and rewards you . . . Without the freedom to explain what one thinks, there is no freedom among men.

(Voltaire, 1768, reprinted 1994, p. 140)

According to a recent study, Voltaire's thought, like that of many eighteenth-century intellectuals, emphasizes a general rejection of intolerance or violence in human actions, a position which could be seen as preliminary to the idea of human rights. In his *Traité sur la tolérance*, he "offers a catalogue of man's inhumanity to man," according to Bordas (2003, p. 15), and speaks out passionately for an end to this form of human brutality:

The right of intolerance is therefore absurd and barbaric: it is the right of tigers, and it is indeed hideous, because the only reason tigers destroy is in order to eat, whereas we have exterminated one another for a paragraph.

(Voltaire, as quoted in Bordas, 2003, p. 24)

From this excerpt, it is clear that Voltaire was supporting a universal right to free expression, evident in his criticism of intolerance. He believes that we, as human beings, are struggling with our differences and conflicts, but alternatively, he sees tolerance principle as the only solution:

Discord . . . is very striking lesson that we should pardon each other's errors. Discord is the great ill of mankind, and tolerance is the only remedy for it.

(Voltaire, in Salvadori (ed.), 1972, p. 68)

On Religion, is another example of Voltaire's conversations that is relevant in this historical exploration in the intellectuals thought about communication as a human right. In this conversation, Voltaire explicitly express his thoughts about a right to communicate one's ideas, thoughts, opinions even if they are representing criticism to political, and religious powers in society.

- C: Do you wish to see anything printed about government and religion?
- A: Whoever keeps silent on these two subjects, whoever cannot look closely at these two polarities of human life, is just a coward. . . our pen is the first weapon against tyranny, and our sword the second.
- C: What! Writing against the religion of your country!
- B: Ah! You're not thinking, Mr. C. IF the first Christians had not been free to write against the religion of the Roman Empire, they would never have established their own. . . Why do you want to deprive us of the freedom they had?
- C: God save me from outlawing that precious freedom! But I want to see some tact in it, as in decent conversation; everyone says what he thinks, but no-one insults the whole company.
- A: I am not asking you to insult society either, but to enlighten it. if a country's religion is scared. A hundred thousand volumes written against it will do it no more harm than o rock-solid walls by a hundred thousand snowballs.

(Voltaire, 1768, reprinted 1994, pp. 142-143)

In this dialogue, Voltaire makes a clear and strong position for a possible right to communication. First, he is asserting on the individual freedom to express his own

opinions and thoughts freely and without frontiers, then, he significantly suggests that this freedom should be channeled to the well-being of the whole society.

Based on Voltaire's previous interpretation, it can be argued that he, first, perceived the right to communication more widely than Milton to include freedom to think, express, publish, and criticize his ideas and thoughts. And second, he agrees on the importance and necessity of freedom and liberty in human life²².

The thoughts of great thinkers like Jean Jacques Rousseau (1712-1778) and Immanuel Kant (1724-1804) have been nourishing the thought about communication as human right indirectly through their assertion on the principles of democracy, freedom, liberty, equality, morality, and significantly duty.

Jeremey Bentham: Public opinion and freedom of expression

As a liberal utilitarian, Jeremey Bentham (1748-1832) was an important advocate for the right to communicate, as he saw public opinion, one form of communication, as an important tool to investigate and judge the actions of government. Therefore, he put on the press or newspapers the duty of informing the public of government policies and actions on the one hand, and mediating between the public and the government on the other. Hence, freedom of the press was a crucial point in his theory of the 'Public Opinion Tribunal' -- as Cutler's suggests -- as a social institution that judges and assesses the political powers in a society.

The significance of this contribution should not be underestimated. For example, from Bentham's conception of the 'Public Opinion Tribunal,' Jürgen

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²² Though considered as an advocate for human rights, he was accused of gender-based criticism from the feminist perspective, which could be seen as not believing in the universal right to communicate. Rivière (2001) says that his general evaluation of women's writings and literature was 'derogatory,' and that he was "far from complimentary towards women," whether they were intellectuals, artists, or celebrities. She claims that this was due to "his egocentric approach, and to the androcentric values typical of the male-dominated interpretative community of his day; he was insensitive to what really mattered to women and refused to connect with women writers" (2001, p. 6).

Habermas synthesized the importance and evolution of the public sphere as one form of "rational communicative critical discourse in a democratic environment" (Cutler, 1999, p. 323). Bentham's philosophy could be seen then, as relaying on the importance of freedom of the press and free expression among individuals of ideas, thoughts, and opinions on the one hand; and moreover, the type of communication, its direction, its uses and its flow on the other hand. Bentham does not accept that the political powers in societies should censor newspapers that inform the people of what is happening, nor does he accept that the direction of communication flow should be one way -- from authorities to the public.

In other words, Bentham first provides an early conception of the public sphere, and second, a larger and new rationale of why we, as humans might have a possible right to communication. As through the exercise of free speech and opinions in the public sphere, individuals can assess and criticize public policy and contribute positively in public life. Bentham's model of communication and democracy called for an open two-way channel. John Stuart Mill explains the significance of the public opinion and its role in society for Bentham:

[Bentham] exhausted all the resources of ingenuity in devising means for riveting the yoke of public opinion closer and closer round the necks of all public functionaries, . . . Wherever all the forces of society act in one single direction, the just claims of the individual human being are in extreme peril. The power of the majority is salutary so far as it is used defensively, not offensively -as its exertion is tempered by respect for the personality of the individual, and deference to superiority of cultivated intelligence.

(Mill, *Bentham*, 1867, reprinted 1987, p. 168)

Generally, a one-way system of communication would not represent Bentham's understanding of the right to communicate. While his 'Tribunal' has more than one function, the most important one is that all persons should enjoy the right of access to information. In other words, as a believer in rational progressivism, he regards public opinion as mainly formed within a system where there is a free flow of

information throughout the society. With such free access, Bentham believed, people would choose the opinion or the position that provided them with the "greatest happiness" (Cutler, pp. 340-343).

As for his approach to rights, however, Bentham rejects the possibility of moral or natural rights per se, claiming that they are 'nonsense'. He explains hereunder that the 'want' does not constitute a 'right':

In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights; a reason for wishing that a certain right were established, is not that right—want is not supply—hunger is not bread. That which has no existence cannot require anything to preserve it from destruction.

(Bentham, as quoted in Palumbo, 1982, p. 122)

Instead, he supports legal rights, as they are, in his point of view, representing a stronger obligation and protection than being vague, as the case of natural rights, he clarifies:

Natural Rights is simply nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of these pretended natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government can, upon any occasion whatever, abrogate the smallest particle.

(Bentham, as quoted Palumbo, 1982, p. 122).

Though Bentham could be regarded a contributor to the thought of communication as a human right through his early assertion on the public sphere's role in society, and the importance of the freedom of expression and the public opinion in society, it is argued that one could not justify the claim of a right to communication according to the 'greatest happiness' as he argues. Indeed, the quantitative method is not the only justification of a claim of a right. Finally, John Stuart Mill pays tribute to the significance of Bentham's doctrine speaking out for freedom of expression, and his leadership in the movement for the recognition of thoughts' exchange, which was

elaborated later as one of the basic human rights in his *Bentham*, published in 1867 in a collection of essays, *Dissertations and Discussions*, it is apparent that he esteemed Bentham as a philosopher and key thinker:

If we were asked to say, in the fewest possible words, what we conceive to be Bentham's place among these great intellectual benefactors of humanity; . . . we should say - he was not a great philosopher, but he was a great reformer in philosophy. . . He introduced into morals and politics those habits of thought and modes of investigation, which are essential to the idea of science; . . . It was not his opinions, in short, but his method, that constituted the novelty and the value of what he did.

