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The Internet and Civil Society

Peter Levine

Civil society is moving to the Internet. All kinds of organizations use Web pages for recruitment, public relations, fundraising, and communication among their members. Citizens get their news from Web pages and deliberate about public affairs via email. Parishioners send electronic condolences to bereaved members of their congregations. Hobbyists exchange advice and treasured objects on specialized Internet sites.

But as civil society moves online, some worrying trends are beginning to emerge. This article examines five main grounds for concern.

Equity

The first (and most widely recognized) reason to worry about the effect of the Internet on civic life is that people cannot use computers effectively unless they have money, skills, and access to high-speed connections. The cost of computing power is decreasing, but at the same time the standard equipment used on the Internet is growing more complicated every day. Consequently, for many the cost of a functional Internet connection remains too expensive. In the U.S., more than half the population is thought to be online, yet income, race, education, and age still predict whether people use computers and computer networks. Problems of access are far worse in poorer countries. According to the United Nations Development Programme, the industrial nations are home to 15% of the global population and 88% of Internet users. In Africa, by contrast, only half of one

percent of the population is online. A quarter of all the world's countries have less than one telephone for every 100 people, which makes widespread Internet access look hopeless in the near run.

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Although the wealthy may find that civil society becomes more exciting and inviting as it exploits the power of computer networks, poorer and less educated people have no alternative but to use old-fashioned, face-to-face, local modes of association. Worse, groups that used to include a broad range of people may adopt the Internet and shed their poorer members.

Ideally, the Internet would allow everyone to become a producer of news, advice, and public opinion—not just a consumer. However, producing Web pages and software is much more expensive than surfing the Web or sending email. These costs might fall as the number of designers grows, software becomes easier to use, and service providers proliferate. As usage soars, however, connections are becoming painfully slow. Today it is impossible to publish complex material with an ordinary computer and dial-up Internet access. Although faster home service is available via cable lines, American cable companies now limit the amount of material that their customers can transmit, choosing to leave their lines free for other users to receive data quickly. In short, companies with millions of customers inevitably take precedence over private citizens with personal Web pages. But if ordinary citizens for the most part download corporate material, rather than create content of their own, then the Internet will begin to look like satellite television instead of a revolutionary, *interactive* medium.

Thin Social Bonds

The Internet has risks even for those who can use it fully. For one thing, it may replace robust, durable, and emotionally satisfying social bonds with superficial and contingent ones. When we communicate using a computer, we can withhold practically all information about ourselves, including our names and locations; we can break off contact at will; we can adopt multiple personalities and identities; and we can shield ourselves from the consequences of what we say. Thus, it is hard to imagine that people will develop strong bonds of trust and mutual obligation if computers become their main means of communication. Communication may be easier than ever, but if we find ourselves in need, there may be no one to turn to.

This is only a guess about the likely effect of the Internet on human relationships. As my colleague William Galston has argued in these pages, speculating about the social impact of the Internet in 2001 is like predicting the effects of television from the perspective of 1952. At that early date, analysts of TV “might have noted how neighbors crowded into a living room to watch the only set on the block,” and they might have drawn conclusions about television’s “community-reinforcing tendencies that would have seemed antique only a few years later.”

Still, it is worth surveying the available evidence. The 1996 National Election Study in the U.S. revealed that Internet users had more offline or real-world memberships than other people had, and that they were more trusting. These generalizations held true even if one compared only people of similar education and income. Similarly, a survey conducted by UCLA in 2000 found that people who used the Internet spent slightly more time participating in clubs and organizations than people who had never used computer networks; Internet users were also less likely to describe themselves as “lonely.” A likely explanation is that individuals who are active in civil society are so generally energetic and interested that they take to the Internet early and avidly.

Less encouraging results, however, emerge from two studies that examine the effects of Internet use on random populations *over time*. The 1998 Carnegie Mellon HomeNet study found that people who were given Internet access began to communicate less with other members of their own households, and their social networks narrowed. The HomeNet researchers hypothesized that the “time that people devote to using the Internet might substitute for time that they had previously spent engaged in social activities” and that “people are substituting poorer quality social relationships [on the Internet] for better relationships, that is, substituting weak ties for strong ones.” Participants also reported an increase in depression as they used the Internet.

The Stanford Institute for the Quantitative Study of Society analyzed the results of 35,000 people given the simple Internet link, “Web-TV,” for the first time. They

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found that new Internet users began spending less time with family and friends, they also began attending fewer social events and also devoted less time to the newspaper.

Combining these four sets of data, a tentative hypothesis emerges. People who use the Internet at any date will be more socially connected than those who do not, yet over time a whole society will grow more disengaged or atomistic as a result of increasing Internet use.

But it would be wrong to jump to the conclusion that such disengagement is a bad thing. On one hand, the weak ties that are evident online allow people to interact without accepting responsibility. Anonymity, difficulty punishing antisocial behavior, the absence of



"Trust me Mort—no electronic-communications superhighway, no matter how vast and sophisticated, will ever replace the art of the schmooze."

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social cues, and the use of temporary, alternative personalities—all weaken social inhibitions and encourage offensive or hostile behavior. (An example is "flaming," or responding to another's communication with extravagant harshness and abuse.)

On the other hand, the ability to withhold information about oneself at times allows one to operate in a race-and gender-blind arena, safe from discrimination. For instance, the city of Santa Monica, California, gives citizens access to a local email network called PEN, with free terminals in public spaces. As a result, homeless residents—previously scorned—have become active participants in creating the city's homelessness policy. On their advice, Santa Monica now provides free showers, washers, and lockers. One citizen, Donald Paschal, has written:

I am homeless. . . . We without shelter are looked on with disdain, fear, loathing, pity, and hatred. This difference makes 'normal' contact with other humans almost impossible. Not only might we be dirty, or perhaps smell bad, we are different. In the minds of many, people who are different must be avoided. This is why Santa Monica's PEN system is so special to me. No one on PEN knew that I was homeless until I told them. After I told them, I was still treated like a human being.

To me, the most remarkable thing about the PEN community is that a city council member and a pauper can coexist, albeit not always in perfect harmony, but on an equal basis. I have met, become friends with, or perhaps adversaries with, people I would otherwise not know of.

This inspiring story requires a caveat: Donald Paschal is evidently a skilled writer, so he must be educated (or successfully self-educated). Differences in education, native language, dialect, and sometimes gender remain palpable—even online.

Still, the hope of partial anonymity may cultivate community by encouraging candor and personal disclosure, especially of shared stigmas. The HomeNet and Stanford Studies conclude that citizens generally become more isolated as a result of Internet use, but one also can identify important exceptions. Information Systems Professor Jenny Preece finds that people who share medical problems, for instance, create "empathic communities" online, sharing information and emotional support. Sometimes communities are deeper when we choose our partners, rather than simply accept the local networks of our birth. Since it offers such choice, the Internet can provide welcome

relief from (to quote feminist Marilyn Friedman) "the repressive world of what some sociologists call communities of 'place,' the world of family, neighborhood, school, and church."

Political scientist Bruce Bimber's distinction between 'thick' and 'thin' communities is relevant here. People join "thin" communities because they already possess common beliefs, values, or ends, and they think that collaboration brings benefits. I may sign up for an email list-serve, for instance, because I believe that the benefits (information about a specific subject) outweigh the costs (a cluttered inbox). Later, out of a sense of obligation, I might also contribute information. But I will quit as soon as I decide that the overall costs of participating outweigh the benefits. Thus, if we can call the list-serve a "community," it is a highly instrumental one. It requires some mutual trust, but trust of a conditional and limited type. In a "thick" community, by contrast, members appreciate the inherent

Sometimes communities are deeper when we choose our partners, rather than simply accept the local networks of our birth.

value of the group, its participants, and the goals achieved by collective decision making. Religions, neighborhoods, and families are often "thick," but it is rare for "thick" communities to form online without any presence in the real world. To be sure, committed participants in email, bulletin boards, and online role-playing games insist that they have created online "communities." But since participants may lack experience in "thicker" groups, their testimonials cannot be accepted at face value.

Citizens in liberal societies have a right to escape from private associations—such as unions, political parties, churches, fraternal organizations, and even their families. Ease of exit promotes individual freedom and, all things being equal, is preferable to the oppression arising within organizations that attempt to control their members by preventing defections. But in a healthy civil society, the liberal right of exit coexists with an array of strong, disciplined, "thick" associations. For instance, one can quit a traditional labor union or family, but only at a cost. And admission to such groups requires the agreement to contribute and conform to specified norms. The threat of exclusion or expulsion gives organizations power over individuals—even in a liberal state.

Disciplined organizations may discriminate against outsiders and oppress those at the bottom of their internal hierarchies. But they also require their members' general assent and in return offer political power

and paths for advancement. Thus, for instance, a white, working-class American man of the nineteen-fifties could count on fairly loyal service from the Democratic Party, the Catholic Church, and labor unions. He could also imagine rising to be a party elder, a Cardinal, or a union president. All of these associations have lost membership and political importance, partly as a result of reforms designed to ease entry and exit. For the most part, today's disciplined and powerful organizations are corporations, which offer little to those without skills or wealth. While the voluntary sector has become less discriminatory since the 1950s, it has also grown weaker as a whole, leaving working-class citizens without an important source of power.

The Internet is likely to exacerbate this trend. To join a newsgroup or an email list or to frequent a Web site, one usually types a few commands; to quit is just as simple. Internet consultant Elizabeth Reid observes that "users who engage in disruptive behavior on-line can be subjected to public rituals intended to humiliate and punish them." But these sanctions are surely weaker online than in the "real world." Since Internet groups—with their easy admission and penalty-free exit—cannot effectively discipline their members, they cannot overcome collective-action problems. They lack the means to compel people to serve one another, to deliberate about a common good, or to make sacrifices for that good. Since they cannot harness the resources of individual members, Internet groups can acquire little power in the broader society.

Some enthusiasts believe that network technology itself allows people to overcome collective-action problems. We no longer need either authority or markets to achieve common ends, these proponents argue, because we have entered the era of SPINs—"segmented, polycentric, ideologically integrated networks." SPINs include the women's movement of the 1970s, the Zapatistas' supporters in Mexico, the international network of neo-Nazis, and the anti-globalization movement. SPINs need neither money nor enforceable rules; instead, technology minimizes transaction costs and shared values motivate members. SPINs have indeed protested and disrupted other institutions, but I doubt that they can devise (let alone implement) positive programs. For instance, the anti-globalization movement has put protesters on the street, but it seems incapable of creating a new system of international trade.

Enthusiasts also assume that software that allows the free exchange of text, pictures, or music is likely to create virtual communities and build an ethos of sharing on the Internet. But the reality is more sobering. One study has found rampant free riding on the music-sharing network called Gnutella. More than 70% of all participants take music without offering anything in

return. In the end, such networks will be useless, since individuals will give nothing, but only take.

This is evidence against those who claim that the Internet (seen as inherently “distributed” and “empowering”) will naturally generate deep and satisfying social bonds. Although it is too early to reach the opposite conclusion—that the Internet will destroy genuine communities—the warning signs merit further scrutiny and the development of proposals for reform.

