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1 Introduction

The role of media professionals working in the cultural and media industries is inevitably concerned with technical change, and transition in the practices of media production. But the enduring purposes of media to inform, educate and entertain remain a constant, in whichever order these are prioritized: an ethical media that informs a democratic citizenry is paramount. Climate change is nowadays referred to as the most important moral issue that human society faces in the twenty-first century, but without an ethically responsible media, very few people would have any idea about the actual significance of these developments.

The terms ‘media’, ‘law’ and ‘ethics’ get combined in various contexts. For some media students the first thought that comes to mind will be *Wire in the Blood* (2002–), *The Sopranos* (1999–2007), *Breaking Bad* (2008–), *Underbelly* (2008) or some other mediatized formats of criminality and general grievous bodily harm. For others it would be the illegal phone-hacking practices of tabloid media in their unauthorized intrusions into the lives of celebrities, politicians and even victims and their families. And for other people it might perhaps be the endlessly unethical practices of ‘reality’-TV formats, and the way they treat their limelight-seeking contestants. The list of potential transgressive media practices is almost limitless, and even more so when we factor in new social media practices and internet cultures.

Yet knowing about these wider processes of mediatization assists us in gaining an understanding of the role of media in society, and has important implications for audiences’ use of media, and the sense they make of the world. Our lives and our work increasingly involve engaging with large and small screens, some in our homes and others while we are on the move. We are informed, and entertained by and through media, and their access devices and applications are constantly evolving. This usage of mediatized content occurs in both public and private contexts, and this has divergent legal and ethical
consequences and meanings for individuals, publics, cultures and societies.

This book is about examining the legal and ethical boundaries of media practices. Media practitioners learning the ropes need to develop an understanding of a range of key concepts, frameworks and general legal literacies that are relevant to their roles as content creators. On one level this is simply a matter of self-protection, but on another it is about acquiring the confidence to create well-informed, quality content for a media citizenry.

It is often not widely recognized by people who are just beginning their careers in the media, but if you have created, used or distributed content in a myriad of electronic ways, then you would have been bound by the same legal principles as journalists and other media workers who write or produce content for metropolitan dailies, for radio or television or 24/7 online.

Although it may not be necessary to have a lawyer's often detailed knowledge of laws, media practitioners need to be able to do risk assessments of the stories they write, or the content they produce. They need to be able to recognize risky words and phrases, know when to seek legal advice in relation to controversial content, estimate whether a publication is likely to land them in court and make informed judgments about whether to proceed with a publication.

The book also focuses on the ethical dimensions to media industries and media work. In broad terms, this means being aware that the foundations upon which those working in the media will often be making judgments and decisions, are informed by particular philosophies and belief systems. These range from formal religious and spiritual belief systems, through to less formal, less explicit and less self-conscious ideological and political frameworks of interpretation that exist in our everyday lives. Responsibility is an important concept for workers in the media industries who give voice to or represent ideas to often very large audiences. But without an understanding of what this responsibility entails, how can individual and organizational conduct be guided? Media academics James Curran and Jean Seaton famously counterposed what they regarded as a dominant fault-line in the moral history of media industries in the title of their landmark book, *Power without Responsibility: The Press, Broadcasting and New Media in Britain* (2003). Not surprisingly, this begs the questions: What is it to act responsibly in one’s media practice, and for whose benefit? And how can those working in the media make sometimes difficult distinctions between their own agency, and the wider structural picture of the media industries?
In forming an understanding of divergent morality in media practices, it's important that we at least be aware of the main different media systems. Ultimately, it's up to us as individuals to be in a position to use these comparisons to build our own memory databases of different value assessments. Similarly, to achieve a global perspective of difficult legal and ethical issues in the media we need to have a sense of these different systems and their conditions. (We consider different legal systems in Chapter 2.)

The rapidly changing media industries are driving new practices. This is a dynamic process that is working in reverse too: new media practices are influencing the way that the industry is evolving. Facebook, Twitter, blogging and news forums, search engines and video-sharing networks, are all being used in new ways that are closely implicated in social change. The North African and Middle Eastern democracy movements are just the latest examples in an unfolding sequence of protest movements around the globe. Some argue that all the while, running in the background, governments in authoritarian states have twenty-four-hour media and communications machines that churn out alternative moral governance models where ‘economics trumps all’ (French, 2011).

But the moral relationship of new social movements and the use of new media practices is not just about revolutionary change. The ethical implications can be much more complex to tease out; they are culturally and politically specific and arise from the particularities of a national media-system context (Hallin and Mancini, 2004). My approach in this book is to use examples from contemporary media practice that assist us in unpacking legal and ethical nuance: no overarching ethical or legal model is privileged. My assumption is that particular situations will have multiple determinations, affects and meanings within a culture.