(Mill, *Bentham* 1867, reprinted 1987, p. 138)

Strongly influenced by Bentham's philosophy (his father's friend), is our next thinker, John Stuart Mill. According to Mill's position, one can claim for his right to communicate if it meets with some specific prerequisite, the relative moral consequences of this right.

John Stuart Mill: Absolute right relative to greatest happiness

Another important contribution to the development of the concept of communication as an important right is that of John Stuart Mill (1806-1873). Mill offers a good explanation of the concepts of freedom and the rightness of action in many of his works. In his *Utilitarianism*, for example, he explains these conceptions, suggesting that the highest goal of freedom and moral action is to "promote the greatest happiness of the greatest number"; therefore, is stating a sort of normative standard of how humans can judge a specific action. Mill differs from Bentham, who distinguished pleasures only in quantity, in qualifying happiness or pleasures as higher or lower, superior or inferior, and thus more or less valuable. Following this approach, and in developing his own definition of morality, Mill constructed a theory of moral standards based on utility (which is useful in this context of discovering the right to communication); that is, utilitarian action as the basis for defining a

normative degree of morality. Mill, in his essay *On Liberty*, of which a large part is dedicated to the discussion of freedom of thought and expression, conceptualizes 'liberty' as a virtue necessary for happiness. As Gary explains, "The principle of utility is an evaluative and not an action-guiding principle and direct utilitarian policy is condemned as self-defeating. . . . Mill develops in that essay . . . a conception in which happiness has a link with liberty" (1988, p. 122). Thus, one could infer from this and the passage hereunder that Mill's approach to the right to communication could be seen as, the rightness or goodness of the action is determined by its consequences:

The morality of an action depends on its foreseeable consequences; its beauty, and its loveliness, or the reverse, depend on the qualities which it is evidence of. Thus a lie is *wrong*, because its effect is to mislead, and because it tends to destroy the confidence of man in man; it is also *mean*, because it is cowardly - because it proceeds from not daring to face the consequences of telling the truth.

(Mill, *Bentham* 1867, reprinted 1987, p. 172)

In other words, the weight of an action itself, whether it leads to a positive consequence or not, is not as important as the fact that, this action leads to the 'greatest happiness' for the greatest number of people on the one hand, and minimizes their harm on the other.

Mill argues for the freedom of thought as an inseparable human right, and at the same time promotes the importance of individuality, emphasizing the treatment of one's opinion as one's own 'personal property.' This apparently unlimited freedom is not, in fact, the freedom to express 'heretical' statements and opinions; rather, Mill suggests that freedom of thought and opinion could be channeled into the well-being of society as a whole through the individual ability to criticize the 'corrupt' government. This idea of democracy, where citizens can effectively express their opinions and get involved in social decision-making, includes the right of the minority to be heard:

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner, if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it.

(Mill, *On Liberty*, 1859, reprinted 1974, p. 76)

From this excerpt of *On Liberty*, one could see that Mill is advocating for individual right to free speech without constraint, through his/her right not to be silenced.

Paradoxically, is this statement advocating an absolute right to speech whatever the consequences are, or does Mill believe in this individual's capability of practicing a 'good' pattern of communication and speech, hence, he could not be silenced?

Mill in *On Liberty*, Chapter 4, asserts the right of individuals to seek their freedom; at the same time, however, they are bound by a moral rule and utilitarian guideline of bringing happiness and preventing harm to other individuals. In other words, individuals in practicing their rights should also respect the rights of others individuals to act differently and freely. In this context, questions of the relation between the individual and society inevitably arises:

Though society is not founded on a contract, . . . everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct toward the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights.

(Mill, *On liberty* 1859, reprinted 1974, p. 141)

Though much credit is given to Mill's contribution to the concept of liberty, critics argue that there is some difficulty in applying it practically: "Application of the Principle of Liberty . . . is useless in guiding policy about the restraint of liberty" (Gray, 1988, p. 123). Also Mill does not provide guidelines for an objective judgment of the liberty principle; he does not tell us, for instance, "how much liberty is required" or "how much harm prevention" (Gray, 1988, p. 124).

Although Mill's philosophy may be interpreted differently owing to confusion over the limits of a given right, he makes it clear that everyone as an 'individual human' is free to exercise freedom of speech under one condition, which is related not to the content, as O'Rourke (2001) argues, but to the 'circumstances' in which the opinion is expressed (pp. 126-127). Mill sets out those limits in Chapter 3 of *On Liberty*, where he declares that it is essential to look to the speech's consequences and its harmful effects on others, not the speech in itself as a 'harmful act':

No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act . . . Acts, of whatever kind, which without justifiable cause do harm to others may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people.

(Mill, *On liberty* 1859, reprinted 1974, p. 119)

Here, Mill is clearly arguing that an act (like publishing pornography for example) that causes harm to people, should be eliminated at once. Therefore, he is saying that freedom of opinions is not absolute until it meet with the social and moral relative requirement in order to accept it.

In fact, the following Millian explanation of what he considers to be a 'right' is significantly important in this historical exploration, as it resembles, to a great extend, what Hohfeld's had offered us in the provisional conceptualization of a 'right,' he says:

When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a sufficient claim, or whatever account, to have something guaranteed to him by society, we say that he has a right to it.

(Mill, *Utilitarianism* 1861, reprinted 1974, p. 326)

Therefore, Mill is clearly arguing that to possess a right, such as the right to communicate for example, is to have a strong claim to the extent of being protected by society against any violation. Mill's position brings about an objection in the fact

that he refers to 'utility' to be the credible reason for claiming this right, though, he declared previously in favour of moral reasons that are clearly representing a stronger claim than the utility reasons. He clarifies his position:

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility.

(Mill, *Utilitarianism* 1861, reprinted 1974, p. 326)

Summary Example

In the context of the ideas discussed above in the endeavour to explore the roots of the concept of the 'right to communication,' the following example correlates and merges these ideas to apply them to the right to communication. Consider one of the problems discussed in chapter 2, that of child-murderer Clifford Olson, or publishing pornography for example. Then imagine how Milton, Locke, Voltaire, and Mill would apply their philosophies to the situation.

Given the time variable in this recent case, if Olson's diaries are considered as 'bad book,' it is fair to say that Milton would initially allow him to publish his memoir as to give the true Christian believer the choice to choose between 'good' and 'evil'. However, he would also raise the 'burning-book principle' against Olson's memoir after being published. But again, Milton, through his philosophy, does not provide a specific guideline of how this person can be judged and whether he can claim for his right to communicate freely through his paradox of pre and post censorship allowance. Still the question remains: Would Milton allow child pornography as type of free communication?

Kant would say that the action of publishing a murderer's diary in itself is immoral, therefore this murderer cannot make his claim for freedom of expression on the basis of an absolute and universal right. Mill would agree with Kant, but for different reasons. He would assume that this person has the right to publish his diaries, but would ask certain questions. What is the utility of them to the whole

society? Would the publication of these diaries achieve the greatest degree of happiness for the greatest number of people, and minimize harm to the society? And if this person is claiming freedom of speech, what are the consequences of this 'harmful act'? ²³

Mill would refuse this murderer's claim for his right to communication in this instance, because no good or happiness would be accomplished, and harm to some would certainly result. In this regard, he upholds that:

There are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners and, coming thus within the category of offenses against others, may rightly be prohibited. Of this kind are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so.

(Mill, *On Liberty* 1859, reprinted 1974, p. 168)

As for Voltaire, it is likely that he would propose that Olson could publish his book on the basis of the absolute right to speech on the one hand, and as a way to tolerate him on the other. Voltaire maintains that: "I disapprove of what you say but I will defend to the death your right to say it" (as quoted in Lee, 1990, p. 3).