Threats to Public Deliberation Online

Apart from human bonds and trust, another good that people expect from civil society is public deliberation. Popular opinion is supposed to guide—or at least constrain—democratic governments. But people do not automatically possess conscious views and opinions about major public issues. Citizens develop their opinions by participation in or observation of discussions. Their opinions can prove wise or foolish, selfish or altruistic. But deliberation is the most democratic way to *improve* citizens’ views, since individuals are forced to defend their proposals in the face of those with different interests, backgrounds, and information. As a consequence, overtly selfish or foolish ideas tend to drop out. Deliberation is also an essential means of communication between the public and the government. Decision makers cannot use election results alone to ascertain what the public wants, because what

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deliberate, they drift toward their own
ideology’s extreme limits.*

a vote communicates is always ambiguous. Only by listening and talking can leaders learn their constituents’ values and priorities.

Because rulers will always be tempted to favor their own interests, no government or politician can be trusted to monopolize the management of public debates. Economic markets also provide few mechanisms for egalitarian, open-ended, and impartial discussion—especially about the proper limits of the market itself. Therefore, independent non-profit associations and ad hoc groups are the best arenas for hosting public deliberation.

There is plenty of political talk available on the Internet, but its quality may worsen over time as individuals *filter* Internet communication. Traditional news media limit the control one has over the ideas one encounters. A person who subscribes to a newspaper because, for instance, he wants specialized information

relevant to his own career will likely stumble across novel ideas, alien perspectives, and upsetting information—*despite* his strong disinterest. Internet users, however, can search for only the information and ideas they want, remaining safely in the company of those with similar views and interests.

Information scholars Marshall van Alstyne and Erik Brynjolfsson have devised an elegant proof for the proposition that “connectivity”—the ability to communicate quickly and cheaply with many people—encourages “balkanization,” defined as a proliferation of separate communities or conversations that are not in mutual contact. If individuals have a finite capacity to absorb information, if they can choose their partners freely from among larger populations, and if most people have at least mild preferences for specific types of ideas and facts, then balkanization is sure to result. A similar logic suggests that the Internet may increase intellectual *stratification*, as experts talk only among themselves and refuse contacts with laypeople.

Studies demonstrate that when groups consisting of dissimilar people deliberate, they move toward compromise positions, and sometimes reach consensus. When ideologically similar people deliberate, however, they drift toward their own ideology’s extreme limits. Since the Internet encourages citizens to select discussion partners from across the country or around the world, one can expect to see islands of committed believers isolating themselves from conversation with those of differing views. Such groups will likely come before our national institutions with firm demands, but without having learned to compromise or to respect other people’s views.

Another reason to worry about online public deliberation arises from the contrast between “voice” and “exit” proposed by Albert O. Hirschman, now a social scientist at the Institute for Advanced Study. Except in highly coercive organizations (such as some military units and authoritarian states), those who are not fully satisfied with their groups commonly choose between two strategies. Exercising their “voice,” they may complain, seek change, and cultivate support among fellow members. Alternatively, they can leave the association, perhaps to join a different one. People typically follow the path of least resistance. For example, if the only way to exit a democratic state is to emigrate, but speech is constitutionally protected, then citizens typically use voice. On the other hand, if firms in a competitive labor market do not respond to employees’ complaints, then disgruntled workers tend to exit.

Both voice and exit promise social benefits. By exiting, group members reduce the size of their own organizations and enlarge other, more desirable ones. Voice works more directly, as group members deliberate about how to improve their associations. On the Internet exit prevails over voice, since leaving any

Internet-based group is easy but changing its prevailing norms is difficult. The likely result is a decrease in public deliberation—especially about ends and values. We might hope that opposing groups would debate one another, but this may not happen on the Internet, because individuals can filter out anything that they don't want to hear. There is no common space, mass audience, or means of addressing people who don't seek out the speaker.

Consumer Choice

If the Internet offers any benefit, it is a dramatic increase in consumer choice. Daily, the business section of any American newspaper informs readers that computer networks help consumers find goods more quickly and cheaply than previously imaginable. Likewise, one can easily find the religious community, support group, or political lobby that most closely fits one's preferences.

Although consumer choice is preferable to despotism, any civic-minded person would worry about rampant consumerism. For one thing, consumption is less dignified and valuable than production and creativity. The Catholic Church teaches that "work is a good thing for man—a good thing for his humanity—because through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfillment as a human being and indeed in a sense becomes 'more a human being'." Similarly, philosopher Hannah Arendt argued for the fundamental importance of creative activity that produces lasting objects of value—"work"—and also deliberation and cooperation among human beings: "action." When we describe activities as "civic," or as the proper tasks of citizens, we usually have Arendt's "work" in mind.

The initial promise of the Internet was its capacity to transform everyone into a publisher, an artist, or a software engineer. Yet the percentage of Internet users who create material has surely fallen dramatically since the early days of the Web. The Stanford researchers find that, for the most part, "the Internet today is a giant public library with a decidedly commercial tilt." If the Internet encourages consumption while discouraging creation, then civil society is harmed.

A second concern is the easy confusion between *consumer choice* and *freedom*. Choosing what one wants to buy is not evidence of autonomy, since one's preferences may have been formed without reflection or an awareness of alternatives. The person who spends his Sunday at the shopping mall buying whatever he wants is not free if no one has ever made a serious case that he ought to spend his time in a church, a forest, or working on a political campaign. The Internet's potential for filtering reduces the chance that our Sunday shopper will be exposed to such arguments.

Some enthusiasts imagine a near future in which all of our communications devices—our television sets and car radios, as well as our computers—will be attached to the Internet through wireless connections. Whenever we choose to watch, hear, or buy something, computers will record this information in order to determine our preferences. We will then receive advertising tailored specifically to those "preference profiles." Proponents argue that advertisers will save money, because they will no longer have to deliver ads to people who lack interest in their products. Consumers will also benefit from targeted advertising, since they will receive only information that is timely and relevant.

If targeting works, then we will desire almost *everything* that we see advertised, rather than a small fraction of it. All of our unfilled needs and wants will be recorded, sorted, and articulated by computer, with the result that we will find ourselves walking on an endless treadmill of unfulfilled desire—slaves to our own past preferences. Furthermore, no one will send targeted messages asking consumers to be more active in their communities, more concerned about future generations, more charitable, or better informed about

The roles of consumers, voters, workers, and companions are different, requiring distinct sets of skills and attitudes.

public affairs. Already, as the Internet expert Andrew Shapiro notes, there exist "endless newsgroups, email lists, and other online information sources dedicated to the most specific interests, but you'd be hard pressed to find a [group] committed to the General Common Good."

The Internet's ethos of pure consumer choice can also harm *freedom of expression*, understood as the ability to address chosen audiences with uncensored messages. This freedom must always be limited, or else an individual could monopolize public spaces, take over private forums, or harass other citizens with unwanted and persistent messages. But in a regime of pure consumer choice, the right to address others vanishes entirely, since each person may freely choose what messages to receive. The structure of today's Internet turns communications into consumer goods, received only if the recipient wants them. Traditionally, citizens can hand out leaflets at a street corner or picket a company's headquarters, but they cannot address people who surf past a Web site.

Another danger caused by rampant consumer choice is a weakening of other forms of reason and decision-making. Besides selecting commodities in the market,

we also choose occupations, friends, companions, and political leaders. The logic of these other choices is formally different from that of consumer behavior. For instance, when I support a policy or ideology by casting a vote, I hope that my decision will bind everyone, whereas when I choose a product in the supermarket, I express only my personal inclination. When I choose a companion, I make a moral commitment that would be inappropriate when I shop for sneakers. The roles of consumers, voters, workers, and companions are different, requiring distinct sets of skills and attitudes. In a culture of rampant consumerism, we could lose our capacity to make these other choices wisely.

Finally, consumer choice is incompatible with alternative cultural norms and values. For instance, Islam is not viewed by its adherents as a choice which happens to fit some individuals' preferences and, if not, may be modified to accommodate one's taste. Literally meaning "submission," Islam demands obedience to the authority of God.

Certainly, people anywhere in the world can now "discover Islam" through www.islamonline.net and myriad other Moslem websites. One can download translations of the Koran, search databases of *fatwas*, and receive instructions from Islamic "cybercounselors." For those already committed to Islam, computer networks may prove useful. But inevitably the Internet makes Islam look like a choice, something that one can opt to do instead of (or in addition to) pursuing an interest in an athletic team, for instance, or looking at naked models. The "islamonline" site is just a few clicks away from each of these alternatives. In a wired world, Islam will have to compete directly for individuals' attention, unable to rely on tradition or authority alone to steer believers to the right sites and the right beliefs.

One study supports the thesis that the Internet is already transforming religious belief into another consumer preference. A survey of Americans who visited selected Christian Web sites found that "organizational loyalty" and the desire for connection do not motivate people to search for information about religion on the Internet. For the most part, individuals seek thoughts, advice, and stories that they find appealing and that they can put together to make a congenial religious package of their own devising. Thus Americans use the Internet to treat religions as they would consumer goods.

The conflict between private consumer choice and deep cultural or spiritual commitments is not easy to resolve. If pressed, I would favor consumer choice, but not without regretting the inevitable losses. Apart from anything else, the Internet may decrease the *pluralism* of civil society, even though it is often touted as a source of diversity. After all, some cultures are incompatible with free individual consumption.

Privacy

Civil society requires a measure of privacy. Public institutions such as courts and legislatures are required to conduct their business openly. In intimate matters such as health, sexuality, and parenthood, privacy is the norm. But in civil society, citizens make selective disclosures of personal information within groups. For instance, members of civic associations exchange opinions about social issues without necessarily disclosing these views to outsiders. Neighbors observe one another shopping and gardening, but do not know how the people next door behave in their bedrooms or in the voting booth.

The Internet changes the nature and limits of privacy. On one hand, it allows us to conceal facts about our appearance, gender, age, and race from other individuals with whom we communicate. This potential

Citizens who lose the effective right to withhold information will become weaker compared to governments and large organizations.

increase in privacy has its advantages, but it may weaken intimate "horizontal" bonds—i.e., connections among citizens as equals. Meanwhile, the owners of computer networks acquire and sell information about those who use their services. Computers monitor what people say and to whom, what sites they visit online, and what they buy and sell. Further, computers can aggregate this information, turning a mere list of purchases into a consumer profile and then adding information from public records. For instance, a company called Aristotle International has built a database of 150 million Americans which, according to the *New York Times*, draws on state motor vehicle registrations, Postal Service and Census Bureau information, among other sources. The Aristotle databank often includes a person's age, sex, telephone number, party affiliation, estimated income, whether he or she rents or owns a home, has children, and has an ethnic surname. It can provide the make and model of individuals' cars, whether they are campaign donors (and possibly how much they give), their employer and occupation, and how often they vote.

Such databases may not only damage personal happiness and freedom, but they also undermine the importance of *voluntary association* by forcing us to make public what we would prefer to disclose only to fellow members of a group. And since information about people is a source of power, citizens who lose the effective right to withhold information will become weaker compared to governments and large organizations.