In China, as observed from around 2006, a rising phenomenon of people power, mobilized through new media internet cultures, has been reported. The notion of human flesh search engines translates into Mandarin Chinese as ‘renrou sousuo yinqing’. One of the first widely discussed instances of this phenomenon in the blogosphere involved a short video that quickly spread virally on the internet. The video depicted a stylishly dressed woman, standing on a riverbank, smiling, with a small brown and white cat – which she then proceeds to viciously kill under her silver stiletto shoe. Following this event, thousands of comments were posted on various online forums: ‘This is not a human’; ‘Find her and kick her to death as she did to the kitten’;
‘Does anyone have a better image of this woman’s face?’ It was reported that before long the woman’s personal details were freely available to netizens, and retribution came with the woman losing her job. Traditional media fuelled these discussions: for example, after the woman was identified, a China Central Television (CCTV) show called *News Investigation* conducted interviews (including one with the alleged perpetrator), and analyzed potential societal causes.

This process of mobilizing internet populations in China for vigilante-style ‘payback’ has been used to track down many individuals for a variety of perceived wrongs, from animal cruelty to corruption, to adultery. As Downey notes, ‘It’s crowd-sourced detective work, pursued online – with offline results’ (ibid.). In these events the traditional media were very willing collaborators. Without their publicity, many events would not get the oxygen of wider public scrutiny. In the kitten killer’s case, her photo became news on television and in newspapers all over China, and eventually the woman’s identity and location were disclosed. It is a serious case involving new and old media, with complex ethical and legal dimensions.

So the human flesh search engines are fostering internet vigilantes, mobs, public shaming at best, and at worst, a kind of ‘internet-lynching’ mentality. People’s personal details are sleuthed: their image, phone numbers, student ID, email and street address, work contacts, car licence-plate numbers. They can be tracked down when the power of collective intelligence is unleashed. On occasions the motives may be well intentioned, but on another level it is also ‘public harassment, mass intimidation and populist revenge’ (ibid.).

While a Chinese court has awarded very minor damages to an aggrieved individual because of the harm caused by an internet-service provider and a netizen, this is unlikely to have any significant longer-term impact on these *renrou sousuo yinqing* media practices. However, it’s been suggested that new tort-law reform may encourage more of these lawsuits (ibid.).

How might we relate such practices to Western legal concepts? The doctrine of the *rule of law* may be invoked: it requires that several features will exist in common-law legal systems, or as American constitutional practice refers to it as, ‘due process of law’. These include: independence of the judiciary; a speedy and fair trial; provision of adequate legal aid; the accused’s right to refuse to make self-incriminating statements; advocacy free of state interference or pressures; the principle that a person is answerable for their own wrongdoing, and may not be subject to ‘guilt by association’ or group
liability (Lloyd, 1981, pp. 162–5). Importantly, for media practition-
ers who report on such matters, the scope of the doctrine of the rule of law is not limited to safeguarding the rights of accused persons. It has an important dimension in the sphere of governmental and state powers more generally. This means that the rule of law, expressed as a principle of administrative law, has become embedded in the operation of courts or tribunals with supervision over executive levels of government or their agencies. This becomes very significant in situations of complaints against a government or a particular official.

The general absence of Western-styled rule of law and all that it entails, is fairly clear in these kinds of human-flesh-search-engines events, many would argue. Such an absence is, of course, largely expected in these dynamic new Chinese media cultures. The initial retributive conduct is virtual, but then it has very real-world, material, legal and ethical consequences. This can be seen in several examples of corrupt government officials being tracked down and ultimately exposed by netizens, and then this becomes amplified by traditional media. There is such an example in the report of an allegedly corrupt district official in Nanjing in charge of real estate, seen in an image posted on a website ostentatiously displaying his expensive Swiss watch. Despite the official’s protests that the watch was a fake, he apparently lost his job. In another instance a Shenzhen local party official, seen drunk in a virally circulated video at a Communist Party event at a restaurant was caught on security camera verbally abusing the father of a young girl whom he had tried to molest in a washroom. This official also lost his job. There is the case of local jail administrators in rural Yunnan who were sacked after netizens were highly critical of their explanations for the head injuries of a prisoner. Initially, the jail administrators had claimed that the prisoner had been injured playing a ‘blindman’s bluff’ game, but they were later forced to admit that he had been wilfully beaten to death. The former Financial Times China correspondent Richard McGregor suggests that the ruling Chinese Communist Party (CCP) had ‘cannily leveraged a modern tool to keep sesame officials in line’, which, in turn, allowed ‘Chinese journalists and bloggers to expose local abuses of power in a way they never tolerate with senior officials in Beijing’ (McGregor, 2010, p. 180). Rebecca McKinnon argues that this approach by Beijing is actually a rerun of an old Maoist idea of rising up against and reporting bourgeois or corrupt officials, a kind of ‘Red Guard 2.0’ (McKinnon in Downey, 2010).
For many, although ‘justice’ (broadly defined) might be the eventual outcome, clearly the legal and ethical elements of process were open to criticism. There is no assumption of innocence until proven guilty, no right to a fair trial or to privacy; these had been replaced by ‘netizen rule’. Important tenets of Western liberal legal philosophy have been circumvented. But arguably there was majority or greater ‘happiness’ in John Stuart Mill’s terminology, and perhaps the interest of the wider public was served? Moreover, if these are crowd-sourced investigations, with netizens sharing information and helping each other to publicly shame wrongdoers, isn’t that for a good end? Is it not possible to argue that renrou sousuo yinqing practices are actually allowing contemporary Chinese citizens to work out, and healthily contest, moral priorities? While the West’s obsession is more often than not about CCP control of media and censorship, the human-flesh-search-engines phenomenon is more accurately framed as being concerned with the everyday flow of information, and speech beyond the usual controls: and it can be a force for both good and less virtuous ideals, like anti-patriotism, anti-government protestors and racist vilification.