From this history of intellectual contribution from Milton to Mill, one can see that although their philosophies are nourishing the idea of communication as a human right, still, they do not offer a comprehensive approach to the problems and controversies discussed before that stemmed from the claim for an absolute right to communicate in practice. Next, is an illustration of the contribution of contemporary intellectuals on this debate.

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²³ I quote from the murdered children's parents' appeal to the Federal Solicitor General Kaplan: "We are suffering further injury at present from the knowledge that Clifford Olson has benefited financially from the murder of our children. This is further aggravated by the fact that Mr. Olson may benefit yet again through publication of his disgusting, wicked, perverted story. Clifford Olson derives obvious personal delight at the publicity that has been given him and knows no moral boundary that will prevent him from collecting financially, either directly or indirectly, for the sale of his memoirs." For further details concerning this story, see:
http://www.crimelibrary.com/serial_killers/predators/olson/20.html?sect=2.

Chapter 4

Contemporary Thought About Communication as a Human Right:

Dewey and Habermas

Freedom of inquiry, toleration of diverse views, freedom of communication, the distribution of what is found out to every individual the ultimate intellectual consumer, are involved in the democratic as in the scientific method.

John Dewey

In action oriented to reaching understanding, validity claims are 'always ready' implicitly raised. These universal validity claims (to the comprehensibility of the symbolic expression, the truth of the propositional content, the truthfulness of the intentional expression, and the rightness of the speech act with respect to existing norms and values) are set in the general structures of possible communication.

Jürgen Habermas

Although several international declarations have proclaimed communication as a basic and universal right for all human beings without any kind of qualification, it was found in chapter two that there are many kinds of communication that make these proclamations problematic. Early discussion regarding communication by Milton, Locke, Voltaire, and Mill generally recognized such problematic cases, however it is questionable whether they provided a satisfactory way of resolving the difficulties these raise. This chapter examines two recent thinkers – John Dewey and Jürgen Habermas – to see whether their philosophies offer a more helpful approach to the dilemmas in question and provide a sounder basis for considering communication as a human right.

John Dewey: Communication as a Social Dialogue

John Dewey (1864-1952) was an American pragmatist, moral philosopher, and anchor of the Chicago School. His philosophy and contribution to the field of communication studies are useful in resolving some of the debates and problems

examined in chapter two, and help to define a possible right to communication in the twentieth century.

Before discussing whether communication could be considered as a human right according to the Deweyian philosophy, it is instructive to begin first with Dewey's perspective and conceptualization of 'communication.' Essentially, communication for Dewey is a core component in the structure of society; without its full existence, society lacks liberty, freedom, and importantly democracy. He wrote the following, plainly illustrating the role of communication in society:

Society exists through a process of transmission quite as much as biological life. This transmission occurs by means of communication of habits of doing, thinking, and feeling from the older to the younger, without this communication of ideals, hopes, expectations, standards, opinions, from those members of society who are passing out of the group life to those who are coming into it, social life could not survive.

(*Democracy and Education* 1916, reprinted 1944, p. 3)

Dewey's notion of communication is widely related to the existence of human beings in a 'community.' He believes that as long as humans co-exist, they have to communicate using several media. In fact, he relates communication to a trio-relationship that consists of common, communication and community dimensions. Dewey explains that human beings share many aspects of life when they live together in a community, hence communication is their tool to exchange feelings, language, attitudes, and opinions:

Society not only continues to exist *by* transmission, *by* communication, but it may fairly be said to exist *in* transmission, *in* communication, there is more than a verbal tie between the words common, community, and communication. Men live in a community in virtue of the things which they have in common; and communication is the way in which they come to possess things in common.

(*Democracy and Education* 1916, reprinted 1944, p. 3)

Substantially, within this context Dewey highlights the significance of public participation, using communication in social life. Accordingly, we can suggest that he may include freedom of expression and freedom of speech as basic requirements in this process:

Each would have to know what the other was about and would have to have some way of keeping the other informed as to his own purpose and progress. Consensus demands communication.

(*Democracy and Education* 1916, reprinted 1944, p. 4)

Moreover, he conceives of communication not only as a channel to transmit messages, but also as a social institution that produces values in society. He asserts the importance of the social environment where participants exchange their information, ideas and other types of messages 'equally':

In order to have a large number of values on continuity, all the members of the group must have an equable opportunity to receive and to take from others.

(*Democracy and Education* 1916, reprinted 1944, p. 84)

At the same time, he asserts that communication should have certain conditions in order to function the way he suggests, as he sees communication as a social conversation between social participants within a society, not merely sending and receiving messages. He argues that

Freedom of inquiry, toleration of diverse views, freedom of communication, the distribution of what is found out to every individual the ultimate intellectual consumer, are involved in the democratic as in the scientific method.

(*Freedom and Culture* 1939, reprinted 1963, p. 102)

Given Dewey's conception of communication as social thinking, one could class him as a defender of communication as a basic human right. Indeed, he criticizes the totalitarian regimes that used propaganda as a tool of manipulating the public in societies like World War II Germany for example. Here, we can raise the question proposed in chapter two once again, concerning the practice of propaganda and

whether totalitarian regimes can claim the absolute right to communicate their destructive ideas backed by the various declarations that have stated that communication is a right without further qualification. Dewey argues that propaganda could never be considered as communication and, accordingly, can not be claimed as a universal or absolute right:

Dictatorship exercises complete command over the press, over travel, over letters and personal communications, in consequence, only a few have access to the sources of information about political methods, and that few is the group with the greatest interest in preventing free inquiry and report. This suppression of freedom of belief and of speech, press and assembly is not among the facts in dispute for it is of the essence of the dictatorship.

(*Freedom and Culture* 1939, reprinted 1963, p. 90)

Thus, we can infer from this that the practice of propaganda is simply not considered communication, because it is not the production of a social conversation between individuals in society. Rather, it is merely the empowerment of a small group or individual on different resources of information. It is communication in society on one hand, yet in disregard of the individual's will on the other. Clearly, the majority of individuals do not have the option of free inquiry and free speech under this system of totalitarianism.

Another important dimension in Dewey's philosophy that enriched our discovery of a possible right to communication is his concepts of 'freedom,' and 'democracy.' For Dewey, freedom means 'individuality,' where individuals practice their will and more importantly their rationality:

The idea of freedom has been connected with the idea of individuality, of *the* individual. The connection has been so close and often reiterated that it has come to seem inherent. . . yet the affiliation of the idea of freedom is with the idea of rationality. Those are free who govern themselves by the dictates of reason; those who follow the promptings of appetite and sense are ruled by them as to be unfree.

(*Freedom and Culture* 1939, reprinted 1963, p. 24)

Thus, even with his recognition of the importance of the individuals' practice of free communication, their practice within social system is superior for him. He says that

When this identification [identifying the social order in society] is established, it follows that any merely individual right must yield to the general welfare.

(*Liberalism and Social Action* 1935, reprinted 1963, pp. 65-66)

In other words, freedom of speech as one of the individual liberties is not absolute in practice according to Dewey. Consider the case of a murderer's autobiography. One could propose the question of whether he is practicing his freedom rationally and according to the established social norms, values, and morals. Dewey would argue in favour/against his or her right to communicate. The following extract of Dewey's *Liberalism and Social Action* clearly outlines the boundaries of a possible right to communicate. He begins by illustrating the main principles of the American revolutionaries who brought forward the American declaration of independence, by saying:

Those who won our independence believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrines; that the greatest menace to freedom is an inert people; that public discussion is a political duty.