Conclusion

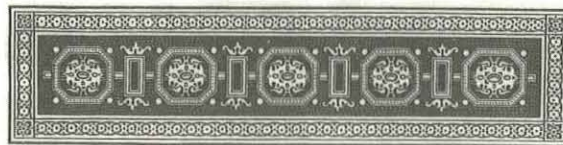
The purpose of this article has not been to issue dire predictions about the probable effects of the Internet on civil society. The Internet may prove beneficial to civil life. Rather, this article identified some potential problems that we can still solve. The Internet need not be left alone to develop haphazardly. Law can protect such values as personal privacy. The contexts in which the Internet is used (especially schools and public libraries) can be managed to assure that computers serve public purposes. Children can be taught to use networks critically and for civic purposes. One especially promising suggestion for reform is the idea of new online public spaces that would be reserved for civic uses and subsidized by the state. In short, the Internet cannot be faulted if civil society is irreparably weakened—we will deserve the blame for our failure to act.

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In general I have benefited from D.C. Seyle, "Dot-com Democracy: Computer-mediated Communication, Community, and Deliberation," which is available from the Kettering Foundation at www.kettering.org (2000).

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Reliance and Reliability: The Problem of Information on the Internet

Robert Wachbroit

Internet use has grown astonishingly in the past few years. With little effort one can learn what legislation is pending in Congress, the status of medical research in various universities and institutes, and the biographies of both the famous and the obscure. The Internet also offers countless sources of news – from traditional sources, such as the *New York Times* and CNN, to more partisan but sometimes more probing advocacy groups. For information junkies, there is little that can beat the Internet. The good news is that everything is on the Internet. The bad news is that everything is on the Internet.

In all likelihood, future use of the Internet will only increase and, as it does, some of us will rely on the Internet for much – perhaps all – of our information. Not all of this information will be reliable. But even if much of it is, heavy reliance on the Internet for information may present a worry. This essay examines the problems of information reliability and reliance on the Internet and looks at some of the difficulties raised by recent attempts to address these problems.

The Problem of Reliability

As many people have noted, anyone with access to the Internet can be a publisher. If you can write it down, you can put it up on the Web for millions to read. As a result, the Internet is an enormous source of information and an enormous source of misinformation. One can easily come across rumors, gossip, ideological rantings, paranoid accusations, lunatic ravings, outright lies, and wishful thinking – all just a mouse-click away from the more reliable information on the Internet.

Is this so significant? After all, rumors, gossip, etc., have always been with us. We shouldn't be at all sur-

prised that misinformation has a future in every advance of telecommunications technology. Soon after the invention of the telephone, the word 'phony' entered the American language. The word, referring to a fake or a counterfeit, apparently arose from the increasingly common experience, by the beginning of

the twentieth century, that the friendly voice on the telephone was too often the voice of a swindler. Today we have grown appropriately cautious about phone calls from strangers, realizing that the benefits of the technology allow for some abuses.

Nevertheless, the consequences of misinformation on the Internet can be significant. The Internet is much like a broadcast medium, spreading messages rapidly, widely, and effortlessly. But unlike most broadcast media, messages can be posted anonymously or with a pseudonym so that checking the source is difficult. At a single click, more people can be misled than is possible with the telephone. Consider some examples:

A teenager was charged with securities fraud, after apparently buying thinly traded stocks and then, using a number of pseudonyms, posting numerous messages

on the Internet touting the stock. Those who believed that enthusiasm for the stock was growing, bid up its price, which soon dropped once they realized that no such enthusiasm existed for the stock. But by that time, the teenager had sold his holdings at a profit.

The Internet is an increasingly important resource for those seeking information about medical conditions. But individuals searching for information on cancer can easily discover Dr. Ryke Geerd Hamer's Web site (www.geocities.com/HotSprings/3374/entdeck.htm), which claims to explain what cancer really is. Not only does the information on this site fall into the dangerous



category of quack medicine—among other advice, the doctor urges people to abandon “official medical treatments”—but the site also fails to inform the reader that Dr. Hamer was arrested for illegally practicing medicine.

Not all the misinformation on the Web is expensive or dangerous, however. Some is just utter nonsense, as is the case of the Web site for the Oklahoma Association of Wine Producers (www.members.aol.com/okawp/). Those who are aware that Oklahoma has no wine industry might be amused by the site, but one can also imagine someone planning a tour of Oklahoma’s wineries after reading the “information” on the site. (The authors of the site intend it as an educational tool regarding misinformation on the Internet, but one has to examine the site carefully to see the disclaimer.)

Intermediaries and Gatekeepers

Several writers see the problem of reliability as arising from the demise of “information intermediaries.” In traditional information outlets—major newspapers and book publishers, most notably—several layers of

What excites so many people about the Internet is not so much that it is cheap and convenient but rather that it is decentralized and open.

intermediaries exist between the writer and the reader. These intermediaries ensure the correctness of what is written. The reader knows that, for example, the reputation of the *New York Times* is behind each of its stories and that the editors, production staff, managers, and legal counsel work hard to ensure that the reputation of the paper is well deserved. The reader can thus trust what he reads in the *New York Times* because of the information intermediaries it employs. But once these layers of intermediaries are removed, a mechanism for ensuring reliability is dismantled. As Andrew Shapiro notes, “Where once there were reporters, writers, editors, fact-checkers, production staff, publishers, libel lawyers, and large media owners, now a worldwide dispatch may be the result of a quirky thought and a bit of tapping at a keyboard in one’s bedroom.”

This explanation of the problem suggests an obvious response. If the reliability of these traditional sources of information is acceptable, then reliable Web sites could consist of these sources having an online presence. And indeed, many of them do. Nearly every major newspaper has a Web site where many of its articles are posted, and these sites are as reliable as their print counterparts. This practice is not confined to newspapers—many commercial, governmental, and non-profit entities have also created an online presence.

One might respond, of course, that such efforts in no way eliminate or control the presence of unreliable Web sites. But that is not the issue. The concern is not the presence of unreliable Web sites—we will always have them, just as we have always had unreliable sources of information prior to the development of the Internet. The concern is identifying the reliable sources—distinguishing trustworthy information from fake. Having respectable sources maintain an online presence seems to ease this concern.

Unfortunately, this response doesn’t go as far as it needs to. It undervalues the potential of the Internet, treating it merely as a new medium that happens to be inexpensive and easy. But what excites so many people about the Internet is not so much that it is cheap and convenient but rather that it is decentralized and open. Anyone can post information without facing censorship and without seeking the approval of some information gatekeeper. Some might say that the more controversial the information, the more important is the availability of the Internet. The Internet can be a powerful democratizing force, especially in repressive societies where information is tightly controlled. Even in more open societies, it is essential for democracy that the public can get information outside of the mainstream. Identifying reliable Web sites simply on the basis of a reliable offline presence excludes the important new sources of information that the Web can provide.

Rather than intermediaries ensuring accuracy, one might propose some sort of certification procedure. Reliable Web sites could display some seal which attests to their adherence to a set of standards regarding the quality of the information presented. For example, a Web site that describes the treatment options for a particular form of cancer might reassure readers of the trustworthiness of its information by displaying a seal of approval from, for instance, the National Institutes of Health or the American Medical Association.

Despite its initial promise, a certification procedure amounts to the reintroduction of information intermediaries—perhaps not at the level of introducing people who are fact-checkers and editors, but at a meta-level of experts who certify the practices and authority of a Web site. While this might enable some new sites to emerge as information sources, trust in the site’s accuracy would actually reside in the site’s certifiers. Further, a certification process would prove unhelpful when information is deemed controversial. In fact, one can easily imagine someone unfairly stigmatizing some sites as unreliable simply because they did not have the time, resources, or awareness to submit themselves to certification. Certification raises obvious questions, finally, regarding who is responsible for this certification, how it is done, and the nature of the certification authority or trust.

More important, any effort at certification can address only one aspect of the problem of information on the Internet. After all, the problem is not really so much about unreliable information on the Internet as about people being misled by what is on the Internet. Being misled requires two elements: unreliable information and credulity. Information has no significance unless it is believed. If people easily believe nearly everything they see on the Web, then the element of gullibility must be added to the problem about the quality of the information on the Web. In this regard, it is worth noting that according to one report, about half of Internet users "believe that most or all online information is reliable and accurate."

This suggests that we need to consider people's behavior as consumers of information, or as knowers. If everyone were more careful about what they glean from the Internet, if they were more responsible searchers of information, then perhaps the concerns about unreliable Web sites might be of much less significance. What is it to be a responsible searcher on the Internet?

The Responsibility of Information Seekers

Believing something just because it is on the Web is irresponsible, but maintaining a thorough skepticism regarding everything on the Web is hardly better. One must develop appropriate habits for assessment and use of information on the Internet. A considerable literature has arisen on how to do just that, including some quite practical advice on how to evaluate Web sites. One can even find Web sites devoted to explaining how to evaluate Web sites. Much of the advice is simple common sense: check the source, look for independent confirmation of the information, etc. The overall lesson is that a responsible information seeker is not passive.

The importance of active involvement in evaluating information becomes especially clear when one examines the behavior of information seekers using the Internet. While many people go to certain trusted Web sites to get information, the most common way people get information on the Internet is by using a search engine. In fact, some sources claim that more than 80% of users get their information from search engines.

By typing a few keywords or even a question, a search engine will proceed to identify those Web sites that more or less match the keywords or question. Although the precise workings of many search engines are closely guarded trade secrets, search engines generally operate in one of two ways: they either examine a proprietary database of (selected) Web sites, which they periodically update. Alternatively, search engines "crawl" through the World Wide Web, using various algorithms to identify Web sites that meet the search criterion. Using either type of search method, the result

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commonly yields tens, hundreds, even thousands of identified sites. Such large results are usually of little significance, since they are ranked by order of relevance and few people ever examine search results beyond the first dozen or so listings.

One might argue that the availability of search engines helps people be responsible information seekers on the Internet. For example, anyone can easily determine whether different Web sites report the same information; one can even determine whether certain Web sites have been subject to praise or blame for the information posted on the site. In contrast, few people have the time, resources, or inclination to see how the

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same story is reported in different newspapers. Unless some reason for doubt arises, usually they believe the reports of their favorite newspapers. But no source of information dominates online, and checking information or its source is fairly effortless using search engines.

Despite these advantages, however, search engines have their own problems. Many search engines are subject to deliberate bias. Some search engines are commercial ventures in which sites must pay for inclusion in their database. Even if inclusion in the database is not for sale or the search engine does not employ a proprietary database, the ranking of results may well be for sale. The popularity of a site depends in large measure on whether it ranks as the first—most "relevant"—site or as the last, least relevant, one. A site that pays for the privilege of a top rank can become a dominant source of information on a particular topic. Imagine a newspaper that determined what appeared on the front page based in part on the financial contribution the source of information paid for the prominence. Just as a practice of selling off the front page would raise questions about a newspaper's trustworthiness, a practice of payment for search result rankings would raise questions about the trustworthiness of results presented in search engines.

Another serious problem with search engines is that they are limited in various ways. These limitations are not simply a matter of how much of the World Wide Web the search engine is searching—though it is important to note that at present no search engine can search the entire Web. Another type of limitation arises from the approximations used to identify Web sites. For example, many search engines identify sites by determining whether the keywords appear on the site. One might reasonably expect that if a Web page contains a particular phrase, then in all likelihood the site is about the topic suggested by that phrase. Plainly, however, although this thinking is reasonable, it carries no guarantee. A search on the phrase "breast cancer" will yield a list of sites that appear to be devoted to information on breast cancer. However, included in the list will be sites containing irrelevant information—for instance, one might be directed to a Web site devoted to an entirely different topic but which states somewhere that the site owners have given to a breast cancer charity. Sophisticated devices designed to fine-tune searches—such as Boolean operators, which can construct more complex search criteria—may reduce but cannot eliminate the selection of irrelevant sites.

