

REMOTE CONTROL: NEW MEDIA, NEW ETHICS

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Catharine Lumby and Elspeth Probyn (eds)

Remote Control: New Media, New Ethics

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[161] The existence of a 'media ethics' could well be seen as an interesting sideshow to the real business of media lawyers. As lawyers, we don't construe bad or incorrect reporting as a matter of ethics, but in terms of the categories of the law used to correct the effects of damaging publications, like defamation, contempt of court and breach of confidence. In other words, law is used to cure damage done to individuals or communities, which may or may not be the result of unethical media practice. Other forms of media law may have a closer connection with a conventional understanding of ethics, as expressed through legislative interventions that place fetters on the ability of people to publicise and receive the publications and material. Such interventions are found in categories like classification law, broadcasting law and internet regulation.

So what are ethics? Conventionally, ethics may be seen as the practical moral guidance of a person's behaviour and actions. Law is not synonymous with ethics, though adopting an ethical cast of mind or behaviour may act as a preventative measure, ensuring that a person is not defamed or that confidences are kept. However, law is not unyielding: defamation for instance does not impose an absolute standard, and provides a balance to absolute fetters in order to permit some publications that would otherwise be defamatory.

In its legislative mode, law is used to make put ethical factors into effect. For instance, s 123(2) and (3) of the *Broadcasting Services Act 1992* (Cth), set out the base level obligations that broadcasters need to conform to, in the creation and

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development of standards of broadcasting content. These requirements make their way into industry self-regulatory codes of practice that are created by the various sectors themselves, and ultimately registered by the Australian Broadcasting Authority. Codes of practice of this type are a kind of 'ethics in action' that are created by the media themselves, and for this reason are meant [162] to provide a more effective form of guidance than top-down regulation. The codes of practice afford different requirements for different media forms and for different content based genres. Other forms of self-regulation, such as the Code of Ethics that the journalist's union, the Media and Entertainment Arts Alliance, imposes upon its members,² were created by their own members through the Ethics Review Committee, and are not externally imposed.

The editors of this collection of 13 essays and seven interviews take issue with this conventional depiction of media ethics.³ Instead, they paint a picture of a conventional ethics as an unyielding body of rules, imposed from above and incapable of being nuanced to the needs of different media types and forms. They take issue with the notion that ethics embed some kind of political and social ideal, or the idea that activities of the media should be measured against these ideals.⁴ Instead, they argue that the creation of new media genres and technologies require a reconsideration of the assumptions grounding 'our ethical norms'.⁵

The editors make a number of claims about ethics in this book, without really defining what they mean by ethics or see encompassed by ethics. The idea of ethics appears to cover everything from cash for comment, defamation, advertising regulation, internet regulation and copyright, to the ethical approaches to be adopted towards contestants in reality tv and a reverse ethic of young consumers playing with media forms against the interests of media producers. Through a broad construction of ethics, Lumby and Probyn seek to enable open forms of communication by relying on an ethics constructed in its engagement, because 'in the end, ethics comes down to use it or lose

² The current code came into effect in 1999, replacing the original 1944 code.

³ Elspeth Probyn and Catharine Lumby, 'Introduction: An Ethics of Engagement', Chapter 1, 1-10.

⁴ Ibid 2.

⁵ Ibid 3.

it' (sic).⁶ Though they do not suggest that the media should be ethics free, they champion a realignment of ethics, its uses, its practices, and its limits.

Lumby and Probyn insist that the collection they have put together is designed to spark 'debate' about media ethics, based around the notion of an ever changing public sphere, and the need to acknowledge an adaptive relationship between media and ethics. The editors acknowledge that they have not covered all the ethical issues, but they are sceptical of an ethics that universalises, and instead advocate a nuanced and adaptive set of standards applicable to different media forms and different audiences. Though canvassed within the parameters of 'debate', they use the material and case studies included in the essays and interviews as evidence to support an argument against an imposed and externalised ethics. Based on this material, they advocate a new form of ethics driven by the individual needs of different consumers, producers and media format and technologies, to promote a new and reinvigorated public sphere that could conceivably replace conventional modes of ethical regulation.

Though the collection explicitly deals with ethics in the media, only one of the essays considers the structure and foundation of ethical forms and the role of ethics in public sphere known as the 'mediasphere'. Duncan Ivison relies on the insights of Habermas to try to explore whether effective communicative activity can be maintained in the light of changed media forms and the reconstruction of media as a form of entertainment an effective public sphere.⁷ He does not seek to provide answers to this question in his essay, but suggests there while there is a need to ensure that there is a degree of integrity in the forms of communication that enter the public sphere, a diversity of views and opinions needs to be heard. While recognising the value in a re-evaluation and re-ascription of ethics, he disagrees with the notion that this means 'anything goes', or that all values or ethical standards must give way to the plethora of views in the community.

[163] The other essays and interviews in this collection provide a series of interesting and instructive insights into the practices of different media forms, and attitudes towards ethics, of a range of media and creative practitioners. It becomes apparent

⁶ Ibid 10.

⁷ Duncan Ivison, 'Arguing about ethics', Chapter 3, 25–41.

that most of the ethical issues considered in the collection operate outside of law's sphere. It may have bypassed our attention that participatory or reality, television formats like *Big Brother* exist against the backdrop of ethical concerns for the participants,⁸ or the idea that participants will 'play' with the media form itself.⁹ For the most part, we may simply consider decisions to participate as a matter of contract law, and any content of these programs the subject of relevant areas of media law. We may not spend time contemplating problems inherent in the compressed public sphere in terms of reporting of and reporting about indigenous people occurs,¹⁰ or ethical problems thrown out by negative or objectified reporting of stories about crime and violence in the Lebanese community.¹¹ By providing us with insights into the effects of partial, unethical reporting, we may also become alert to interstices in the law.