(*Liberalism and Social Action* 1935, reprinted 1963, p. 66)

He continues by saying that it is not adequate to conceive of freedom of speech according to previous revolutionary doctrine without taking into account the various established social norms and values produced in a given society:

The public function of free individual thought and speech is clearly recognized in the words quoted. But the reception of the truth of the words is met by an obstacle: the old habit of defending liberty of thought and expression as something inhering in individuals apart from and even in opposition to social claims.

(*Liberalism and Social Action* 1935, reprinted 1963, pp. 67)

Finally, it is useful to highlight the importance of the second Deweyian ideal: 'democracy.' Some believe that democracy allows people to practice communication by advocating principles such as freedom of speech and the open exchange of opinions and thoughts. In fact, Dewey supports the opposite position: he considers communication to be the essential tool for the practice of democracy. Kallen says that both democracy and science represent, according to Dewey, the "scara, or the sancta of the common faith, a faith that bring together all the world's religions on equal terms of peace and freedom . . . it is the religion of the free mind and the open heart" (1950, p. 175).²⁴ Dewey objected to the narrowly tailored conceptualization of democracy as a form of political organization. For him, democracy is simply a way of social life:

A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience. The extension in space of the number of individuals who participate in an interest so that each has to refer his action to that of others, and to consider the action of others to give point and direction to his own, is equivalent to the breaking down of those barriers of class, race, and national territory which kept men from perceiving the full import of their activity.

(*Democracy and Education* 1916, reprinted 1944, p. 87)

As a moral philosopher, he placed more importance on the ethical dimension of this concept than on the superficial glance at it. Thus, in the context of finding an appropriate approach to understanding a possible right to communication, the practice of democracy in the sense of Deweyian interpretation – where every member of society express his ideas, thoughts, and opinions freely and, more importantly, according to the social order – is closely related to a possible right to communicate. Peters quotes Dewey in his *The Ethics of Democracy*:

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²⁴ Anderson and Major (2001) affirm that Dewey thinks that human beings "have strong impulses toward compassion, justice, and equality, because he believes that humans have a sixth sense about fairness" (p. 105). They add that if Dewey were to come back again and discover the violations of rights and 'racism,' he would be 'disappointed.'

[Democracy] is a form of moral and spiritual association . . . it is the form of society in which every man [or woman] has a chance and knows that he [she] has it - and we may add, a chance to which no possible limits can be put, a chance which is truly infinite, the chance to become a person . . . Democracy is an ethical idea, the idea of a personality, with truly infinite capacities, incorporate with every man [woman]. Democracy and the one, the ultimate, ethical ideal of humanity are to my mind synonyms.

(1989, p. 204)

Synthesizing the perspectives discussed above, one could argue that Dewey asserts that the right to communication is a human right, believing that individuals would choose to use their freedom of speech towards suitable ends, such as democracy and the well being of the whole society. Moreover, communication, employed ethically, is the most important tool to achieve and maintain democracy, where people exercise freedom of speech and exchange opinions and ideas to determine the welfare of society.

Jürgen Habermas: A right to 'undistorted' communication

Habermas's philosophy in turn offers two possible approaches to investigating communication as a possible human right: first, his Theory of Communicative Action offers a way of handling controversial practices of communication; and second, his idea of 'rational communicative discourse' may help to resolve the debate over the universality of human rights in general, and communication in particular. Habermas synthesized ideas from, and was inspired by, many intellectuals and movements that preceded him, among these were religious Protestantism, the Enlightenment, Kant, Marx, and American pragmatism²⁵, especially the work of Herbert Mead and John Dewey²⁶.

²⁵ Habermas admitted, "I have for a long time identified myself with that radical democratic mentality which is present in the best American traditions and articulated in American pragmatism" (Shalin, 1992, p. 238).

²⁶ The main point that attracted Habermas to American pragmatist anchor Dewey's philosophy is "freedom of inquiry, toleration of diverse views, freedom of communication, the distribution of what is found out to every individual as the ultimate intellectual consumer, [and that these] are involved in the democratic as in the scientific method" (Shalin 1992, p. 246).

Habermas was greatly inspired by the Protestant culture; for him, Protestantism "gave birth to a concept of community constituted of independent moral actors bound by voluntaristic commitment to common ethical norms" (Antonio, 1989, p. 730). He sees Protestantism as embodying three main values, 'scientific,' 'artistic,' and 'ethical,' which form the basis for his "Universal Validity Claims (truth, beauty/authenticity, [and] normative rightness)" (Antonio, 1989, pp. 730-731).

At the heart of Habermas's Theory of Communicative Action lie two fundamental ideas. The first is his assumption that all human speech includes what he refers to as 'validity claims'; the second is the 'Ideal Speech Situation' assumed in the use of language. Here, the following questions are proposed: Could access to pornography be considered as a right to communication? Does a person have a right to use aggressive and offensive language to communicate with others using any medium such as disseminating hate speech over the Internet? What possible approaches might Habermas offer to solve these problems?

In this context, Habermas, motivated by his knowledge of psychological literature, was mainly concerned with answering the following question: "What would 'undistorted communication' be like?" (Giddens, 1985, p. 128). This is to some extent similar to the question proposed in this thesis: What type of communication could be considered universal and would be protected by the international, national, regional and even personal regulations and laws, and could such communication be considered a basic human right?

In order to answer these questions, it is important to look at Habermas's emphasis on validity claims, and their being prerequisites for establishing undistorted communication between communicators. He says that in order to participate in a communicative process that is aiming towards achieving an 'understanding,' one can suppose to have four basic validity claims:

I shall develop a thesis that anyone acting communicatively must, in performing any speech action, raise universal validity claims . . . insofar as he wants to participate in a process of reaching understanding, he cannot avoid raising the following . . . validity claims. He claims to be

- a. *Uttering* something understandably.
- b. Giving [the hearer] *something* to understand;
- c. Making *himself* thereby understandable; and
- d. Coming to an understanding *with another person*.

(Habermas, 1979, p. 2)

From this, one could infer that Habermas is proposing that a possible right to communication is not simply "sending" messages, claiming an absolute freedom of speech whatever the content of the message represents. Instead, he is presenting the basic characteristics for an 'undistorted communication,' where the message's sender has specific 'obligations' towards the hearer or the receiver: that he or she speak comprehensibly and responsibly gives the receiver a plausible account of what he or she means.

More importantly, the speaker is justifying his speech according to specific social norms and values. Hence, one could see that hate speech, for instance, could never be considered "communication" according to Habermas. Clearly, one who voices hate speech is not, in any way, speaking truthfully, or sincerely, nor interpreting 'true,' or 'justified' facts. Habermas clarifies this point:

The speaker must choose a comprehensible expression so that speaker and hearer can understand one another, the speaker must have the intention of communicating a true proposition content . . . so that the hearer can share the knowledge of the speaker. The speaker must want to express his intentions truthfully so that the hearer can believe.

(Habermas, 1979, p. 2)

Giddens summarizes this position by explaining that for Habermas, "undistorted communication is language-use in which speakers can defend all four validity-claims –where what is said can be shown to be meaningful, true, justified and sincere" (1985, p. 129). Hence, in Habermas's view, the controversies and problems discussed in chapter two such as hate speech, offensive language, and criminal

diaries, could not be protected under the claim of the absolute or universal right of communication, because, lacking the Habermassian pre-conditions discussed above, these types of practices are not communication! Deception, manipulation, and cheating among communicators is certainly part of what he meant by 'distorted communication.'