A different type of limitation of search engines is their determination of appropriate ranking of results in terms of relevancy (ignoring the more evident problem of relevancy rank for sale). Among the criteria that may be used to determine rank are the numbers of times the keywords occur in the site, whether the keywords occur in the site's address or URL, whether the

keywords occur in links *from* the site or in links *to* the site. Although each of these criteria may be useful, they are only approximations. It is easy to imagine a less informative site scoring higher in terms of relevancy because of these admittedly superficial criteria.

It is important to keep in mind that a search engine is not a "truth engine." No matter how good the search engine is in selecting the right sites, it cannot attest to the reliability of the information on that site. Wittgenstein in *On Certainty* presents the image of someone trying to check a story in a newspaper by buying other copies of the same newspaper and reading the story again. The absurdity of this effort is plain. It would hardly be less absurd if the individual buys different newspapers, all of which use the same source of information, such as a wire-service report or a press release. But this is more or less what an Internet information seeker could wind up doing. Because information can spread rapidly and globally on the Internet, even the information from a single, unreliable source can appear quickly on many different Web sites, and checking different sites may afford no better test of reliability than buying many copies of the same newspaper, or newspapers that rely on the same wire-service report. In short, using a search engine to check the reliability of information on a Web site has its flaws.

The World Wide Web is still young and, as it evolves and as search-engine technology is refined, one can expect many of these limitations to diminish although not entirely disappear. Better search-engine technology will likely increase public reliance on the Internet as the prime source of information. However, heavy reliance on search engines—even if searches become more relevant and rankings increase in trustworthiness—raises other difficulties.

The Problem of Reliance

Many observers have noted that Internet use can be customized to suit a variety of needs and desires. Not only can I choose an online newspaper, but I can also modify it in dramatic ways. I can specify that news items within my chosen topics appear on the "front page." News on topics I have little or no interest can be shifted to the end or even filtered out entirely. As one writer remarks, instead of the *New York Times*, the *Washington Post*, or CNN, I can have "The Daily Me." The significance of this customization, carried to an extreme, is two-fold: first, by allowing one person's knowledge of what is news to be so different from another's, the potential for common experiences essential to a sense of community may be drastically reduced, if not undermined entirely. And second, customized news services can foster a polarization, if not an extremism, in opinions, which, in turn, can threaten democratic deliberation. Let me expand upon these two features.

The commentators who have written on the threat to community and democracy posed by the customization of Web experiences—particularly, Cass Sunstein and Andrew Shapiro—generally direct their attention to filters. They argue that if we get our information entirely from the Internet and if we impose perfect filters—so that we exclude from our sight topics we are not interested in—then we run the risk of communities fragmenting along narrow lines of interest. Since it is important to be informed not only of what you want to know but also of what you may not (at first) want to know, news services perfectly filtered by, in effect, consumer preferences can have a devastating effect on the survival of democratic communities.

Communities consist of people with a variety of interests, concerns, and viewpoints and any effort to reduce that diversity is often seen as repressive and undemocratic. Nevertheless, many writers have argued that democratic communities require the existence of public spaces or forums, accessible by all. Without a public space, the potential for community members to encounter other members with different viewpoints is

*When one becomes oblivious to the interests
and viewpoints of others, one becomes
incapable of deliberation . . .*

diminished or eliminated. It is then a short step for one to lose all sense of the many and diverse interests that inform the community's interests.

This loss of community, in turn, can lead to polarization since, if all one hears are echoes of one's own concerns, then one can easily come to believe, from their repetition, that these concerns are the most important—perhaps the only—concerns. When one becomes oblivious to the interests and viewpoints of others, one becomes incapable of deliberation, since when a community deliberates about a course of action, the various interests and viewpoints of its members must be respectfully acknowledged in order for the deliberation to proceed in a fair and democratic manner. If news is customized to exclude all other concerns but one's own, it becomes all the more difficult to recognize these concerns when one must join together in public deliberation.

One response to the problem of fragmentation and polarization is the suggestion that, as more people spend time on the Internet and learn from it what is going on in the world, public spaces must be created on the Internet itself. If the more traditional public spaces—such as parks, public squares, even sidewalks—become less significant, as people occupy more time in cyberspace, then, so the argument goes, we need to create an "e-commons."

Filters and Search Engines

Many of the same problems regarding filters are apparent when one thinks about the increasing reliance on search engines. This becomes clear by realizing that a search engine is the mirror image of a filter. Whereas filters try to exclude what you do not want, search engines try to include only what you do want. At the limit, where filters and search engines are perfect and make no mistake, the theoretical differences between them begin to disappear. Moreover, in some ways, worries about search engines appear more urgent. The main use of filters on the Internet is to eliminate material unsuitable for children; filters for adult use are not common. In contrast, as mentioned earlier, the use of search engines is widespread.

To be sure, hardly anyone at present relies exclusively on search engines for their information, and for a variety of reasons, including the novelty and imperfections of the technology. But suppose, for the sake of argument, that we are at the limit—search engines can handle extremely sophisticated search criteria, successfully selecting only wanted items. Suppose also that a significant number of people get all of their information from search engines. In that case, it is unlikely that these individuals would search for information on topics in which they have no interest or find uncomfort-

We should now cultivate some awareness of the dangers of informational fragmentation rather than taking a wait-and-see attitude until some critical threshold has been crossed.

able. As a consequence, biases regarding the urgency of one's own concerns are thus reinforced, and blindness towards the concerns of others encouraged.

It might be helpful to think about the fragmentation problem in a more general way. Geography fragments the human population, and, to a rough extent, many traditional communities arise from this fragmentation. Since traditional communities are local, many of the virtues found in them arise from the habits that members of a community must develop in order to cooperate with one another to benefit themselves and the community.

The Internet, however, can induce fragmentation along lines that cut across geography, undermining traditional communities. One type of fragmentation encouraged by the Internet is "associational," which results when individuals form associations with others who are very much like them, without regard to geography and perhaps at the expense of associations constrained by geography. Associations of like-minded people—custom communities—do not have to foster habits of tolerance or democracy. Another type of frag-

mentation encouraged by the Internet is "informational," which, as I have argued, is the consequence of an exclusive reliance on search engines—we become better informed about topics of our choosing, but at the expense of our being informed about topics that matter to others.

Political scientist Robert Putnam suggests that associational fragmentation might be the greater threat to traditional communities. He may be right, but the influences of informational and associational fragmentation are likely to be mutually reinforcing and their bad effects compounded. Further, informational fragmentation can also exacerbate problems within any subgroup that relies on specialized information. Specialization in the sciences, for instance, is efficient for research and training, since an intellectual division of labor allows scientists to focus their energies on narrowly defined problem sets.

But divisions and specializations in the sciences often reflect more the various histories of particular professions and scholars than they do any objective divisions in nature. Consequently, specialization can inhibit progress and creativity because a narrow focus at times is tantamount to tunnel vision. Too often scientists become divorced from the stimulation of interaction with scientists and scholars from neighboring fields. The Internet aids specialization by putting the scientist in touch with like-minded scientists, regardless of geography. But this new interaction comes at the expense of scientists interacting with the broader community of scholars, and the result is ever more fragmented science.

At this point, we should reconsider the earlier supposition that search engines serve as the exclusive source of information for most people. That supposition might seem simply unrealistic since there is no evidence that search engines will come to displace all other sources of information. Furthermore, customization of information sources seems to occur to some extent already in traditional sources. Many traditional sources—e.g., newspapers, radio and television stations—have, or appear to have, biases or ideologies that shape how information is presented; many people choose which source to read, listen to, or watch because they are comfortable with its bias. People with right-wing ideologies usually do not read left-wing magazines, and vice versa. Thus, we seem to have an informational fragmentation even without the Internet. Consequently, the worry that the use of search engines specifically—and the use of the Internet more generally—will lead to informational fragmentation seems overblown: it is based on an unrealistic premise regarding Internet use and it ignores the informational fragmentation that we already encounter prior to the Internet.

One can begin to respond to both points by noting that fragmentation comes in degrees. We do already

have some informational fragmentation due, in part, to consumer choices among traditional information sources. And some degree of fragmentation is no doubt beneficial, as is some degree of specialization in the sciences. But informational fragmentation does not have to be complete in order for it to worry us. Nor does the existence of some informational fragmentation mean that we need not be concerned about that fragmentation increasing. We need to be aware of the potential costs of our growing use of search engines, including the loss of less targeted sources of information. If we (choose to) become increasingly less informed about topics that we have no interest in, then significant "stress fractures" in associations and community are a likely result.

This essay does not pursue the question of how much fragmentation is too much—and perhaps that question allows for little empirical precision. The conclusion one can draw is that we should now cultivate some awareness of the dangers of informational fragmentation rather than take a wait-and-see attitude until some critical threshold has been crossed. We also need to explore suggestions for developing search engines that effectively respond to these concerns. For example, search engines might include information that is not picked up by the intended search but also is not confused with it—such as banner news. A variation on this suggestion would be search engines embedded in general information Web sites: calling up a search engine involves accessing the front page of an online newspaper. Such suggestions are not without problems. What is the incentive for search engine owners to agree to such inclusions? Wouldn't such inclusions simply underscore the worry about bias? Wouldn't some of the questions about certification be applicable here as well?

The question of the reliability of information on the Internet points to both a narrow and a wide issue. The narrow issue concerns whether the information on Internet sites is reliable; the wide issue concerns the impact of a heavy reliance on Internet search engines as sources of information. While more attention must be given to the narrow issue, if we are to realize the benefits of reliable information on the Internet, we must address the wide issue as well.

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State Symbols and Multiculturalism

Jacob T. Levy

American voters and the American media paid renewed attention to the Confederate battle flag during the early months of 2000. The NAACP-organized boycott of South Carolina over that state's flying of the battle flag over its statehouse mixed with the Republican presidential primaries to send the flag issue into the headlines. In Texas, then-governor George W. Bush tried to rally conservative voters to help him shut down a challenge from Arizona Senator John McCain by insisting that the fate of the flag was a matter to be decided only by the people of South Carolina. McCain initially criticized the flag, then offered a stiff and formal endorsement of the purely-a-state-matter position. (After the primaries ended he admitted that the latter endorsement had been a lie.) McCain's own South Carolina campaign chair was a leading member of the so-called "Southern Heritage" movement, which is dedicated to celebrating the memory of the Confederacy. Along with Bob Jones

Symbolic state actions express an official viewpoint about the character of the state, its culture, and its history.

University, the Confederate symbols and nostalgia dominated the national media's coverage of the primary and became a synecdoche for the story that South Carolina was politically extremist, backward, and bigoted. Eventually, in a compromise rejected by the NAACP, the Confederate flag was taken off the capitol building but transferred to another site on the capitol grounds. The long-running disputes over the battle flag continue. Georgia, for example, continues to include the battle flag as a portion of its official state flag, as it has since shortly after the U.S. Supreme Court decided *Brown vs. Board of Education*.