Not surprisingly, in the West we have some roughly similar phenomena, even if they’re not identical. This point of overlap or intersection is very interesting, in an ethical sense, and draws our attention to more universalist values in different societies and their media cultures. Take this account of another woman, this time in the UK Midlands, rather than the Middle Kingdom, who is also not so enamoured of our feline companions. A forty-five-year-old Coventry woman, Mary Bale, was charged with a criminal offence of causing unnecessary suffering to a cat under the Animal Welfare Act 2006. Bale was caught on CCTV (closed circuit television) dumping a family cat into a large green wheelie bin as she walked past it. The cat was trapped for fifteen hours before being eventually freed by its owners. An online campaign led by the cat’s owners to locate Bale ensued, with the video of the incident being posted to Facebook and YouTube (Parker, 2010). Before she was located and eventually arrested by police, she was named and shamed and the police arranged for community officers to stand watch outside her house to protect her against possible retribution (BBC, 2010). Bale was investigated by both the police and the RSPCA.

This incident has some common features with the human-flesh-search-engines cases in China. In both nations, vigilante action was mobilized via the internet and traditional media aided and abetted
the process. While the Chinese netizens relied on popular web discussion forums for the circulation of information on individual wrongdoers, in the UK popular social-networking sites Facebook and YouTube were the preferred platforms. In both nations certain authorities are involved, although in China the role of the police is less clear. In all media cultures, the specific role of the media in representing these material practices has critical ethical implications for our societies. As a key concern over the transmission of media values, the question must be asked: How should news stories like the human flesh search engines be framed, and with what emphasis?

**Framing Ethics for Media Practice**

You might ask yourself what relevance does ethical philosophy have to a job in the media today? The answer is that media practitioners have a key role to play in the way moral debates actually work in society, are mediated, circulated and represented in the public sphere. In a market-driven and mediatized world, the priorities of information provision are defined by global infotainment conglomerates (Thussu, 2007; Spence et al., 2011). Since transgressions of moral sensibilities occur incessantly in the media industries, more often than not under the guise of ‘information that entertains’, media workers are implicated in shaping the ethical landscape through their reports and opinions. As with the acquisition of legal concepts and knowledges, an understanding of important ethical-philosophy frameworks is also a matter of skilling up, educating and informing higher-quality media practices. For others, it will offer a toolkit for a better understanding of the ways that media work in our cultures and societies.

We will explore these frameworks again in more detail in Chapter 2 and throughout the book using selected media examples. However, for the purposes of an introductory discussion, we can consider some foundational concepts from ethical philosophy that assist us to unpack the ethical dilemmas confronting media practitioners. In addition to the ‘three broad traditions of media ethicological discourse’ (Crook, 2010, p. 156), namely, the deontological, the consequentialist and the virtuous, I include brief synopses of Christian, Foucauldian, Buddhist and Confucian ethics. These foundational concepts in ethical philosophy are not put forward here in any particular hierarchy or order of preference.
**Virtue Ethics**

Virtue ethics is sometimes also referred to as Aristotelianism or neo-Aristotelianism after its most well-known advocate from ancient Greece. An important original textual source of his philosophy was *The Nicomachean Ethics* (1999, 2004). This ethical philosophy emphasizes the whole character and the ability of individuals to ‘improve’ or ‘flourish’ over the course of their lives.