Also, it is important to clarify the significance of the 'obligation' dimension in Habermas's point of view. The speaker, according to him, must meet specific obligations that the hearer is expecting he or she will fulfill. For Habermas,

The bond into which the speaker is willing to enter with the performance of an illocutionary act means a guarantee that, in consequence of his utterance, he will fulfill certain conditions.
(Habermas, 1979, p. 62)

Considering the previous Habermassian explanation, it can be argued that his communication prerequisites were, interestingly, the main argument of the New World Information Order debate during in the seventies. The problems of sending/receiving on the one hand, and right/obligation on the other were central to the Third World and developing countries discussion. Massmoudi explains:

Freedom of information is presented as the corollary of freedom of opinion and freedom of expression, but was in fact conceived as the freedom of the informing agent. As a result, it has become an instrument of domination in the hands of those who control the media. In legal terms, it has resulted in the enshrining of the rights of the communicator, while disregarding his duties and responsibilities towards those to whom he is communicating.
(1990, p. 313)

Accordingly, developing countries believe that they are only receiving 'unacceptable' messages, sometimes thought to be 'problematic' for their culture, norms, traditions, and social values as well. This is the reason behind their claims for a more balanced information flow. Habermas genuinely set up these claims by his notion of 'reciprocal' communication, where a sender (or speaker) may have a right to send, but under the condition that he or she meets the receiver's demands and expectations:

The speaker must choose an utterance that is right so that the hearer can accept the utterance and speaker and hearer can agree with one another in the utterance with respect to a recognized normative background. Moreover, communicative action can continue undisturbed only as long as participants suppose that the validity claims they reciprocally raise are justified.

(Habermas, 1979, p. 3)

Therefore, it is understood here that the practice of the right to communication presented in the New World Information Order debate is, in fact, only a one-sided right. The flow of information is only from the developed countries to the developing countries – or, in Habermasian terminology, from the speaker without regard to the hearer's demands from him. In other words, the reciprocal communicative action doesn't exist in this case.

With regards to another controversy raised in chapter two – whether Salman Rushdie could claim his right to publish a book that is not acceptable to Muslim readers on the basis of his right to communicate and his freedom of speech – Habermas sets out another condition:

Speech act may be called "acceptable" if it satisfies the conditions that are necessary in order that the hearer be allowed to take a "yes" position on the claim raised by the speaker. These conditions cannot be satisfied one-sidedly, either relative to the speaker or to the hearer.

(Habermas, 1984, p. 298)

Hence, one can argue accordingly that Rushdie was not the only participant in this communicative situation, but there are other communicators: the hearers or readers of his book, who didn't take a 'yes' position from his speech. On the contrary, hearer didn't accept his speech because it didn't fulfill his demands, nor his 'right' to communicate. A possible answer to the previous question is that Rushdie doesn't have an absolute right to communicate, but a right that is bound by his duties toward recipients of his speech to be just, true, justified and importantly, 'acceptable.'

Given these validity claims, in reference to another problem raised concerning whether pornographers have the right to communicate, it can be seen that the Habermassian validity claims are lacking. No one could argue in Habermas's terms, then, that published pornographic materials (as messages), are 'right,' that the content of these pornographic materials is 'true,' that pornography represents 'truth,' or that pornography is 'justified' as following social rights and norms!

Habermas, in other words, emphasizes the conjunction between the 'claim' or the expression and its 'content'; therefore, advocates for hate speech, pornography, and criminal autobiographies cannot claim the protection of the law as they are not practicing communication in this sense. Here, Habermas clarifies that the content of the speaker's speech is a very important variable that leads the receiver to either accept it or not accept it:

With his "yes" the speaker accepts a speech-act offer and grounds an agreement; this agreement concerns the *content of the utterance*, on the one hand, and, on the other hand, certain *guarantees immanent to speech acts* and certain *obligations relevant to the sequel of interaction*.

(Habermas, 1984, p. 296)

Collectively, we can summarize the Habermassian contribution in the thought of communication as a possible human right through his assertion of both 'responsibility' and 'rationality.' First, responsibility, as clarified before, is the obligation that makes the speaker committed to the receiver of providing him with a pure, true, and sincere pattern of communication. This pattern, according to Habermas, leads to 'understanding.' Therefore, we can eliminate these problems that have been raised in chapter two as patterns of communication. Can someone claim that hate speech is aiming towards understanding, rather than deceiving and manipulating? The same is applicable to pornography: Can pornographers claim that they plan to reach an understanding with receivers? In fact, Habermas summarizes his claim by pointing out that:

Only responsible persons can behave rationally. If their rationality is measured by the success of goal-directed interventions, it suffices to require that they be able to choose among alternatives and to control (some) conditions in their environment.

(Habermas, 1984, p. 14)

Also, he adds that validity claims are intertwined with the notion of responsibility:

In the context of communicative action, only those persons count as responsible who, as members of a communication-community, can orient their actions to intersubjectively recognized validity claims.

(Habermas, 1984, p. 14)

As for the second Habermasian concept, 'rationality,' he means that persons are expressing their opinions and ideas for good purposes:

Rationality is understood to be a disposition of speaking and acting subjects that is expressed in modes of behavior for which there are good reasons or grounds, this means that rational expressions admit of objective evaluation.

(Habermas, 1984, p. 22)

Although Habermas did not clarify what he exactly meant by 'good reasons,' one could predict that they might be the positive claims of communication according to certain social norms and values. The example of the murderer's autobiography can illustrate Habermas's meaning. In fact, Habermas's prerequisites for undistorted communication through his validity claims are also useful in analyzing whether the murderer has a right to communicate or not. Habermas asserts that it is not sufficient to provide a justification for the communicator's position – such as Clifford Olsen for example – but it is important to establish the validity claims within certain social contexts such as social norms and values in a given society. Habermas specifies:

In contexts of communicative action, we call someone rational not only if he is able to put forward an assertion and, when criticized, to provide grounds for it by pointing to appropriate evidence, but also if he is following an established norm and is able, when criticized, to justify his action by explicating the given situation in the light of legitimate expectations.

(Habermas, 1984, p. 15)

Thus, one could presume that Olsen doesn't have a right to publish his memoirs, even though he might have certain justifications for them, such as regrettably judging his actions, or attempting to reconcile with the murdered children's parents.

It is interesting also to note here that Habermas differentiated between two kinds of communication depending on the validity claims: strong communication and weak communication. In the weak type of communicative action, as Heath describes it, the speakers or communicators just use the norms and values that already exist, and don't aim to change them. In the strong communicative action type, on the other hand, the communicators do not just use the existing norms in society, but 'generate' and produce other normative actions. (2001, pp. 30-31)

Although this is a somewhat abstract idea of communication, it implies the social role of communicators in the many levels of communication (e.g. personal, group, mass, etc.) and their responsibility for generating society's normative rules which are embodied, according to Habermas, in validity claims and moral prerequisites, including human rights. If people were to communicate using the Habermasian model of the *Ideal Speech Situation*, while practicing and producing communication as a human right, this would be the 'ideal' and more powerful situation than one where the rules are merely followed without regard to the consequences (e.g. everyone has a universal right to free speech, even criminals).

In the context of the debate over whether human rights are universal or socially constructed, it is argued here that Habermas's idea of 'rational communicative discourse' offers a comprehensible solution. It is important to conceive first communication in its broadest sense, including knowledge and language in general, and not to limit the concept to mass media or the press.

There is no doubt that Habermas was strongly influenced by the Enlightenment philosophers, especially the work of Kant and Marx. In his *Inclusion of the Other* (1999), he explains the relationship between law and morality. Here he

differentiates between the 'moral universe,' which includes all natural persons and hence is not limited in time or space, and the 'legal community,' which protects only its own members. The practice of these legal bodies lacks the "normative validity claimed by moral norms" (p. 256). Therefore, he suggests that the best way to comprehend this 'law' is to treat it as a "functional complement to morality." In other words, the best way to conceptualize an article in the Universal Declaration of Human Rights, or any other declaration that states the right to communicate, is as a 'functional complement' of the ideal moral value that this article claims to protect, i.e., the value and importance of communication and knowledge for humans.