However, it is perhaps a little disingenuous to see this collection simply in terms of a debate about ethics. The net is cast far more widely than 'ethics', to also include critiques of the law and more general forms of regulation are fair game. The role of law may or may not be acknowledged as part of this process. Ann Dunn draws on the ethical, philosophical and legal problems thrown out by the blurring of the lines between program content and advertising in her essay, 'Ethics Impossible? Advertising and the Infomercial'.¹² She provides an account of an investigation by the New South Wales Fair Trading Advisory Council on the effect of advertising in the guise of editorial content, which led to the recommendation that codes of practice be instituted to correct ethical problems found in this type of material.¹³ She makes the point that the use of 'codes' act as a form of regulation is the method by which industries attempt to avoid externalised regulation.¹⁴ The institution of codes and self-regulation gives ethics a form, but one which fails to have any in any real or practical effect.

⁸ Catharine Lumby, 'Real Appeal: The Ethics of Reality TV', Chapter 2, 11–24.

⁹ Milissa Deitz, 'Great Pretenders: Ethics and the Rise of Pranksterism', Chapter 13, 230–42; Interview with John Safran, 'The Limits of Satire', 243–8.

¹⁰ John Hartley, 'Their Own Media in their Own Language', Chapter 4, 42–66.

¹¹ Ghassan Hage, 'A Viable Ethics: Journalists and the "Ethnic Question"', Chapter 5, 74–86; Interview with Maxine McKew, 'Beyond the Disconnect: Practical Ethics', 67–73, Interview with Linda Jaivin, 'Representing Asylum Seekers', 189–95.

¹² Chapter 8, 133–51. Elspeth Probyn 'Eating into Ethics: Passion, Food and Journalism', Chapter 7, 107–23, on the issue of detachment; Interview with Cherry Ripe, 'Beyond Food Porn', 124–32.

¹³ Dunn, *ibid* 143.

¹⁴ *Ibid* 143–5; also see Interview with Jim Moser, 'Pitching to the "Tribes": new ad techniques', 152–8.

The idea of governments establishing codes of practice and self-regulatory arrangements in place of externalised regulation has been in place in the broadcasting sector since 1992. The inter-relationship between law, ethics, regulatory arrangements and the structure of the market forms the basis of Graeme Turner's thoughtful analysis of the *consequences* for public discourse in [164] the wake of the failure of broadcasting regulation in the infamous 'cash for comment'.¹⁵ Effective participation in the public sphere is shown to be effectively stymied for anyone without the requisite market access; some kind of regulatory intervention is necessary.¹⁶ An interview with Mike Carlton bookends this essay, providing an insight into the viewpoint of a radio commentator who engaged publicly with the cash for comment events.¹⁷

Shifting out of conventional media forms into the realm of the internet takes the collection into new territory. The *Sydney Morning Herald* journalist Margo Kingston provides an absorbing account of her foray into the new form of journalism based around a Webdiary,¹⁸ popularising interactivity with readers whose contributions became part of her journalism. To deal with the role of her readers, she established a code of ethics for contributors, ('not black letter law'),¹⁹ based on the MEAA Code and adapted to the needs of Webdiary. Intriguingly, she will publish material from contributors that does not comply with the MEAA Code so long as material is factual, and quotes are identified,²⁰ but which potentially leave her and the publishers open to actions in defamation. The idea of the amateur as producer of net content is uncovered in Kath Albury's funny overview of the way porn is created on the net,²¹ through the images would breach the content rules of Sch 5 of the *Broadcasting Services Act 1992* (Cth).

¹⁵ Probyn and Lumby, above n 3, 8. The editors made the claim that Turner suggested that though 'some ethics took a battering, the ensuing outcry and public inquiry provided a sense of what a working media ethics should do: provoke comment and reflection from all sides of the Australian public'.

¹⁶ Michael Moller, 'Grassroots ethics: the case of Souths versus News Corporation', Chapter 12, 216–29.

¹⁷ Interview with Mike Carlton, 'Money versus ethics', 100–6.

¹⁸ Margo Kingston, 'Diary of a Webdiarist: Ethics goes Online', Chapter 9, 159–72.

¹⁹ *Ibid* 165.

²⁰ *Ibid* 171–2.

²¹ 'The Ethics of Porn on the Net', Chapter 11, 196–212; Interview with Fiona Patten, 'Ethics and Sex', 212–15.

Though the collection is focussed on ethics, it is impossible to escape the perception that ethics and law as treated by some of the authors as being one and the same, designed to act as a fetter on the free ability of people to communicate on the internet. Kate Crawford's essay 'Control-SHIFT: Censorship and the Internet',²² charts the changes in the internet from that of a free, uncensored, open space, to one which is more and more restricted by legal controls. She argues that 'censorship' of the internet occurs through diverse means ranging from defamation law to copyright law, to Australia's online content laws. Specific areas of law become covert tools to censor content on the internet. Thus, the specific goal and function of these laws are reconstructed, and their role as correcting damaged reputations, protecting property, or providing information to consumers, is ignored or dismissed.²³ Of course defamation law can have a chilling effect, copyright can be used to deny access to material, and attempts to regulate content on the internet may be futile, but to suggest that they are covert censorship tools is perhaps overstating the situation.

This collection moves into both charted and uncharted territory, and of course, takes risks in the process. It perhaps overstates its remit as an exercise in reconsidering ethics in the light of changed circumstances, but in doing so, engages with the wider scope of legal and regulatory dilemmas affecting the Australian and international public sphere.

²² Chapter 10, 173–88.

²³ Ibid 173.