Aristotle’s virtue theory is an example of moral rationalism, and focuses on the character of people in terms of their virtues. As a form of moral rationalism it can be encapsulated in the idea that it is more important to travel than to arrive. That is, we can improve our understanding of moral problems, both major ones like poverty, war, capital punishment, etc. (and all the broader value systems they imply) and relatively minor ones such as how we, for example, represent someone that we’ve interviewed or described in a media story. It is referencing a model of ethical conduct that considers that individuals are capable of, and indeed should strive and be responsible for, self-improvement in the way that they deal with ethical issues. Aristotelian ethics is sometimes referred to as a teleological ethics from the Greek ‘telos’, meaning ‘ends’. Virtue theory is an ethics of ends; an account of how a person’s character may reach a virtuous endpoint. A contemporary equivalent, which finds resonances in several of the ethical frameworks in this chapter, is the idea of ‘displaying one’s moral compass’. Individuals can learn to fine-tune their moral decision-making apparatuses and find the good life.

Some terminology is key to understanding Aristotle’s virtue ethics. The term *eudaimonia* was the word Aristotle used in his virtue ethics to describe a person who had arrived at a state of ‘well-being’, flourishing in a mentally active way, and enjoying life (Graham, 2004, p. 54). The Greek word *arete* translates to ‘virtue’, so in *The Nicomachean Ethics*, the phrase ‘in accordance with virtue’ means that we should approach any particular set of moral circumstances ‘in the best possible way’. Aristotelian virtue ethics employs the term ‘phronesis’ or ‘practical wisdom’ to emphasize that sheer intellectual insight alone is not the path to the good life. Rather, it’s a combination of intellect and emotional intelligence that has been cultivated through life choices that would represent ‘the good’ for humans (ibid., p. 57).

This emphasis on making the right decision to fit a particular set of circumstances is informed by the notion of a *golden mean* (Graham, 2004). But this was not a matter of simply steering to the middle
ground in making the best possible ethical decision: it is a reference to a notion of balancing between the extremes that may arise in certain contexts. Crook’s view is that this is concerned with ‘good motives, and determining good actions to achieve good consequences’ (2010, p. 157). Virtue ethics, then, requires a deft balancing act between extremes of emotions and rationality. There is a view that virtue ethics is well suited for application as an ethical framework in media-practice contexts since it recognizes the role of individual moral agency, above black-and-white laws, regulations or codes of practice; and that a virtuous character is very important when it comes to making decisions including those related to media production (Black and Roberts, 2011; Couldry, 2006). The notion of a golden mean can be traced back to a century before Aristotle, in Confucian thought, and it offers a way to negotiate or ‘moderate’ between conflicting positions in ‘practical situations in everyday media environments’ (Bugeja, 2008, p. 26).

Nick Couldry, a leading British media scholar, is a ‘neo-Aristotelian’, and he applies his contemporary virtue ethics to theorize the performance of the media, and how people make use of the media around them. One of his key arguments is that the media play a vitally important role in the circulation of information helpful to the conduct of citizens’ lives (Couldry, 2006, p. 125). However, human agency remains the starting point for his media ethics, and this means that, in order to act responsibly, we need to think carefully about how we use available media, but also that media practitioners should strive to lead more ethical professional lives.

**Deontological Ethics**

The term ‘deontological ethics’ is from the Greek ‘deon’ meaning duty. The most prominent figure in this tradition of ethical philosophy is Immanuel Kant, who was born in 1724 in Konigsberg, Prussia, and died in 1804. Central to Kantian ethical precepts is the idea that actions should be judged according to the intentions that motivate them. Individuals’ own sense of self-directed internal moral duty is determinative, not whether the consequences will retrospectively justify a certain course of action.

Many of the central aspects of Kant’s ethics derive from his *Fundamental Principles of the Metaphysics of Morals* (1785) and his *The Critique of Practical Reason* (1787). Kant developed an elaborate scheme of categorical imperatives based on specific maxims such as
'Act only according to the maxim which you can at the same time will that it should become a universal law.' Actions are judged right in this framework if they follow a certain moral rule that satisfies a categorical imperative. The Christian overtones in Kant’s ethics are inescapable, for example in the maxim ‘Act so that you treat humanity, whether in your own person or in that of another always as an end, and never as a means only’ (McCormack, 2006 cited in Crook, 2010, p. 181). The latter maxim is usually referred to as the humanity principle. In media work, it brilliantly gives pause to ethical decision-making and guides moral actions. However, it also creates potentially insurmountable ethical dilemmas for media-practice routines, since on some level individuals are interviewed or incorporated in narratives in the making of media products, and are therefore always a means to an end. This is not, of course, to foreclose the myriad ways in which ethical thinking can be brought to bear on situations confronting media practitioners on a daily basis.