For Habermas, political philosophy doesn't really provide a balance between popular sovereignty and the rule of law. In fact, he believes that neither of the two political positions – Republicanism, derived from Aristotelian ideals, and Liberalism, derived from John Locke's ideals – can solve the problem of human rights. Instead, he proposes a 'communicative' model or perspective: "a regulation [such as a human right] may claim legitimacy only if all those possibly affected by it [all nations, countries, religions, cultures, etc.] consent to it after participating in rational discourses" (Shalin, 1992, p. 259).

Drawing on this standpoint, one could argue that the "language" that is embodied in the Universal Declaration of Human Rights for the recognition and protection of the right to communicate is universal. According to Habermas, this regulation can claim its universal nature if all those affected by it consent to it after engaging in public, rational, and communicative discourse. Finally, as a condition to achieve this rational communicative dialogue in society, Habermas asserts the importance of a 'democratic environment.'

Considering the preceding discussion and the position of the third world, colonized countries in the context of Habermas's notion of a 'rational communicative consensus,' it must be asked how the Universal Declaration of Human Rights could

achieve universal status while two important facts were ignored. First, that seventy countries around the world did not participate in or contribute to this rational communicative discourse, and therefore did not consent to its legitimization, acceptability, or suitability to their norms, traditions, and values. Secondly, the existing powers that consented to this declaration were at the same time colonizing those who did not!

Glendon (2001) relates that on the fiftieth anniversary of the Universal Declaration in 1998, scholars at Harvard University described the Declaration as "an arrogant attempt to universalize a particular set of ideas and to impose them upon three-quarters of the world's population, most of whom were not represented at its creation" (p. 224).²⁷ Consequently, one could see that Habermas's perspective offers a fruitful resolution to this seemingly endless debate. A compelling consideration here is that, even though the claims of exclusion portray what really happened, it cannot be denied that after the decolonization of the excluded countries, and when they attained status as participants in the international body responsible for languaging their rights, one hundred and seventy countries—the entire membership of the UN—consented without any reservation or abstention of vote to the 1993 Vienna Declaration, after engaging in Habermasian 'rational discourse.' In the Vienna Declaration: Article 1 clearly retains that "The universal nature of these rights and freedoms is beyond question"; and Article 5 that: While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.

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²⁷ It is important to remember that neither the third world developing countries nor the Axis countries (Japan, Germany, Italy) participated in the languaging of the Universal Declaration of Human Rights in 1948.

In summary, human rights are universally 'language'd' to include all human beings, and what is not universal is the specific context and practice of these rights.

Habermas, in his *Between Facts and Norms*, clarifies:

Actors must form an idea of this context whenever adopting the performative attitude; they want to engage successfully as citizens, representatives, judges, or officials, in realizing the system of rights. Because these rights must be interpreted in various ways under changing social circumstances, the light they throw on this context is refracted into a spectrum of changing legal paradigms. Historical constitutions can be seen as so many ways of constructing one and the *same* practice—the practice of self-determination on the part of free and equal citizens—but like every practice this, too, is situated in history. Those involved must start with their *own current* practice if they want to achieve clarity about what such a practice means *in general*.

(1998, pp. 386-387)

Another memorable assertion of this point was made by Charles Malik in his speech of December 9th, 1948, at the United Nations assembly on the occasion of the introduction of the Universal Declaration of Human Rights:

Thousands of minds and hands have helped in its formation. Every member of the United Nations has solemnly pledged itself to achieve respect for and observance of human rights. But, precisely what these rights are we were never told before. . . . This is the first time the principles of human rights and fundamental freedoms are spelled out authoritatively and in precise detail. . . . I can agitate against my government, and if she does not fulfil her pledge, I shall have and feel the moral support of the entire world.

(Glendon, 2001, p. 164)

In conclusion, the philosophies of both Dewey and Habermas have significantly enriched the idea of a possible right to communication. First, Dewey conceptualized communication as a special social conversation that specifies democracy, freedom of speech, and freedom of expression among its basic characteristics. Secondly, Habermas defined validity claims in which the sender of communicative message must meet the receiver's demands from him or her in order to engage with in communication. In other words, the interchangeable relationship between right-duty and demand-responsibility.

Chapter 5

The Right to Communicate: Between Philosophy and Practice

The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down twenty-one years ago in Article 19. This is the right of man to communicate. This is the angle from which the future development of communications will have to be considered if it is to be fully understood.

Jean d'Arcy

In reviewing the preceding discussions of the history of thought regarding 'rights' in general, the 'communication right' in particular, one could conclude that there are three distinct dimensions to the history of communication as a 'right.' The first is the formal languaging of this right in various declarations and covenants. The second is thought about whether there actually is any such right and if so, its justifications and possible limits. The third is the attempt to realize the 'right' to communication, however understood, in actual practices.

Language Dimension

The creation of an international language of human rights is an important dimension that crowns the recognition of a 'right' to communication. The formal, legal, positive, and protective language of human rights functions to both protect human beings against violations of their rights on the one hand, and to conjoin individuals and states in practising these rights on the other. As shown previously, there is more than one historical declaration that could be considered as the first seeds of languaging the right to communication, such as those that arose from the American and French revolutions. Despite their importance in this historical exploration, they are still not considered 'universal,' as they uphold and protect this right, among others, only for their respective citizens. The Universal Declaration of

Human Rights in 1948 was the first 'universal' language of these rights that provided a legal document for the enforcement of the right to communicate not only on the individual level, but also in the social realm. This document was the spark that brought about several covenants, conferences, treatises and declarations to reinforce this historic development.

As a result of this formal language, a shift occurred in the genesis of the right to communicate. Before these different languages, the right to communicate was simply an individual freedom, that is, an entitlement at the time and place a claim was made that lacked the guarantee that it could be claimed at all times or by everyone. After this phase, the right to communicate began to be considered a 'right' at least in language.

Realization Dimension

The realization dimension was crucial as it paved the way for the recognition of the importance of this right for human beings. Initially, the conception of the right to communicate was rooted in philosophy; it was an understanding articulated by various individual intellectuals, thinkers, and philosophers, who began to realize how important communication is for human beings. They voiced their support for the high degree of enjoyment of these freedoms without constraints imposed by authorities, such as governments and churches; indeed, these freedoms were eventually guaranteed to citizens for the first time in the Declarations of the American and French Revolutions. They also expressed the nature of these freedoms on a moral level, believing that although they are absolute, people must channel them for good purposes.

A final characteristic of this dimension, which could be considered as an obstacle in the history of the right to communicate, is the emphasis on the individual, in human rights in general, and the right to communicate in particular. As

there are no boundaries for the right to communicate, the main concern was to emancipate the individual from constraints and oppression, without special attention or regard for other individuals or the rest of society.

Milton, in seventeenth century England, realized the significance of communication and its two inseparable aspects: that individuals should enjoy a high degree of freedom to express it and access it, while at the same time be enjoined with a moral and religious responsibility to use it for good purposes. Coupled with his emphasis on freedom of thought, expression, and the press, and his refusal to accept any kind of pre-censorship to limit or suppress the expression of this freedom, was his belief in the essential goodness of human nature. The individual would make good use of these freedoms by making good choices.

Moreover, as clarified previously, Milton was defending only one dimension of the right to communicate – the pre-publication dimension – as he allows for post-censorship that confines, or burns, 'bad' books. The questions here are the following: Would Milton still defend this position in contemporary society? Would he still advocate the right of human beings to communicate through publishing, authorship, the press and other media, on the basis of his belief in human capability to make good and moral choices, keeping with Christian values? Similarly, Voltaire could be asked the following: Would he still demand 'toleration' even for those who engage in hate speech? Would Mill still use the claim of absolute liberty and free speech to defend the publishing of pornography? The answers to these questions are crucial.