Disputes Over Symbols

These ongoing disputes from across the South are echoed in the American West. Gerard Baker was the first American Indian to serve as National Parks

Service superintendent of the Little Big Horn National Battlefield (renamed as such after being called the Custer National Battlefield from 1946 until 1991). His half-decade in that office ended in 1997 after he tired of near-constant conflict with enthusiasts for General George Armstrong Custer, whose forces were wiped out by a Sioux and Cheyenne army in 1876. The renaming was the first step in shifting the site away from a celebration of Custer toward a commemoration of those who died on both sides; the same bill also authorized a monument to the Indian dead to stand near the existing monument to Custer. Baker tried to push that process farther, allowing Indian rituals of remembrance to be practiced on the battlefield and overhauling the content of the site's tours and educational programs. The "Custer buffs" protested at every stage, insisting that the process was politically-correct pandering to an ethnic minority. (One supporter of the changes, U.S. Representative Pat Williams of Montana, observed that "as far as we can tell, it was the only battlefield named after a person, and the only one named after the loser, at that. *That* was political correctness run amok.") Eventually Baker requested and received a transfer to another park. Ground has been broken for the Indian memorial, but construction remains stalled due to a lack of funds.

Disputes like these are not unique to the United States. South Africa must grapple with how to treat holidays, statues, and other public symbols that honor an Afrikaaner history of violence against and oppression of blacks. The Bosnian government has faced paralyzing disagreement over what should go on a flag, an official seal, and even license plates. Indian Muslims vigorously protested the changing of Bombay's name to Mumbai by a local government dominated by Hindu nationalists, interpreting the new name as a celebration of linguistic and religious chauvinism. In 1994 Australia endured riots and the firebombing of churches, community centers, and government buildings in a battle largely over what name the state would use to refer to Macedonians in the country. (The then-Prime Minister, trying to placate Greek Australians after his government extended diplomatic recognition to the Former Yugoslav Republic of Macedonia, adopted the phrase "Slav-Macedonians" and attempted to foist it on public



Protesters drape a Confederate flag on the steps of the South Carolina Statehouse in response to the lowering of the Confederate flag from the Statehouse dome on July 1, 2000. For some a symbol of slavery and others a tribute to their Southern heritage, the Confederate flag had flown from the top of the Statehouse dome for 38 years. (AP Wide World Photo/Rick Bowmer)

institutions and broadcasters.) States adopt names for regions, cities, ethnic groups, and even themselves; they adopt flags and anthems; they commemorate the past through holidays, parks, proclamations, statues, and monuments. All of these symbolic state actions express an official viewpoint about the character of the

Standards for judgment are difficult to come by . . . especially in a political culture . . . accustomed to translating all serious moral disputes about politics into the language of rights violations and constitutionality.

state, its culture, and its history. Disputes over that character, over who is a member of the state, over how to interpret the way the state gained control over its current lands and people, over what is worth celebrating in the state's history, are all reflected in disputes over those symbols.

In none of these cases are any rights or resources, any property or powers, directly at stake. The state actions do not limit any person's liberty or seize any person's goods. As such, they seem to fall outside the scope of theories of justice, as those are usually understood. No one in particular is harmed by them in a way, for example, that would give standing for relief by a court in an Anglo-American judicial system. (There are exceptions—most conspicuously, U.S. courts are willing to strike down the state adoption of some religious symbolism as violating the Establishment Clause of the First Amendment. But ordinarily, state symbols may not be challenged in court.)

Political matters may fall outside the scope of justice, however, and still be within the scope of a broader political morality. Some state symbols are morally preferable to others; some official speech is morally wrong. Standards for judgment are difficult to come by, though, especially in a political culture (like America's) accustomed to translating all serious moral

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disputes about politics into the language of rights violations and constitutionality.

In his comparative study of ethnic conflict, political scientist Donald Horowitz finds that “symbolic claims are not readily amenable to compromise. In this, they differ from claims deriving wholly from material interest. Whereas material advancement can be measured both relatively and absolutely, the status advancement of one ethnic group is entirely relative to the status of others.” Not only are disputes over state symbols often zero-sum; they are sometimes all-or-nothing. With so little room for compromise, there is often little incentive for moderation.

Ethnic conflicts are not always or primarily about symbolism, even when words and symbols are part of what’s at stake. Flags and coats of arms often count for much less than concrete matters: who has the right to

*Not only are disputes over state symbols often
zero-sum; they are sometimes all-or-nothing.*

use which language when? Who controls which land? Which cultural traditions will be banned, which ones tolerated? Will constitutional arrangements allow for any self-government by minorities? Members of minority cultures and ethnic groups are imprisoned for speaking their native languages, dispossessed of their lands, expelled and made into refugees, and sometimes enslaved, raped, or slaughtered. Nor are these high stakes limited to obviously-explosive places like the Balkans or the African Great Lakes; there are live questions of justice from indigenous land rights to the toleration of minority religious practices in most western liberal democracies. Some academics say that questions of recognition and respect, not questions of rights and resources, are at the heart of ethnic politics; but this thought seems to me a luxury of immersion in educational institutions, which have more direct control over curricula, mottoes, and holidays than over legal liberties and powers.

But still, such concrete questions of rights and resources do not make up the whole of ethnic and cultural politics. Issues of identity and recognition, symbolic issues, play an important part as well; and there is no general tendency for symbolic disputes to be less intense, to be taken less seriously by the participants. Liberalism is right to give rights and resources moral priority over recognition and symbols; but that should not prevent liberals from seeing the tremendous importance symbolic disputes can have to their participants. Liberalism, and a liberal state, ought to come to grips with the moral importance of symbolism.

Responses to Symbolism

We should not, however, detach our moral understanding of state symbolism from our moral understanding of concrete injustices committed against subordinated ethnic groups. The participants in disputes over state symbols are often all too aware of the close relationship between the two. State symbols often celebrate and commemorate a history of cruelty, injustice, and exclusion. They often aim—or obviously

State symbols often celebrate and commemorate a history of cruelty, injustice, and exclusion.

invite the charge that they aim—at symbolically excluding a minority from full membership in the polity. They suggest that the polity's past wrongs against a group are precisely what makes the polity worthy of celebration and loyalty.

What's worse, they make this suggestion in the voice of the citizenry, including members of the wronged group. When the state speaks (that is, when state officials adopt a flag, name a place or a group, write the text on a statue or the educational materials for a national park, and so on) it claims to do more than just offer an opinion into the marketplace of ideas. It claims to speak on behalf of all its members. Hobbes long ago noticed that built into the idea of authorization, and therefore the idea of authority, was the claim that the citizens "authored" the state's actions. The idea has even more resonance when the authority's actions consist of words. Democratic states, especially, claim that their words and actions in some sense issue from the people as a whole. Whether and to what degree these claims are justified are questions that may be set aside for present purposes. But the fact that they are made (and widely believed) makes certain state speech particularly objectionable. Sometimes state speech or symbols that glorify (for example) past state violence seems like an implicit threat to unleash the violence again. But even without that component, citizens ought not to be insulted or degraded by an agency that professes to represent them and to speak in their name.

Although many disputes over ethnic and cultural symbolism are strictly zero-sum, not all of them are. Symbolic status is not *entirely* relative to the status of others. Suppose one's culture is routinely degraded and humiliated, pronounced to be primitive and bestial. Then policy changes, and members of that particular culture are now considered to be human. A gain in status may impose a corresponding status loss for others, since the other group's sense of its own *superiority* may be diminished. But commonly the previously

superior group is not degraded in turn. One group's liberation from humiliation does not require another group's humiliation. Now, none of this is true about the symbolism of national character. A state becomes officially binational only at the expense of its being national. Malays or Fijians gain symbolic priority only at the expense of Chinese-Malaysians or Indian-Fijians. But minimal symbolic recognition need not be zero-sum in quite the same way.

Advocates of a strong form of what philosopher Charles Taylor has called "the politics of recognition" suggest that public invisibility is also a kind of symbolic exclusion and degradation. When there are no public monuments that commemorate an ethnic group's history, when no official holidays are established in honor of any member of a given minority, when public buildings are all named for members of the culturally dominant group, then, too, the state has humiliated some of its citizens and has committed a moral wrong. This line of argument is sometimes justified, but it is a hazardous one. It invites a kind of political pandering and one-upsmanship ("Anything less than proportionality, or even parity, in official holidays constitutes invisibility!")

Much official symbolism is inevitably part of a spoils system, handed out in an attempt to appeal to a particular constituency or interest group. In the United States, perhaps the purest example of this kind of pork-barrel symbolism is the unending stream of official commemorative days, weeks, and months announced by Congress and other levels of government. Most people never know when National Goat Cheese Week or National Veterans of the Grenada Conflict Day come to pass; they are noted only in the

The coin of public honor can be debased, just like the coin of praise from a person who lavishes the same compliments on all. . . .

Congressional Record and in lobbying-group newsletters. They provide an absurdly faint shadow of public recognition, since the public never knows they exist; the state speaks a word of praise to the constituency group, but no one else ever hears it. Yet lobbying groups continue to insist on these faux-commemorations, and Congress and state and local governments continue to devote time and resources to discussing and establishing them.

Insisting on quotas for public symbolism threatens to reduce all symbolism to that level; it diminishes whatever value public symbolism might have. Indeed it is self-defeating. The affirmation and recognition that public commemoration confers is dependent on

the lingering thought that the commemoration is provided for some public reason and not for the purpose of providing affirmation. When that thought ceases to linger, as it long since has in the case of the pointless official days and weeks, no real recognition is provided. As morally different as public and private speech sometimes are, there is an important similarity. The coin of public honor can be debased, just like the coin of praise from a person who lavishes the same compliments on all (or from the person whose kind words for the intelligence or charm of others are uncorrelated with their intelligence or charm but highly correlated with their wealth, or their social standing, or their ethnicity).

A strong politics of recognition might also endorse a rule that simply allows each group to define its own labels and symbols. Outsiders, and the state, should accept each group's claims about its own name, symbols, and so on. While this may answer the question of "who decides?" across a certain range of cases, it does not dampen the conflicts over the decisions. It is just not the case that what one group calls itself is of no concern to another. The crux of the conflict between Greeks and Macedonians (in Australia as in the Balkans) was that two groups were both laying claim to the word "Macedonian," with Greece maintaining that "Macedonian" described only a subset of "Greek." What if white Protestant Americans tried to reserve for themselves the label "American," or the name "God's people?" I do not suggest that either move is likely; but the possibility illustrates that one group's preferred name can easily be an insult to another. A liberal state cannot prevent persons from referring to themselves however they like; but it cannot simply adopt their preferred terms for its own usage. Moreover, cultural

"Words can never hurt me" has a bit too proud a place as an argument in American political culture.

groups are too heterogeneous for us to assume that the name chosen by leaders or a majority will not be experienced as an insult by other members of the community.

Words Can Never Hurt Me?

Children are taught to say, "Words can never hurt me." Since symbolism does not affect any rights or resources of any person, some think that there can be nothing morally important to say about it, nothing worth disputing. Words, expressions, and symbols are not the stuff of justice or morality, or even of morally interesting politics. They are "only words." What stat-

ues are erected and what holidays are celebrated are inevitably arbitrary, but they fail to meet the threshold test of warranting moral praise or condemnation; they have no actual effect on individual persons. The justification would vary a bit, but this basic position might be embraced by anyone from a conservative opposed to "political correctness" to an Old Left socialist who finds symbolic disputes to be distractions from the serious business of economic politics.