Kant’s ethics then, is very rule-based, and therefore resonates with a more legalistic or ‘black letter’ law or codes-based approach to problem solving, including those arising from media practice. His focus was on obligation, fulfilling our duties and leading our everyday lives in a responsible manner (Black and Roberts, 2011, p. 340). Gordon Graham has suggested that Kantian ethics is ‘marred’ in at least two ways. First, since will or intention is privileged and bracketed from consequences, this sets up ‘a complete divorce’, which is impossible. Second, he argues that, although we can agree that will or intention must be an important component in weighing up moral actions, the prerequisite for universal application of reasons for acting in particular ways is a flawed test. If any set of actions or mode of conduct can be universally described as the best moral outcome, it cannot hope to account for nuance or exceptional situations (Graham, 2004, p. 122).

In spite of these criticisms of deontological ethics and its most famous advocate, as an approach it represents an invaluable touchstone for ethical decision-making, especially to those who work in the media. The moral duties for people in the media industry are many: to be fair and honest, to be accurate, to protect individual privacy especially when gathering news information, to be cautious when media production involves children, to protect the anonymity of sources and so on. That a Kantian ethics is in many ways a theological pathway to explore, sets itself up to occupy a ‘high moral ground’. For many, including media practitioners, that can be a safe, indeed superior, position to occupy.
Christian Ethics

With many connections to Kantian moral duty and more absolutist values, a Christian ethics can be construed as a populist framework relied on in decision-making in all spheres of activity, including the media. The idea of ‘Do unto others as you would have them do unto you’ is quite close to the (Kantian) humanity principle’s prescribed conduct towards others. Although a predominantly secular understanding of the interaction of law and morality is mainstream thinking now, except in relation to particular religious traditions, that has not always been the case (Lloyd, 1981, p. 46). In earlier historical periods it was normal for morality, law and religion to interact. Of course this connection of laws to divinity is embedded in the popular imagination through our knowledge of the Ten Commandments (or ‘the Decalogue’).

Conduct is strongly circumscribed by an either/or view of whether or not it conforms to the Christian moral code. As an infallible guide to the correct behaviour in any context, a Christian ethics is said to be the following of God’s will. Conduct tends to be reduced to a calculus of whether it is right or wrong under this Christian code, in all its multifarious variants. It may surprise some to contemplate the idea that, in some fundamental ways, Christian ethical frameworks are similar to those of other monotheistic religions such as Islam and Judaism. These religions all share a view that the correct way to live is to observe codes prescribed in the writings of a supreme deity, which make up a master rule-book for a moral life.

A Christian ethics shares with several of the frameworks discussed the notion that it is possible to develop morally by making judgment calls over a life. This can be defined as character building for a better life, acting on a sense of duty and conscience, following the right path in one’s professional or personal life or selecting the elements that appear to be true or consistent with your beliefs and approach to living with others. In our media practice, it makes sense that we are guided by our wider beliefs and values: these form an underlying scaffolding for those who chose not to draw distinctions between their personal or working lives; or for that matter, the particular media platform they are making media texts on, as we are now all exposed to cross-media work (Bugeja, 2008, p. 3).
Utilitarian Ethics

Utilitarianism, which is also referred to as a consequentialist approach, is interested in the consequences of actions and decisions, rather than the intentions behind them, or the moral duty or character of the person responsible for them.

Utilitarianism can take many different forms. It is popularly associated with Jeremy Bentham (1748–1832) and John Stuart Mill (1806–73). In English literature, utilitarianism is immortalized in Dickensian notions of an approach interested solely in usefulness rather than beauty or pleasantness (Graham, 2004, p. 129). The ‘workhouses’ of Victorian England were ‘useful’ in the sense that they provided a roof over the heads of people otherwise forced through poverty to live on the streets, but happiness was a rare commodity.

However, it was not usefulness in the modern sense of ‘utility’ that interested utilitarian ethical philosophers. So, how might we best characterize a utilitarian ethics? Its fundamental premise is that decisions should be made according to the amount of happiness particular actions or conduct will promote. The greatest happiness principle is closely associated with utilitarianism, and advocates actions that are likely to lead to the maximum amount of ‘happiness’ or pleasure in any given situation. Mill expressed it this way: ‘actions are right in proportion as they tend to promote happiness, and wrong as they tend to produce the reverse of happiness’ (Mill, 1976, p. 117)

The main difficulty from a media-practice perspective is that utilitarianism as an ethical framework may provide a justification for many actions in popular entertainments, including media treatments of various issues and concerns that satisfy the majority of people. In other words, an action is deemed ‘ethical’ if it results in a large number of happy people; rather than whether or not it improved or corrected some social situation, or the welfare of certain individuals or disadvantaged groups. As you might anticipate, this formula for media practice privileges maximum pleasure and entertainment, and is also likely to be a high-ratings winner, even if it causes harm to certain people in the process. The other important implication pointed out by Graham, is that utilitarianism is not an altruistic ethical or moral philosophy: although promoting a generalized happiness, it’s more concerned with individual happiness and in this sense might be considered to be an attitude of ‘generalized benevolence’ (Graham, 2004, p. 134).

