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News in Cyberspace: The Creation of the New Ignorance

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ARTICLES

NEWS IN CYBERSPACE: THE CREATION OF THE NEW IGNORANCE

*Ronald Charles Griffin**

Computers are dummying us down. Book learning has given way to computer to speak. Modern technology overwhelms us. Users are enthralled with gadgets to the point where they have lost themselves in them. We have abandoned, perhaps mislaid, our sense for ignorance; what it means to be illiterate in the 21st century; and working definitions for truth. In this environment a dab of education (enough to make somebody lethal), a sprinkle of bigotry, and fear produce people with ideas that are bad for us. This essay cautions against trucking with those folk; it marks what they do in the media that is unhealthy for us; and fixes what's broken in information dispensaries (e.g., broadcasting, film and blogs) so future users won't have to bother with this stuff.

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INTRODUCTION

Computers are dumming us down. Book learning has given way to computer to speak. A dark age is on the horizon. When the electricity is turned off folks won't know what to do with themselves. Modern technology overwhelms us. Users are enthralled with gadgets to the point where they have lost themselves in them. We have abandoned, perhaps, mislaid our sense for ignorance;¹ what it means to be illiterate in the 21st Century;² and definitions for truth.³ In this environment a dab of education

¹ It is a state of mind, in short, a lack of awareness of the social forces operating upon and the institutional demands imposed upon peoples' lives; for example, bureaucratic insouciance that all Floridians communicate with government agencies via computer. Reich, *infra* note 15, at 37; <http://dictionary.reference.com/browse/ignorance>.

² Linear thinking has given way to short disjointed bursts of information about everything. People are flooded with more data than they can process. Condensing and synthesizing material is hard. Carr,

(enough to make somebody lethal), a sprinkle of bigotry and a bit of fear produce ideas that are bad for us.⁴ This essay cautions against trucking with folk intoxicated with this stuff; it marks what they do in the media⁵ that is unhealthy for us;⁶ and fixes what's broken among the information dispensaries so future generations won't have to bother with this muck. The essay showcases alternative realities,⁷ broader views about life,⁸ and the life of the mind.⁹ There is a thesis statement, a philosophical rant, a period piece (Childhood), some world views¹⁰ (people brooding about their surroundings); shortcomings in broadcasting, film, and other media; and what can be done about them.

I. THESIS STATEMENT

Let me be blunt. American society is fragmented¹¹ and niched.¹² It's full of knowledge and reason.¹³ It provides an identity for some (it's a bowl of nutrients) and a haven for others who don't understand their environment. Information floods the ground.¹⁴ People are drowning in data. News makers

The Shallows 10 (2010). People have stopped writing, rewriting and revising on paper. Computers make the work easy. *Id.* Instead of one part of our brain telling another part to do something intellectual, a machine has taken over the task; and, sadly (it's the shame-of-all-shames) bloggers (god knows who they are) have come on the scene to supplant journalists who were (for a long time) the fact checkers in society. *Id.* at 16.

³ Something is true for a time and no more. ZIZEK, *LIVING IN THE END* TIMES 25-26 (2011) [hereinafter ZIZEK]. Truth is beauty, ugliness, and simplicity that is (after some calculations) obvious to everybody. HOLT, *WHY DOES THE WORLD EXIST?*, LOC. 3080/50% (2012) (Kindle) [hereinafter HOLT]. Truths and falsehoods are attributes of speech. Hobbes, *Leviathan*, LOC. 744/8% (Kindle). It comes down to getting the names for things right. *Id.*

⁴ ZIZEK, *supra* note 3, at 36.

⁵ Epstein, *The Selection Reality*, in *WHAT'S NEWS* 131-32 (1981).

⁶ Television has gone niche and tribal. It's people talking to likeminded people all the time. *David Abrahams' Royal Television Society Speech* (full text), *THE GUARDIAN* (May 24, 2011), available at www.guardian.co.uk/media/2011/may/24/davis-abrahams-rts-speech-full?INTCMP=SRCH; See Williams, *The Media Tribe Disfigures Public Life*, *THE GUARDIAN* (Jun. 16, 2006), available at www.guardian.co.uk/media/2005/jun/16/pressandpublishing.religion?INTCMP=SRCH.

⁷ ZIZEK, *Supra* note 3, at 14-15 (2011).

⁸ *Id.* at 181-182.

⁹ Dark forces goad man. Materialism shapes what he thinks. Peterson, *Mass Media and Their Environments*, in *WHAT'S NEWS* 30 (1981) [hereinafter Peterson].

¹⁰ HOBBS, *LEVIATHAN*, Chaps. 13-14 (1651); *Cf.* QUINN, *ISHMAEL* 162-63 (1992). It's eerie situation. Life—as we know it—struck a bargain with all beings but man. Since he could destroy everything a code of morals was erected to sate his appetite for killing. Man's deeds were good when he could rationalize them. His deeds were bad when he could not rationalize them. *Id.* at 151-166.

¹¹ SHENK, *infra* note 37, at 111.

¹² *Id.* at 112.

¹³ GALBRAITH, *THE NEW INDUSTRIAL STATE* 74 (2007).

¹⁴ *Id.* at 75, 76.

make it worst¹⁵ (i.e., abandoning coverage of national affairs for novelty,¹⁶ half truths,¹⁷ titillation, and the salacious).¹⁸ *Journalists aren't doing their job.*¹⁹ Filmmakers could but haven't helped us or made things better. Somebody's got to stop the bleeding. This essay is a first step.