To indicate what this position leaves out, consider this example: What if the United States Census Bureau adopted a racial epithet as its name for one of the racial categories into which it divides Americans? Even the vicious epithet used for so long against African-Americans is, after all, only a word. But it is a word that is tied up with a long history of violence, public and private. It is a word that is understood, by whites and blacks alike, to exclude blacks not just from full citizenship but from full humanity. Its use by a speaker with power or authority is nearly a threat. Leaving aside questions like whether it would be a rights violation or whether it would be legally justiciable, what reason could we possibly have for declining to say that it would be wrong for the state to adopt this epithet for common use? When we recall that the state professes to speak in the name of its citizens, "words can never hurt me" becomes an even more obviously insufficient response to such cases. One need not accept any claims about language constructing social reality or language forming the basis of oppression in order to think that *this speech would be wrong*. In the name of all of the citizenry, it would denigrate and (symbolically but painfully) attack a significant portion. In an allegedly authoritative voice, it would state that the history of injustice of which the word reminds blacks and whites alike was acceptable, even commendable.

"Words can never hurt me" has a bit too proud a place as an argument in American political culture. Sometimes civil libertarians suggest that words and expressions are immune from political and moral criticism in order to defuse the threat of censorship. Condemning another's speech is too quickly interpreted as a prelude to a violation of freedom of speech, and so supporters of freedom of speech sometimes retreat into moral relativism when faced with reprehensible forms of expression. Of course, *some* criticism of others' words *does* plausibly contain an implicit threat of censorship (for instance, Congressional hearings or resolutions about classes of private speech and expression—such as music lyrics). But citizens' moral criticism of state speech does not. It offers no threat of coercion, no threat to the diversity of expressed ideas, no threat to individuality, no threat to the democratic process.

Some liberals maintain that the state should not publicly endorse particular points of view, particular cultural identities, particular visions of the good life.

"Content neutrality" is a concept from the American constitutional jurisprudence of speech regulation, but might be elevated to a general liberal principle of state action and speech. Content neutrality, however, is a principle for evaluating an actor who referees speakers, not a principle for evaluating speech itself. No particular speech, expression, or symbol can be content neutral, so if the principle of content neutrality is applicable to state speech, that means the state may not speak. Liberal neutrality could be supposed to require that the state avoid official symbolism, which necessarily elevates some substantive claims about cultural communities and their worth over others.

The seemingly interminable disputes in the post-Dayton Bosnian state about national symbols—a flag, a coat of arms, a national anthem, even license plates—illustrate the appeal of this approach. Symbols which are Muslim, Serbian, avowedly multiethnic, or avowedly nonethnic are all unacceptable to some constituents and political leaders. None of the symbols are neutral. Both liberal neutrality and prudence might counsel abandoning the project of adopting *any* symbols of state. A long history of mutual abuses might leave little room for acceptable public commemoration. Fights over symbolism in any event have little incentive for moderation or compromise, and sometimes any choice of symbol seems designed to provoke some part of the population. Modern states are in the habit of having anthems, coats of arms, and the rest, but little is lost if they are sometimes forgone. I doubt that the principle of liberal neutrality ought to be extended so as to insist upon strict neutrality in all state speech and, therefore, forbid state speech. But prudence and a careful attention to avoiding provocation will sometimes counsel silence rather than a fight over what shall be said, what symbol chosen.

In the United States, official language laws with much bite have been held to violate the First Amendment. Most remaining official English proposals seek largely symbolic declarations. We cannot pretend that the state is linguistically neutral; English is and will remain the *de facto* language of state. But there seems little need for the symbolism of an official declaration, little reason for the state officially to endorse English. State silence would be better.

We are left with a standard that treats symbolic celebrations of past instances of ethnic violence, cruelty, and injustice as worthy of moral condemnation, while leaving most other cases of symbolism to the considerations of prudence. If a state cannot affirm each group on its own terms, it can at least refrain from celebrating wrongs against any of them. Humiliation is a debatable standard but must not be simply a subjective one; we (whoever we are evaluating a particular cultural dispute) must ask whether the person or people are right to feel humiliated. State symbols that celebrate a

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history of violence and cruelty against a particular group—say, the Confederate battle flag—are legitimately taken to be humiliating. So are the preambular statements in some states' constitutions that the state belongs to a particular ethnic group; the words may not strip anyone of citizenship, but they symbolically exclude from citizenship.

The Symbols of Slavery

The debates and disputes over the symbolic legacy of slavery in the United States are widespread and can be bitter. There has been considerable agitation for an official apology for slavery from the United States government. New Orleans has adopted a rule that public schools should not be named for slaveowners;

If a state cannot affirm each group on its own terms, it can at least refrain from celebrating wrongs against any of them.

this attracted international attention when a school named for George Washington was renamed. During the battle to integrate the public schools, some southern states resurrected the battle flag of the Confederate States of America as a symbol of their defiance; it flies over some state capitols to this day. Statues of Confederate leaders and monuments to the Confederate war dead dot the South. A statue of Queen Catherine of Braganza, which is supposed to stand overlooking New York's borough of Queens which was named for her, has been the subject of bitter controversy because some activists have charged her with profiting from the slave trade. This is false; indeed, Catherine left money in her will to be used to free slaves. She was linked to the slave trade only insofar as the two states of which she was royalty, Portugal and the United Kingdom, were at that time involved in it. Nonetheless, the dispute has gone on for years and continues to prevent the statue's placement.

The passage of time matters in symbolic disputes. Retaining the month-names of July and August does not at all connote official approval of the millennia-old wrongs committed by the Caesars, and no one (not republicans, not Jews or Christians, not the descendants of the Gauls) can reasonably claim to be humiliated or symbolically excluded from the polity because of it. Slavery was abolished a century and a third ago. However, American blacks did not attain full legal equality for a century after that. Violence against blacks was pervasive in the South for decades after slavery was abolished. And the upsurge in official

Confederate symbolism after *Brown vs. Board* confirms and cements the link between those symbols and their unjust history.

This history does not mean that every symbol at which some African-Americans take offense really is a humiliating endorsement of past injustice. There is a difference between celebrating figures for the war they fought to defend slavery (Robert E. Lee, Jefferson Davis) and celebrating figures who owned slaves but who are being celebrated for other reasons (George Washington). Similarly, the dispute over Queen Catherine shows that we should not simply defer to every activist who invokes a history of injustice. Once the facts become known, a statue of Catherine cannot rightly be interpreted as a celebration of slavery or of the slave trade.

On the other hand, the emphasis on slavery, and on not symbolically endorsing it, is justified. Even if the answers given in particular cases are wrong, the questions (does this state action symbolically celebrate or glorify a history of shameful wrongs?) are the right ones to ask. Avoiding such institutional humiliation and official endorsement of past cruelty no doubt seems like a minimal standard, compared with a full-blooded politics of recognition. But it is a minimal standard that would demand quite widespread changes in official symbolism, not least in the United States itself.

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Some of the themes of this present essay are discussed further in Jacob T. Levy, *The Multiculturalism of Fear* (Oxford University Press, 2000).

Sources: Mike Tobin, "Indian Memorial Renews Battle at Little Bighorn," *TimesPicayune* (August 25, 1996); Donald Horowitz, *Ethnic Groups in Conflict* (University of California Press, 1986). For an examination of related legal problems, and more generally for an exploration of the present issues that focus on commemorations of the Confederacy, see Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (Duke University Press, 1998).



Truth Commissions and Transitional Justice

David A. Crocker

Societies that seek a just transition from authoritarian regimes or civil wars to democracy often must reckon with an appalling history of human rights violations. These abuses—which include extra-judicial killing, genocide, crimes against humanity, disappearance, rape, and torture—are committed by a previous government against its own citizens (or those of other countries), by its opponents, or by combatants in a civil or international armed conflict.

Many discussions commonly assume that there are only two possible responses to past wrongs: trial and punishment, or forgetting the past. Cambodia, for instance, although it is now contemplating the establishment of a joint Cambodian-United Nations tribunal, initially made an attempt at national amnesia. The Khmer Rouge is estimated to have killed between 1.5 and 1.7 million people during its control of Cambodia from 1975 to 1979. Yet when a former top

How a fledgling democracy ought to reckon with severe human rights abuses is a question central to the notion of transitional justice.

leader surrendered to the government in 1998, the prime minister at first declared that the leader ought to be welcomed back “with bouquets of flowers, not with prisons and handcuffs.” The prime minister added that “we should dig a hole and bury the past and look ahead to the twenty-first century with a clean slate.”

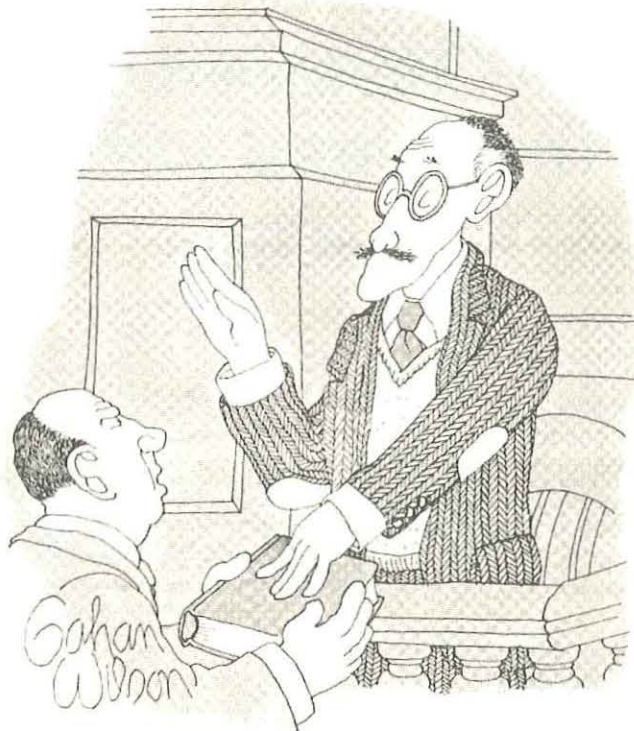
Other societies have rejected this alternative, recognizing that they possess a variety of means to reckon with human rights abuses. These means include domestic trials, international war crime tribunals, investigatory bodies of many types, social shaming, banning of perpetrators from public office (“lustration”), public access to police records, public apologies, memorials to victims, reburial or reparation of victims, literary and historical writing, and the granting of amnesties.

How a fledgling democracy ought to reckon with severe human rights abuses is a question central to the notion of transitional justice. Although “transitional justice” often refers exclusively to prosecution of human rights violators, it is more accurate to apply the term more broadly to cover the possibilities of establishing an accurate account of the past, compensation to victims, fair distribution of goods and opportunities, and the restoration of what has been lost. As a new democracy deals with its “difficult past” by responding appropriately to past evils, it must also take care not to undermine its prospects for future development.

A number of countries recognize that truth commissions are a useful means to achieve transitional justice. At least twenty countries have utilized truth commissions—South Africa and Guatemala most recently—East Timor, Nigeria, and Sierra Leone are currently establishing such bodies, while a dozen or so countries, including Bosnia, Burundi, Indonesia, Kenya, Mexico, Peru, Rwanda, and Yugoslavia are at present considering their use. Although they can further many important goals in societies making their transition to democracy, truth commissions must be supplemented by other measures—such as trials, judicial punishment and reparations—to increase the chance for success of a new, but fragile, democracy. This article explores eight cross-cultural goals that societies and international agencies must achieve to help establish transitional justice and suggests ways truth can contribute to these efforts.