The distinction between so-called act- and rule-utilitarianism is an
important feature of this ethical framework. This might be best explained through an example from contemporary cinema. In the film 28 Days Later (2002) directed by Danny Boyle, humanity is on the verge of annihilation due to the rapid spread of a plague-like virus known as ‘rage’. Those infected suffer a slow and crazed death, and attack the unafflicted, thus spreading the virus. In the film, it is acceptable for survivors to kill other humans in order to preserve their own lives. This might be interpreted from within the bounds of an act- and rule-utilitarian ethical framework. In this ‘end-of-humanity’ scenario, the taking of human life is condoned, and implied to be morally justified. Act-utilitarianism would decree that, generally speaking, the happiness and greatest pleasure of the majority requires that humans do not kill each other under any circumstances. However, a rule-utilitarian ethical framework would allow that, in these horrific conditions, it is permissible to take a life, or multiple lives, to ensure healthy individuals’ survival and the survival of the species. In other words, while the act-utilitarian would suggest every action is taken in order to maximize happiness, the rule-utilitarian would say that, if our actions follow the rules, then the greatest happiness will ensue. The general prohibition against killing is there for good reason and allows the majority to live together peacefully, most of the time. This is the utilitarian ethical framework, but as amended by Mill, who saw exceptions to the general ‘act-utilitarianism’ approach, that would, on occasion, require rules for the greatest happiness and even justice (ibid., p. 136).

Cees Hamelink has argued in The Ethics of Cyberspace that both act-utilitarianism and rule-utilitarianism are ultimately flawed for two reasons. First, who decides who is the supreme agent defining the optimal consequences for certain choices; and second, how can we gauge those ideal consequences in disparate situations (and in rule-utilitarian situations sufficiently similar for a rule) for different actors? In other words, the consequences (actual effects) for the largest number of people are not always foreseeable (Hamelink, 2000, pp. 3–4). Nonetheless, this ethical approach is capable of provoking serious debate about moral choices (especially in media-production decisions) and their consequences.

Other specific media examples throughout the book will invoke utilitarian thinking, but you will gain a sense of how this framework may be used to justify practices such as invasion of privacy through surreptitious filming, the use of listening devices and forms of entrapment and deceit. Some media codes of practice contain clauses which
consider the consequences of actions for an individual's privacy, when they are subject to covert surveillance, and generally when information is being gathered about them. In those circumstances, media workers would need to fully assess the broader ‘public-interest’ merits of these kinds of secretive activities (see Chapters 4 and 5).

We can see that weighing up consequences and calculating the amounts of happiness or pleasure generated by a particular media story, programme, blog, website or tweet is a helpful framework for media practitioners. The contentious aspects of this framework, however, are connected with whether the evaluative process is reliable, and whether or not there are other preferable frameworks to assist decision-making and judgment in media practice.

**Foucauldian Ethics**

The philosophy of Michel Foucault can make an important contribution to our understanding of media ethics. As one of the major ethical philosophers of the modern period, Foucault’s thought can be usefully applied to the steady stream of controversy and scandals in the media. Indeed media scholars are seeing the explanatory value of Foucault’s work from a number of different perspectives. For example, Albury, in her research on pornography, argues that the ways in which individuals negotiate an understanding of their own ethical position through ‘a personal and community-based process’, align well with the philosopher’s writings in relation to how people reflect on and construct their personal ethical sensibilities (Albury, 2003, pp. 206–7). McCluskie, on the other hand, suggests Foucault’s contribution lies in making available a powerful critique that allows us to see how relations between ‘knowledge regimes’ and ‘concrete practices’ shape individual actions. Further, McCluskie argues that ‘panoptic control’ and the industrial ramifications of, for instance, ‘the declining/reconfigured ranks of reporters’ are relevant to a contemporary media ethics (McCluskie, 2011, p. 371). For industries that are constantly evolving, Foucault’s legacy for media ethics is both in providing tools to assist us in analyzing industrial operations on the big-picture canvas of changing practices; and, at the same time, in examining at a very personal level the way that individuals make their own sense, and find their way ethically, within the media industries.

In 1984 Foucault died, aged 57, leaving a huge legacy in terms of
his contribution to philosophy and the number of influential texts he authored. The actual corpus is very well known, including key works such as *Madness and Civilisation* (1961); *The Order of Things* (1966); *The Archaeology of Knowledge* (1972); *The Birth of the Clinic* (1973); *Discipline and Punish* (1975) and *The History of Sexuality* (1976, 1984, 1984) (Rabinow, 2000).