Although these philosophers advocated an absolute right to communicate, and contributed greatly to our contemporary recognition of the concepts of freedom, justice, and morality, relying solely on their positions as the basis of a possible right to communication is clearly insufficient. It has been made clear that both language and philosophical realization need an 'enforcement' or a 'practice' dimension to determine exactly what the basic characteristics of a possible right to communication

are in real life that can be backed by the universal language and receive the acceptance among human beings and society.

Practice Dimension

The theory, formalization in language and realization of the right to communicate have built the foundation for moving forward, but in attempting to link words and practice, contradictions become evident. While the language makes available a universal right to communicate for all human beings without any distinction, practicing this right creates a possible conflict with, first, the existing social and political systems and circumstances and, second, one's own right versus the practice of this same right by others. Chapter two extensively illustrated the latter case by showing where problems and difficulties exist when the right to communicate is practised in an absolute and universal way.

It is argued here that, given their history, human rights from their emergence (before the Universal Declaration of Human Rights' language) up to the present, were and are still not universal in practice. The First Amendment of the American Declaration, for instance, guaranteed equal rights among all human beings as a universal right, but excluded slaves from entitlement to these rights, even though both slaves and other Americans were living in the same place at the same time. Moreover, in recent years, despite all international efforts, human beings continue to suffer from violations of their rights, from social, physical, economic, and educational rights in general, to communication rights in particular. Many international, national, regional, and local bodies have documented violations in many countries every

year²⁸. In fact, this particular claim is one of the bases of the relativity approach to human rights.

But if humans are treated as sacred, then how can violations of this sacredness be justified? In the Rwanda and Bosnia massacres, for example, many human rights have been violated. In the context of communication, rights are violated in the mass media when entities such as the Asper Group interfere in journalists' editorials because they own the newspapers. Do they realize that they are violating the journalists' rights to communicate their own ideas? Or do they believe that the journalists only have a right to communicate the media owners' ideas?

Concerning the historical development of this issue, the contributions of medieval and eighteenth century thought are certainly fruitful in conceiving the main principles of the right to communicate. At the same time, however, they fail to offer a comprehensive guideline or provide solutions for the current controversies between the ideal universal language of the right to communicate and its practice. Alternatively, the contemporary philosophies of Dewey and Habermas presented in chapter four offer part of a possible solution for the universality argument by clarifying whether communication could be considered as a basic human right or not. Together, it is argued here, Dewey and Habermas offer a clear-cut approach to an understanding of the absolute right to communication.

Dewey conceptualized communication as a 'social conversation' between individuals living in society, where it is necessary to exercise freedom of expression, speech and democracy. Therefore, he would reject the claims of absoluteness of practice of those members of society who claim for a right to communication without

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²⁸ For more detailed information regarding the violations of the right to communicate around the words, see: www.amnestyinternational.com, www.ifex.com, www.cris.com, www.article19.com.

allowing participants to exchange their messages equally, as in the case of propaganda.

For his part, Habermas outlines prerequisites for the Ideal Speech Situation and validity claims for communicative action. He articulates that any human speech should maintain the validity claims; to be truthful, justified, true, and sincere in order to claim its universalistic nature.

The history of this issue has brought the debate to this point, where another element of the argument arises. In the context of analyzing the right to communicate in the contemporary period and recent times, the following question must be examined: What would be more important for humans in discussing their right to communicate: language or practice? Or, to construct it in another manner, is the possession of the right in language more important than its social practice? Answering this question is complex, especially in the context of recent years with the rise of new and modern communication technologies.

At the core of this discussion is the fact that, given the universal language of the right to communicate, the practice of this right is evidently not universal; instead, it is ironically leaning towards being an authoritative type of communication in society. In other words, the more modern or civilized a society becomes, the more power is given to authority to control communication media for humans. In fact, d'Arcy predicted this evolution during the 1960s. He argued that it was not so long ago that human beings were able to communicate freely with each other by seeing and listening. Subsequently, as they increasingly became dependent on technology as the medium to communicate, they have alienated themselves from each other:

In point of fact, it is not yet one hundred years since man has been able to hear over a distance, and barely forty since he has been able to see beyond the horizon. The achievement dazzled him, and the extraordinarily complex organization, public or private, that was set up forced him to accept a restriction of freedom that he had previously rejected for other vehicles of thought.

(d'Arcy, 1977a, p. 2)

Accordingly, this point leads to a further investigation of the meaning of 'communication' and a discussion of whether it could be treated as a human right fundamental to human existence in a democratic society. Yet, defining communication has not been an easy task for scholars and researchers for several reasons, one of which is its normative nature. Scholars and theorists in this field have contributed hundreds of definitions of communication, and have concluded, as Littlejohn observes, that "the verb 'to communicate' is well established in the common lexicon and therefore is not easily captured for scientific use. Indeed, it is one of the most overworked terms in the English language" (2002, p. 6).

Communication is conceived according to Gunnar Naesselund, the former UNESCO director of the Department of Free Flow of Information and Development, as the following:

[Communication] is not an end in itself, but rather a wide-ranging set of means by which human beings and their social institutions can discuss, react and take steps towards goals defined by themselves. It is an element of life—an attitude and a demonstration of a basic faith in the potential of human beings.

(Fisher, 1982, p. 11)

Realistically, communication plays a vital and pervasive role in our lives, and d'Arcy, for one, asserts this importance in all societies: "All social organization rests upon communication among its constituent parts. All beings are dependent upon communication with their kind. All social organization results from communication." And he adds the following: "Indeed all social structure rests upon and evolves within the framework of those methods of communication available to it at any given time" (1977b, p. 46).

Before beginning to address the core question of this thesis it is useful to first move away from the abstract debate surrounding this issue and observe and attempt to understand some examples of the practice of communication as a human right, however it is realized.

Summary Example 1: The Socialist perspective on the right to communication

The example below is presented mainly to illustrate how the right to communication is treated normatively in practice or in real life. Jadwiga Pastecka states clearly in her report, *The Right to Communicate: A Socialist Approach*, a key papers in the Macbride Commission Report, that

[T]he right to communicate is a natural human right but at the same time it is a social phenomenon strongly shaped and defined by the socio-economic conditions, ideological assumptions and cultural values of a given country . . . the right to communicate is a product of social structure, because, . . . 'it is not the way people communicate that determines the social structures it is the social structures that determine the way people communicate.

(1982, p.1)

This perspective asserts that information is a basic human element necessary in social communication but only when it is practised in a manner that adheres to a 'socialist' society's ideology. Pastecka adds the following:

The socialist concept of communication system is devised to give the people some general picture of the world or at least of its most important problems, it treats information and news as elements of certain logical, complex, coherent, and rational knowledge in all important fields of life both local and international which is necessary to a modern man for a full individual life and social functioning in the contemporary world.

(1982, pp. 2-3)

One can see the vast difference between this approach to communication and the Deweyian concept that recognizes communication as 'social thinking' between individuals not imposed by authorities or laws that identify and regulate it.

From the socialist perspective, the practice of the right to communicate is bound by certain rules that are convenient to this society, and prescribed by either the authorities of the system or the major powers of the society. Hence, the socialist pre-requisite for the right to communicate is that it should preferably be consistent with the authority's perspectives and judgments. Accordingly, the role of authorities

is to control the flow of information in order to filter out 'distorted,' 'false,' and 'inaccurate' types of communication. Pastecka continues:

One is ready to admit that although this system of communication is psychologically healthy and socially sound it is not so attractive as its competitor: the news about the opening of a new nursery has a poor chance of attracting attention in comparison with the news about a madman who killed 7 nurses during one night!