Strengths and Limitations of Truth Commissions

1. Truth. To meet the challenges of transitional justice, a society must investigate, establish, and publicly disseminate the truth about past atrocities. What Alex Boraine, who served as Vice President of South Africa’s Truth and Reconciliation Commission, calls “forensic truth” (or “hard facts”) presents factual information about past atrocities. Most importantly, forensic truth identifies the violators themselves. Despite



"Do you swear to tell the truth, the whole truth, and nothing but the truth, and not in some sneaky relativistic way?"

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the importance of forensic truth, there also exists "emotional truth," that is, knowledge concerning the psychological and physical consequences of the *threat* of abuse. The criterion of truth also requires that more general truths be ascertained—such as the chain of command that led to rights violations and the causal factors that explain them.

Knowledge about the past is important in itself. One way to make this point is to say that victims and their descendents have a moral right to know the truth about human rights abuses. Moreover, without having reasonably complete truth, the other goals of transitional justice cannot be realized. Appropriate sanctions are impossible unless the identity of perpetrators and the nature of their involvement are established. Further, just reparations are possible only if victims are correctly identified and the harms they suffered accurately established. Finally, reconciliation demands agreement about *what* happened and *why*, since former enemies are unlikely to be reconciled if what count as lies for one side constitute verities for the other.

It is not enough for a truth commission to discover the truth about past events. The truth must also be made public and officially acknowledged. Some truth commissions—in order to safeguard witnesses, if not the commissioners themselves—have conducted their hearings and deliberations in private. The South African Truth and Reconciliation Commission (TRC), however, was particularly successful in making its activities public and transparent: it gathered testimony in various locations throughout the nation. Its proceedings were often open to the public and, finally, multilingual media routinely covered such important TRC activities as its hearings on individual human rights violations and its considerations of applications for amnesty.

Although some truth commissions identify publicly specific human rights violators, the most important kind of truth any investigatory body can seek is the discernment of how the commission of atrocities became a matter of policy and, in some cases, a part of the daily life of the society. By taking testimony

directly from the principals—sometimes soon after the violations were investigated—truth commissions can provide a reasonably complete picture of events and their effects on individual lives. Further, unlike traditional judicial bodies, which determine legal guilt or innocence, investigatory bodies such as truth commissions also can profile examples of moral heroism in the face of barbarism. Proponents of a truth commission for Bosnia, for example, stress that such a commission would make public the fact that some Serbs aided their Muslim neighbors (and vice versa): “Against the backdrop of all the evil that has taken place, the tale of the good is a part of the history to be revealed.”

Truth commissions cannot, however, bring *all* truths to light. In order to complete their work within one or two years, truth commissions can investigate thoroughly only several of the many rights violations cases brought before them. Moreover, truth commissions commonly lack the power to subpoena and cross-examine witnesses, search and seize evidence, and independently corroborate witness testimony. Although accurate historical studies have yet to be done, even the relatively incomplete studies that exist are usually more thorough than what is possible for

*The most difficult issue a truth commission
faces concerns whether there is one
truth or many.*

truth commissions. Historians typically are far more likely to possess the time and skill in gaining access to documents, sifting through facts, unmasking distortions and lies, assessing explanatory hypotheses, and ascribing responsibility.

Perhaps the most difficult issue a truth commission faces concerns whether there is “one truth or many.” Although most “forensic truths” are relatively uncontroversial, citizens and even members of the truth commission itself will likely disagree strongly about what individual or institution bears most responsibility for the atrocities committed. One can find several approaches to the sensitive subject of ultimate responsibility, a topic that commonly is a central part of a truth commission’s final report. One way, exemplified by Chile’s National Commission on Truth and Reconciliation, is to employ general (and sometimes vague or ambiguous) terms—which achieve unanimity, but at the expense of precision. A second method strives for agreement but also identifies issues that remain matters of contention. In a third approach, which resembles the practice of the United States Supreme Court, unresolved disagreements are formulated as majority and minority judgments in the same

Truth v. Justice: The Morality of Truth Commissions

Robert I. Rotberg and Dennis
Thompson, Editors

The truth commission is an increasingly common fixture of newly democratic states with repressive or strife-ridden pasts. From South Africa to Haiti, truth commissions are at work with varying degrees of support and success. To many, they are the best—or only—way to achieve a full accounting of crimes committed against fellow citizens and to prevent future conflict. Others question whether a restorative justice that sets the guilty free, that cleanses society by words alone, can deter future abuses and allow victims and their families to heal. Here, leading philosophers, lawyers, social scientists, and activists representing several perspectives look at the process of truth commissioning in general and in post-apartheid South Africa. They ask whether the truth commission, as a method of seeking justice after conflict, is fair, moral, and effective in bringing about reconciliation.

“This book discusses the vast and complex range of choices in between blanket amnesty and total accountability through criminal justice, and does so with engaged and critical sympathy.”

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“The case for truth commissions is strongly and persuasively presented in these essays, which bring together a remarkable group of lawyers, political theorists, and historians, all of them intelligently engaged with each other’s concerns.”

—Michael Walzer

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or even in separate reports. Although these last two approaches to disagreement are respectful of societal pluralism and stimulate further public deliberation, they also suffer the serious disadvantage of undermining the authoritative or collective character the truth commissions intends to convey in issuing a final report.

2. Public Platform for Victims. Any society that hopes to reckon adequately with past political wrongs also must provide a platform for victims and their families to recount their suffering and receive public acknowledgement of their ordeals. Treated with contempt previously, victims who receive public acknowledgement and sympathy are now respected as persons with dignity. The *public* character of the platform is essential, since it is precisely secrecy that made extensive campaigns of terror possible.

Depending on how thoroughly testimony is both gathered and disseminated, truth commissions often succeed in attaining this goal. South Africa's TRC, for instance, took testimony from over 22,000 victims or their families, made its sessions public, encouraged extensive media coverage, including radio broadcasts and nightly and weekly television summaries, and also constructed a useful web site.

3. Accountability and Punishment. Full transitional justice also requires fair ascription of responsibility and appropriate sanctions for abusers. Sanctions commonly include legal imprisonment, fines, reparative payments (punitive damages), public shaming, prohibitions from holding public office, and mandatory community service.

Many questions about responsibility and punishment remain. For instance, assignment of accountability is not always a straightforward matter. It is difficult to agree about the degrees and kinds of responsibility concerning the planning, execution, provision of material support for, and concealment of, atrocities. Some might argue for a greater degree of moral responsibility for "sins of commission" than those "sins of omission." One must also examine to what extent

or, on the other hand, the demonization of all members of an opposing group.

One can also raise difficult questions about sanctions. Transitional societies must decide whether sanctions must be legal ones only, or whether more informal, social sanctions might be effectively used as well. Societies must decide whether the punishment can include a retributive element. If so, safeguards must be in place to assure that retribution does not become

When a truth commission identifies likely violators of human rights, it helps end a culture of impunity. . . .

revenge. It is a difficult matter, finally, to decide how retribution might be balanced against other functions of punishment, such as protection of the public, deterrence, rehabilitation, and moral education.

At first glance it might appear that truth commissions make no contribution to accountability and sanctions. Indeed, Mary Albon, a founder of the Project on Justice in Times of Transition of the Foundation for Civil Society, argues that such bodies are designed precisely as a morally second-best alternative when attributions of guilt and punishment are ruled out because of fears that legal prosecution might divide the society or weaken the new, but incomplete, democracy. Further, societies (such as Chile in the early 1990s) at times choose truth commissions as a last resort, the only response possible when amnesty or other legal maneuvers enacted by the prior regime to protect itself and its functionaries block legal remedies. Alternatively, Archbishop Desmond Tutu, among others, insist that truth commissions—and especially the TRC, which Tutu headed—are not morally second best at all. He insists that they have advanced beyond penal or retributive justice to achieve "restorative justice," a relationship of forgiveness and harmony between human rights violators and their victims.

This view—that the work of truth commissions does not include the search for accountability and the imposition of sanctions—is mistaken on several counts. First, when a truth commission identifies likely violators of human rights, it helps end a culture of impunity in which rights violators get away scot-free. In Argentina, violators identified in that country's truth commission report, *Nunca Mas* [Never Again], have faced social stigma, with fellow citizens shunning former military leaders and expressing their opprobrium by, for instance, cursing and spitting. In South Africa, abusers from many walks of life—including doctors, scientists, clerics, as well as police and military personnel—have had to face their own families who, prior to

Transitional societies must decide whether sanctions must be legal ones only, or whether more informal, social sanctions might be effectively used as well.

groups—particular police or military units, political parties, or professional groups—are accountable for rights violations. Without a carefully considered view of accountability and responsibility, societies too easily choose the morally objectionable options of, on the one hand, amnesia and uncritical resignation to their past,

truth commission hearings, may have had no idea that spouses or parents took part in horrendous acts.

Sanctions within the power of truth commissions need not be legal in order to impose a burden and control rights abuses. In fact, truth commissions enjoy several advantages over legal prosecution. One advantage is that truth commissions can launch and conclude their work more rapidly than is possible within judicial proceedings. Truth commissions also tend to cost less and address the crimes of more people. Also, in those cases in which a country's judicial system is prone to incompetence or bias, truth commissions may be more effective as well as honest.

Further, as the cases of Argentina, Chile, Guatemala, and South Africa make clear, the work of truth commissions can complement judicial proceedings. In Argentina and Chile, for instance, criminal proceedings followed the publication of each country's truth commission report, while in South Africa, the trial, verdict, sentencing, and imprisonment of police death squad commander and assassin Eugene de Kock took

*Recommendations made by truth commissions
help remedy the earlier causes of
rights violations.*

place just as the TRC began its proceedings. The information gathered for de Kock's trial subsequently was used by the TRC in its work. Because the courts and TRC worked together, the threat of trial and punishment became a powerful incentive for those suspected of atrocities to apply for amnesty and tell the truth. As an editorial in a South African newspaper observed in 1996, "the perhaps unintended combination of judicial stick and truth commission carrot has emerged as a potent force in flushing out former operatives who have adopted a wait-and-see-attitude."

Truth commissions also often aid the work of the judiciary. The information gathered by truth commissions commonly becomes the basis for legal action against human rights abusers, who ultimately are ordered to pay fines, serve prison terms, pay compensation to victims, perform community service, or accept prohibitions on holding public offices. The Argentine and Chilean truth commissions recommended to their respective judicial authorities that certain individuals be prosecuted, and the commissions provided evidence for judicial processes. Furthermore, the Amnesty Committee of the South African TRC has rejected amnesty requests from—and urged prosecution of—5,392 of 7,112 of those who applied for amnesty. The Committee also advocated prosecution of those it judged to have lied, violated rights with

nonpolitical intent, or caused harm disproportionate to the agent's political aim. And those who never applied for amnesty risk legal prosecution and civil suits.

Finally, recommendations made by truth commissions help remedy the earlier causes of rights violations. Specifically, these recommendations address weaknesses in the judicial system, thereby increasing the possibility of fair judicial processes in the future. Hence, a truth commission's success in getting at the truth is compatible with and often contributes to the assignment of responsibility and imposition of legal and other sanctions. Moreover, unless prosecution accompanies or follows a truth commission, a truth commission by itself might deepen grievances and even incite new violence.