The ancient Greeks in the sixth and seventh centuries BC provided considerable historical source materials for Foucault, particularly in the truthful discourses of the poets. In an inaugural lecture at the College de France, ‘The Order of Discourse’, Foucault outlined the goals of his philosophical project, in broad terms, as questioning human beings’ will to truth, to ‘restore to discourse its character as an event and in short to ‘abolish the sovereignty of the signifier’ (Rabinow, 2000, p. XII). His work is also based on related ideas of a ‘will to knowledge’, ‘systems of exclusion’, ‘technologies of power’ and ‘technologies of the self’.

In ‘On the Genealogy of Ethics’, Foucault seeks to elaborate on an ethics, or personal conduct, as an ‘aesthetics of existence’ (Foucault, in ibid., p. 261). Following from his analysis of wider personal relations, including sexual relations among the ancient Greeks, Foucault argues that humans should see their own everyday lives as a kind of work of art. It’s a view that people can exercise a certain aesthetic activism and agency over how they constitute themselves, through the personal choices they make. There are, then, visible elements of the other ethical philosophies: Aristotelian virtue ethics, Christian ethics and Confucian ethics. As in virtue ethics, we can see that individuals can make conscious decisions about how they build their own moral self. It’s a kind of self-directed ethics where different components can be selected and assembled in ways that we as individuals believe best represent ourselves as moral agents.

In his major three-volume treatise, *The History of Sexuality*, Foucault was analyzing the history of morals. He was able to distinguish certain acts or actions on the one hand, and moral codes that may apply to them on the other. He uses the example of relations between a man and a woman, governed by a marital code, which sets down certain rules about only being allowed to have sex within the marriage, not with others. Overlying these prescriptions on our moral lives is something Foucault refers to as rapport à soi, which translates as ‘the relationship with one’s self’. By this he means that, in addition to the moral requirements and prescriptions that apply socially, and institutionally, there’s also this process of moral self-manufacturing.
Foucault believed that this relationship with one's self could be broken down into several different sub-elements. First, there is the aspect concerned with moral conduct, whether we refer to that in a Christian sense as feelings, a Kantian sense as intention, or a Foucauldian sense as our response to a particular judgment or ethical decision. In a media-practice context this ethical substance might refer to the choices we have made in constructing a story or some media product. Myriad choices and decisions are made in our media practice: what is omitted is frequently as significant as what is included. An important dimension, then, of Foucault's ethics is the cumulative affects of our ethical decision-making, as constitutive of our wider moral lives over time. In this sense it is like an Aristotelian virtue ethics, which similarly advocates moral development.

Second, Foucault saw that the relationship to one's self contained a ‘mode of subjectivation’ or mode d'assujettissement, which refers to the way people are interpolated or called into recognizing their moral position or obligations. Here Foucault is referring to whether the source of a particular moral ideology is, for example, a ‘natural law’ (against murdering fellow humans), a universal rule in a Kantian sense (some general prohibition) or more to do with an aesthetics of existence (a conscious personal decision that is consistent with one’s own moral agency).

Third, how can we as individual subjects mould our own morality in order to become ethical actors? Foucault believed this was about what individuals can do for themselves, in their own self-formation or asceticism.

Fourth, Foucault considered that the relationship with ourselves was about the telos, or becoming. This could be framed as ‘best practice’ for the self: what kind of being do we aspire to the most? So overall, there are moral codes of behaviour or conduct (and this is not referring to the media codes of practice, principles or standards), which exist in society and its institutions, and then there are the processes over which we can direct or participate in our own self-construction, in a moral sense. His argument is that together these two elements constitute the sphere we call ‘morals’ (ibid., pp. 263–4).

Foucauldian ethics covers a great deal of terrain as a history of morality and examine the role that ‘technologies of the self’ play in moral processes. He is imputing more to a subject’s constitution than mere immersion in a ‘symbolic system’ (ibid., p. 277). Individuals are assembling their own moral agency from a range of available
resources; a process that requires living and character formation in an Aristotelian sense. Foucault's ethical philosophy is sometimes criticized as being too morally relativistic or ambiguous. However, to be broadly comparative is often a good way to make moral judgments across society and cultures. On the other hand, if values are intentionally contrarian or anti-universalistic, that may also be very problematic in the group decision-making processes that often occur in media contexts.

For media practitioners, the power of Foucault’s ethical reasoning perhaps derives from his recognition of moral diversity itself. This is an appealing proposition for those who value media diversity.

Foucauldian ethics represent an important contribution to interpretative, contextually generated, inductive moral decision-making in media practice.

Confucian Ethics

Aristotelian virtue ethics finds considerable resonance in the ethics of Confucius. As with Aristotle’s ethics, Confucian ethics has as its starting point a reflection on human life overall, rather than specific acts or conduct, and focuses on human character rather than rules, principles or consequences. For both Aristotle and Confucius the concern is with what a ‘good life’ is, or how a person can lead a good life, and what qualities are necessary to do so.