(1982, p. 3)

Critically, could this model of communication possibly embody an understanding of a balanced right to communicate, rather than an authority that disseminates information? Contradicting this position, Habermas offers an alternative perspective that requires the participation of the society's individuals in free communicative discourse in order to agree upon a given social accepted value:

In justifying the system of rights, . . . the only legitimate law is one that emerges from the discursive opinion-and will-formation of equally enfranchised citizens. The latter can in turn adequately exercise their public autonomy, guaranteed by rights of communication and participation, only insofar as their private autonomy is guaranteed.

(Habermas, 1998, p. 408)

In short, the right to communication was and still is a 'vague' concept for many persons and systems, backed by a universal language, but needs to be a real illustration of the 'societies' own practice of these shinny concepts of 'freedom,' 'equality,' and 'rights' among humans and not only what authorities disseminate.

Summary Example 2: Current practices of the right to communicate

It is interesting and pertinent to analyze some other practices of the right to communicate in recent times, especially in comparison with the previous example. The practice of journalism is an appropriate starting point. The primary component in a journalist's message is his or her 'accuracy' in gathering and interpreting news stories and opinions. This is a qualification that can be seen, to a great extent, in the language of the Habermassian validity claims, namely 'truth,' 'sincere,' 'justified,'

and 'comprehensible.' If the journalist deceives his or her readers or manipulates them with 'false' and 'undistorted' news stories, he or she will lose credibility and, consequently, readership. Therefore, although Habermas has been criticized for his 'ideal' perspective concerning the role of validity claims in real life, it can be argued that to convey a message such as a news story, a journalist must meet the demands of his or her readers as the recipients of the message.

Consider the medium of letters to editors, where anyone can express his or her opinion concerning a policy, an issue, or a problem, as one instance of the right to communicate in practice. At the same time, if this letter is criticizing someone, this person has the right to respond in the same place the criticism was published. Cartooning and editorials, along with several other forms of communication patterns, are examples of the actual realization of the right to communication in practice. Briefly, journalism ethics are an important element, and an evident example of recent times, as they embody both people's right to information, and the obligation of newspapers, news agencies, and communication institutions towards their audience.

Controversial, and therefore more complex, examples of the right to communication in practice, are the publishing of adult materials and the broadcasting of adult programs. Although here it is argued that this type of message could not be considered as 'communication,' it is practised differently in real life. Considering that people are exercising their 'freedom' to access adult materials, it is implied that they should remain within the regulations and laws of society. In practical terms, if anyone wants to air an adult advertisement, he or she should first attach classification labels so that those under 18 years of age, along with other 'receivers' that should not, or do not wish to, come by these messages, are not exposed to them. In other words, their right is bound by moral and legal responsibility towards

others to respect and ensure that they do not violate their privacy and their right 'not' to receive these types of messages.

Then, Is Communication a Basic Human Right?

Synthesizing the previously discussed theoretical frameworks and the multitude of arguments regarding the treatment of the right to communicate, one is left with the following fundamental question: Is communication a basic human right or not?

A single answer to this question cannot be provided; instead, a possible position is offered. Given the different philosophical positions and intellectual contributions that came about in the historical exploration of this issue from the seventeenth century onwards, it can be argued that setting guidelines might be the key determinant for answering this question, and widely understanding the right to communicate and its nature.

Firstly, the meaning of a 'right' is required: a right is absolute when it is valid without any reservation of any kind. Accordingly, it is admitted that there are no absolute rights, as even the very fundamental rights such as the right to life are not considered absolute. Sometimes, rights can be violated, either with justification – such as cases and circumstances of war, and situations of self-defense for example – or without justification – like murders or terrorism. Therefore, the same is applicable to communication; communication is not an absolute right. Instead, recalling the Hohfeldian correlative relationship, it is found that the plausible standpoint is to regard communication as a right, but bound by a certain degree of 'duty' or 'responsibility' towards the others. So, if the right to communicate ideas, thoughts, opinions, etc., is claimed by someone, that person should be, at the same time, under both moral and legal 'responsibility' to meet the social and ethical demands of recipients of his or her messages.

Secondly, the level of communication is required: communication could be considered as a basic human right according to its level. Advocates for the absolute right to communicate are correct in their specific argument that no one can deny that there is a given level of communication that is considered as absolute, universal, and non-negotiable. A human being is a social animal, and in order to live, he or she must communicate. Jean d'Arcy maintains that "man has a specific, biological, need to communicate" (1982, p. 2), and even in applying his argument on the social plane, the same concept is still observed. "Communities, to coexist, require to communicate between themselves" (Fisher, 1982, p. 7), which is to a great extent similar to Dewey's conceptualization of the role of communication in society. Interestingly, this position has broadened the notion of 'communication' to include different levels, starting from the conscious, inter-personal, personal (face-to-face), inter-groups, and mass communication. Different formats of communication are also delineated, ranging from signs, expressions, and words – as patterns of verbal communication – to gestures, body and paralinguages communication.

Based on the previous discussion, one can see that the level of communication is an important parameter in answering to the question of this thesis. Communication that is necessary for human existence is a basic human right. No one can deny that even prisoners are allowed to see other prisoners, or to have a visit permit to see their relatives, though they should be not be allowed to have a phone in their cells, for example.

Thirdly, the content and usage of communication is required: a final guideline to answer the previous question is related to the content and usage of communication. Many communication practices claim for legal and social enforcement though the content of these practices could never considered as 'communication.' Hate speech, harming people with offensive language or signs and using communication to manipulate people can never be considered, in my opinion,

as a basic human right. One can list a variety of reasons not to accept these 'messages,' among them are morals, ethics, and social values. Instead the Habermasian validity claims can simply be used as a guide for communicative action that leads to 'understanding' between human beings, and societies.

Considering Marshall McLuhan's famous statement, "the medium is the message" – which implies that medium and message are the two basic components of the communication process – signals that, in the context of this discussion, the recent language of rights has obviously covered a variety of message formats and different media. Formats vary from 'holding,' 'seeking,' 'receiving,' 'imparting,' and 'expressing' information, as a *right for everyone* through *any* kind of *media*, without any frontiers or barriers.

Consequently, given the continuous advancements of modern technologies in the field of communication and information, it has admittedly been difficult in recent years to define and elaborate a single position on the right to communicate that can be generalized over time, as well as be accepted by all cultures and ideologies over space. It is clear that if scholars had defined this right a decade ago, the definition could not be applicable nowadays. Television as a medium is different from DBS, and newspapers are different from the Internet. Collectively, the concept of the right to communicate still needs continuous and further elaboration. Jean d'Arcy outlines in the 1960s that, the right to communicate concept is "as yet inchoate concept, a concept of the future, still in the making" (1982, p. 1).

Finally, we, as communication scholars, must work toward defining and finding a way to realize the importance of communication as one of the basic human rights. Until now, communication as a basic human right remains in the abstract language, and must still be practiced in a way that fits into every culture and society. The possible solution proposed in this thesis, deriving from both Dewey and Habermas's positions, is first to assert communication as a social conversation in

society that is stemmed from its social facts and environment, and is capable, at the same time, to produce its own normative rules and to practice the value of communication in an acceptable form for everyone in this society. One of these important norms is democracy, where every member in society is practising communication in different ways: politically, socially, culturally, etc. Mass media are both one of the key players in raising public awareness of the importance of the right to communicate as a social value and a channel with which to exercise it. In the context of ethics, communication should be an intelligible, comprehensible, justified, sincere, and pure process, as proposed by Habermas, in order to be acceptable in society. Nonetheless, the right to communicate must acquire a more powerful position on the practice and enforcement of the strong language that is housed in the various declarations.

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