Although truth commissions have particular merit in addressing promptly the causes and consequences of systematic abuses and the problem of collective responsibility, trials are more suitable for holding accountable individual political leaders and the architects of atrocities. The either/or of "truth versus justice" can be avoided, since both truth commissions and trials have distinctive and mutually supplementary roles in achieving the multiple goals of transitional justice.

4. Rule of Law. Transitional societies should comply with the rule of law, which, as legal scholar David Luban argues, is one of the abiding legacies of Nuremberg. The rule of law embodies such principles as respect for due process, evenhanded treatment, and the prohibition against taking private revenge. Rule of law is especially important in new, fragile democracies concerned with distinguishing themselves from prior authoritarianism, institutionalized bias, or the "rule of the gun."

*Truth commissions strengthen the rule of law
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to reduce bias.*

In some instances, however, truth commissions strengthen the rule of law by publicly investigating all sides in a conflict, recognizing ways in which abusers in some cases also are victims, and adopting measures to reduce bias. One such measure is the appointment of commission members who represent various and opposing political factions and who have a reputation for fairness. Those who write the final report must be vigilant against (but not overcompensate for) unintentional racial, class, or ideological bias. At its best, truth commissions respect both due process in treating persons who come before it and at the same time respect local culture. For instance, South Africa's TRC is notable for its successful avoidance of a "kangaroo

New and Notable:

New Dimensions in Bioethics: Science, Ethics, and the Formulation of Public Policy

edited by

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In the last three decades, bioethics has matured into a field of study with several areas of concentration, including medical ethics, environmental ethics and more recently, genetic ethics. For reasons related to both the developmental history of the subject and to the poignancy of the problems presented, most textbooks and collections of essays have dealt with only a single area, medical ethics. This collection enlarges this restrictive vision of the field. By combining essays relevant to medical ethics with companion essays on environmental ethics and genetic ethics, the book emphasizes similarities in the methods of analysis used in diverse bioethical problems, whether dealing with genes, with people, or with the environment. In this way the book hopes to contribute to the intellectual unity of the subject and to suggest changes in the way bioethics can be taught and studied.

In addition to the editors, contributors are: Robert Burt, Strachen Donnelley, Nina Dudnik, Kelsey A. Hart, William Galston, Jay Katz, Kenneth Kidd, Joshua Lederberg, Carol Levine, Ellen Messer, Dorothy Nelkin, David Pimentel, Robert Socolow, and Arthur Westing.

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truth commission" and for respecting in its own way the rule of law:

Andrew Wilson, a bluff liberal Supreme Court Justice, knows that the hearings, during which the crowd dances around the hall at recess, and people shout abuse at the perpetrators, are not normal courtroom procedure. The hearings are a ritual of empowerment, in which people who, in Desmond Tutu's words, were 'treated like rubbish' all their lives get to be treated like citizens. Wilson knows that they have waited fifty years, in some cases, for this moment, and he lets them have their say. But the hearings must never degenerate into mob justice: when he tells people to put their posters away and sit down, they do. There is discipline here—a complicity between judges and a huge crowd to keep the proceedings fair, even to the perpetrators.

5. Compensation to Victims. Compensation, restitution, or reparation (in the form of income, medical services, or educational and other opportunities) should be paid to individuals whose rights have been violated. Depending on the scope of its mandate and the duration of its existence, a truth commission may contribute to the goal of just compensation. In Chile, a body institutionally separate from the nation's Truth and Reconciliation Commission has compensated the survivors of human rights abuses and the families of

Although truth commissions should not be artificially limited to achieving only one aim—such as truth—they should not be expected to accomplish too much, either.

victims. This division of labor came about because while the truth commission had to complete its work in a relatively short time, a longer period was needed for deciding on criteria for compensation and for identifying and treating harms, some of which emerge years after being inflicted.

In South Africa, the TRC's Reparation and Rehabilitation Committee (R&R) is following the Chilean model. Although it implemented some "Urgent Interim Relief" toward the end of the TRC's life, the R&R's power was almost exclusively that of making recommendations to Parliament. A permanent body, the President's Fund, if accepted, would implement the recommendations themselves. Although truth commissions should not be artificially limited to achieving only one aim—such as truth—they should not be expected to accomplish too much, either. Following Chile's example, South Africa is implementing a refined "reparation and rehabilitation policy" that defends reparation on both moral ("restoration of dignity") and legal grounds and provides several types of individual and communal reparation. Individuals are to be compensated both through monetary packages, which take into account severity of

harm, number of dependents, and access to services, and through services such as reburials and providing of headstones.

6. Institutional Reform and Long-term Development.

To reckon fully with past wrongs, an emerging democracy must identify the causes of past abuses and take steps to reform the law and basic institutions to reduce the possibility that such violations will be repeated. Basic institutions include the judiciary, police, military,

A truth commission's actions can be linked directly to efforts to reduce poverty and racism.

land tenure system, and tax system, and the structure of economic opportunities. One temptation in post-conflict or post-authoritarian societies is to permit the euphoria that arises with the cessation of hostilities and the launching of a new democracy to preempt the hard work needed to remove the fundamental causes of injustice and guard against their repetition. A transitional democratic society must try to remove deeply entrenched causes of human rights abuses—such as poverty, racism, and tribalism—and it must do so in a way that strengthens its democracy and promotes just economic development. The long-term development goal should be that all citizens have opportunities to participate politically and live decently.

A truth commission is well positioned to make recommendations for reforms that enhance civil and economic development. Because of its public prominence, an official investigative body is likely to provoke public debate and encourage national and international efforts to ensure “nunca mas” (never again). Further, a truth commission’s actions can be linked directly to efforts to reduce poverty and racism. For example, confessed human rights violators may make reparations to their victims by contributing time or money to society-wide poverty alleviation. Additionally, the TRC’s “sectoral” approach to institutional reform and long-term development was an important breakthrough in transitional justice. The TRC, for instance, held hearings in such sectors as health, business, the judiciary, the media, prisons, and faith communities, and it encouraged each sector to engage in a process of institutional self-examination and reform. Finally, as political theorists Amy Gutmann and Dennis Thompson argue, a truth commission can contribute to long-term democratization and equal respect for all citizens by practicing in its “process” what it preaches in its “product.”

7. Reconciliation. A newly democratic society in transition from past conflict or repression should aim to

reconcile former enemies and reintegrate them into society. There are at least three meanings of “reconciliation,” ranging from “thinner” to “thicker” conceptions. On the most minimal account, reconciliation is nothing more than “simple coexistence,” which means no more than that former enemies comply with the law instead of killing each other. Although this *modus vivendi* is a momentous achievement and is better than violent conflict, transitional societies should aim for more. While they may continue to disagree and even be adversaries, former enemies must not only live together nonviolently but come to respect each other as fellow citizens as well. Law professor Mark Osiel calls this kind of reconciliation “liberal social solidarity” while Gutmann and Thompson term it “democratic reciprocity.” Among other things, this means that people hear each other out, enter into a give-and-take with each other about matters of public policy, build on areas of common concern, and forge compromises with which all can live.

A third, more robust, “thicker” conception of reconciliation has sometimes been attributed to the truth commissions of Chile and South Africa. Both commissions include the word “reconciliation” in their names, and both understand the term as demanding a shared comprehensive vision, mutual healing and restoration,

While they may continue to disagree and even be adversaries, former enemies must not only live together nonviolently but come to respect each other as fellow citizens as well.

and mutual forgiveness. These “thicker” conceptions of reconciliation are much more difficult to defend than “thinner” notions—which simply require that former adversaries live together peaceably and behave lawfully.

One reason that “thicker” conceptions of reconciliation are unlikely to be realized is that the reduction of enmity between former adversaries—let alone the seeking and granting of forgiveness—is unlikely to occur through the short-term efforts of a truth commission. Transitional justice takes time (often many generations) and goes through several phases; there are limits to what a truth commissions can do in one or two years. True reconciliation is possible only when former enemies work together on common projects over a period of *years*. In fact, the best hope for any form of complete reconciliation lies in a new generation that has not experienced past conflicts.

Further, truth commissions permit—and even encourage—confessions of guilt and mutual forgiveness, especially in a society in which a religious imperative to forgiveness is widely accepted. Yet to prescribe

these acts legally would be to compromise the moral autonomy of both victims and abusers as well as promote feigned professions of guilt and contrition. More generally, it is morally objectionable as well as impractical for a truth commission or any other governmental body to force people to agree about the past, forgive the sins committed against them, or love one another.

8. Public Deliberation. A newly democratic and transitional society that aims at reconciliation should include public debate and deliberation in its goals and strategies for transitional justice. It is unlikely that in any society citizens will agree fully about the aims and means for dealing with past abuses. Moreover, all good things do not always go together, since sometimes achieving one goal comes at the expense of (fully) achieving another. The threat of legal sanctions against human rights abusers, for instance, might abort agreement that would end a civil war, or imperil a fragile democracy in which the military regime responsible for earlier atrocities still wields power. In order to protect witnesses or secure testimony from alleged abusers, truth commissions at times interrogate witnesses or alleged perpetrators behind closed doors. Public testimony, however, may worsen relations—at least in the short run—among former enemies. Or, to cite another example, the resources used by truth commissions to conduct their work might be better employed in alleviating poverty or widening political participation.

Disagreements about ends, trade-offs, and means can be reduced if not eliminated through public deliberation that permits a fair hearing for all and promotes morally acceptable compromises. Investigatory bodies themselves can set a good example. One reason the Argentine, Chilean, and South African truth commissions gained legitimacy was that their respective members represented a wide spectrum of political positions.

Certainly, truth commissions should conduct their activities publicly whenever possible, and their work should be accessible—linguistically and in other ways—to every citizen. Truth commissions have realized this goal of public deliberation and decision making in different ways and to different degrees. The TRC, for example, practiced public deliberation internally, publicly vetted its procedures, stimulated public debate and comment, and responded to public criticism.

Concluding Remarks

Some truth commissions have been more successful than others in achieving these eight goals. Regardless the effectiveness of any one particular truth commission, it is clear that such an investigatory body cannot by itself achieve transitional justice. The most morally adequate societal reckoning with past wrongs occurs in those countries in which the work of truth commissions is combined with other national and international

tools. The publication of a truth commission's work must lead to implementation of its recommendations—the most crucial of these include trials of the most culpable, reparations to victims, and reform of social structures. In short, truth commissions are only the *first* step in a long-term societal effort to reckon with past wrongs. Priscilla B. Hayner, the leading scholar of truth commissions, makes this point well:

A strong truth commission can spark violence if it is not backed up by reasonable and fair institutional responses to gross and widespread human rights crimes. This is most likely to be true where there is intense frustration with the lack of justice, little outlook for change, and no sign of remorse, apology, or even symbolic reparation from former perpetrators and beneficiaries of the abusive rule. . . . The most useful contribution of a truth commission is to open, rather than close, a difficult period of history. Ideally, it should lead to other processes or institutions, such as memorials, museums, new educational curricula, and perhaps other commissions of inquiry or reparations bodies, all of which may better integrate a silenced and conflicted past into a respectful and peaceful memory.

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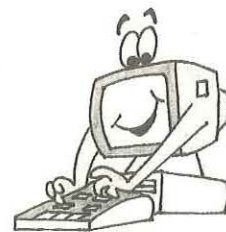
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