There are some fundamental steps for taking a Confucian approach to ethics. Rather than a focus on Aristotle’s *eudaimonia* (happiness, thriving) Confucius (551–479 BCE) sought to find the human *dao* (way), or the path to become a good person. To become a good person, one must cultivate *de*, that is, a dispositional character (generally translated as ‘virtue’ in English) or the character *ren*. *Ren* has been generally translated as ‘benevolence’ or ‘humanity’, but is also widely referred to as ‘human virtue’ or ‘cardinal virtue’ (Yu, 2007, p. 24). Just as *eudaimonia* or ‘happiness’ is the pursuit of virtue ethics, *dao*, or the way, is the common object of ancient Chinese ethics. Confucian ethics is called ‘*dao* of the Master’, so in that sense Confucian teachings are also a discourse about an ethical method.

In Chinese intellectual history the ideas of Confucius often stem from the ‘Four Books’, including the *Analects*, *Mencius*, *The Great Learning* (*Daixue*) and the *Doctrine of the Mean* (*Zhongyong*). In elaborating how it is that a person can become a good person by cultivating *ren*, Confucian ethics reflects on and discusses all the core living
issues including what it is to be human and lead a good life, education, family, virtue politics and so on.

In a Confucian ethics, a key question is ‘Where is the human dao?’ Thus, in seeking out the best ethical approach to a particular issue, people need to reflect on their lives and ask if they are on the correct path for a ‘good life’? (ibid., p. 27). This is obviously a question that many media practitioners could certainly benefit from asking themselves, in the context of thinking through the implications and consequences of the media content they produce. We only need to observe the excesses of commercial radio or the havoc wrought in the lives of ‘reality’-television-show contestants to understand the importance of such reflection. Confucius saw his role as a ‘transmitter’ of traditional values and ideals. The underlying purpose of this transmission was the perpetuation of the dao embodied in these traditional values (ibid., p. 45). The parallels for media practitioners are unavoidable, even if ‘missionary’ pursuit of virtuous objectives is not a prime motivation.

Buddhist Ethics

A relatively new, and yet vast field that has rarely been applied specifically to media practice, especially outside the Asian region, Buddhist ethics is seen to have a close relation to Buddhist philosophy itself. Indeed the notion that a moral life and decision-making are intimately connected with the typical mental cultivation associated with Buddhist ethics makes a persuasive argument (Hallisey, 2003).

If notions of ‘cultivation’, ‘perfection’, ‘habituation’ and ‘improvement’ sound similar to the Aristotelian virtue ethics’ ideal of character formation and becoming an ethical person, that is not surprising. Writers of Buddhist ethics acknowledge the connection, and agree that ‘virtue’ is a common dimension shared with the ancient Greek ethicists. But it’s worth remembering that Buddhism as a religious philosophy pre-dates the Greeks (Plato, Socrates) by several centuries. As Saddhatissa notes, writing in the Theravada Buddhist tradition, a learned and eminent Brahman ‘expounded his teaching that morality and wisdom are essential to the character of a true Brahman’, representing the ideal, ethical person (Saddhatissa, 2003). It is in this context of normative evaluations of the character of people that a Buddhist ethics is well positioned to offer decision-making guidance for media practitioners. However, Buddhist ethics is a very broad field of philosophical inquiry and ‘mind culture’ generally, and therefore
has a great deal to offer thinking about relations to media representations and practices.

Structure of the Book

The purpose of this chapter was to introduce readers to the importance of media practitioners possessing a toolkit of legal, ethical and media-practice skills and knowledges, in order to produce quality content for an informed citizenry. The issues, concepts and ethical frameworks introduced in this chapter are a useful starting point for reflecting on ethical media practice. In Chapter 2 we continue to consider these literacies through an exploration of some of the basic constituent elements of interacting legal, ethical and media systems. Chapter 3 considers confidential information and defamation across Anglophone common-law jurisdictions and cultures, while in Chapter 4, evolving notions of privacy are explored through a discussion of the uses of new media and communications technologies.

Chapter 5 delves into the shifting debates in relation to intellectual property and modes of regulation. Copyright is examined in the context of the realignment of technological capacities and media-consumption practices, where the long-term sustainability of this business model, for both rights holders and consumers, is uncertain. Chapter 6 draws on a case study of large-scale corporate media consolidation to explore the contemporary application of the term ‘public interest’: the argument is made that key ethical questions arise from the fundamental structuring of media systems in market societies. In the concluding chapter we review enduring risks and priorities for media practitioners, who find themselves operating in the midst of ongoing transformations in the media and communications industries.

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