II. PHILOSOPHICAL RANT

A. *Slavoj Zizek*

Let's get busy.²⁰ Nothing remains the same.²¹ Everything comes from chaos²² and serendipity.²³ Knowledge is perceptions of change. Ignorance is ignoring changes. Truth is something we see in its disappearing traces.²⁴ Betwixt and between the everyday commotion, people getting upset, knowledge gathering, and uncertainties, contexts determine whether there is something more or less about what we perceive in our surroundings.

B. *The Commons*

*We live on a commons.*²⁵ Settlers are saddled with morals—legacies handed down by parents to children to cope with the demands of everyday

¹⁵ REICH, THE GREENING OF AMERICA 10-11 (1970) [hereinafter REICH].

¹⁶ *Id.* at 167, 168.

¹⁷ LASH, *infra* note 59, at 76.

¹⁸ FULLER, *infra* note 41, at 20.

¹⁹ SHENK, *infra* note 37, at 168, 169.

²⁰ There are parallel universes like *ours*. HOLT, *supra* note 3, LOC. 2204/35%, LOC. 2951/47%. They come from a bubble with indeterminate and unstable properties that burst. *Id.* LOC. 3026/49%. The explosion produced nothingness, pulses, and beings. Nothingness is a reality that accommodates phantoms that cannot be described in words. *Id.* LOC. 835/13%. Nothingness has a pulse (a thumping brought on by proto beings winking in and out of existence). *Id.* LOC. 958/ 15%. There is a realm marked beings (a reality, some say, a space accommodating objects, life, weights and measures, and deconstructionists). *Id.* LOC. 617/10%. This realm is plagued with scientific and dogmatic questions. The dogmatic ones are mired in myths, partial evidence gathering, superstition, logic, and decisions. People make good and bad decisions in this realm. The good ones are leavened by history—what makes life rational, people happy and living worthwhile. HABERMAS, THEORY AND PRACTICE 253 (2007) [hereinafter HABERMANS].

²¹ ZEZEK, *supra* note 3, at 25-26.

²² HOLT, *supra* note 3, LOC. 3334/58%.

²³ We are points and numbers in space, *Id.* LOC. 3354/54%, with the capacity to act harmoniously with others. *Id.* LOC. 3364/54%. Consciousness is an “it” or “whatever” that remembers harmonies. *Id.* LOC. 3466/56%. Harmonies make things and objects in our lives. Of course, new arrangements appear on the scene. They behave erratically producing objects not seen by anybody, www.referenceforbusiness.com/management/Bun-Comp/Chaos-Theory.html.

²⁴ *Id.* at 184.

²⁵ In the beginning there was pressure to reform popular culture from above. Literacy replaced oral histories. Enlightenment seeped down to subordinate orders. *Book Note, The Relevance and Irrelevance of the Founders*, 120 HARV. L. REV. 619, 620 (2006). There were push backs, stasis, and

life.²⁶ Dwellers draw circles around their neighbor's aspirations and do their best to stay on their side of their neighbors' lines.²⁷

Everybody's preoccupied with their projects—assembling, launching, and seeing them through to fruition. Dwellers erect principles to minimize conflict. We (Americans) like freedom²⁸ (the option to go hither-and-yon unmolested by our neighbors), liberty,²⁹ equality,³⁰ anonymity,³¹ peace and quiet, veils to protect our business secrets (when we launch projects), fairness,³² and justice³³ (giving everybody their ration of the commons' wealth to get through the day).³⁴

Some dwellers commodify their surroundings. Others manage commodifications. The media mediates what we perceive about our surroundings, leaving folk to scum with each other over jobs in small business, heavy industry, oil companies, agribusinesses, construction firms, and other entities for money (Figure 1).³⁵

Settlers live in physical and virtual worlds. The former is marked by weights and measure and deconstructionists (who reduce things to common denominators to see how things work). The latter services replicas of

eddies unchanged by events; a ranting press and rowdy politicians deliberating about important matters displaced polite chats between enlightened politicians about what was good for us. *Id.* at 622, 623. See BATZELL, *THE PROTESTANT ESTABLISHMENT* 381 (1964); CASH, *MIND OF THE SOUTH* 25-28 (1968). Sadly, nothing's changed in the 21st century. Bradley, *Founded in Enlightenment, America Faces Ignorance and Confusion as the Challenges Grow Evermore Complex*, www.huffintonpost.com/william-bradeley/America-challenges_b (Jul. 2, 2012).

²⁶ PURDY, *THE MEANING OF PROPERTY* 20-22 (2010).

²⁷ See, e.g., *Sherbert v. Verner*, 374 U.S. 398 (1993). Men wooed others for peace to insure that *all* lived out the lives nature gave them. Hobbes, *Leviathan*, CHAP. 14 at 190. It amounted to shedding liberties that were coextensive with the liberties others shed themselves. *Id.*

²⁸ REICH, *supra* note 15, at 20-21.

²⁹ *Id.*

³⁰ *Id.* at 37. Cf. REEVES, *AMERICAN JOURNEY* 173 (1999).

³¹ Solove, *The Virtue of Anonymity*, ROOMFOR DEBATE, THE NEW YORK TIMES, NYTIMES.COM, available at <http://www.nytimes.com/roomfordebate/2011/06/21/youre-mad-youre...>

³² RAWLS, *A THEORY OF JUSTICE* 13, 96 (1999). It's following institutional rules and acceding to mutually advantageous arrangements when: (1) there is a equal distribution or rights and responsibilities and (2) a tolerance for inequality under a prevailing (but readily replaceable) arrangement that improves everybody's life and the lot of the least among us. *Id.* [hereinafter RAWLS]. See Farnsworth, *The Taste for Fairness*, 102 COLUM. L. REV. 1992 (2002). It's somebody doing something to: (1) promote economic security; (2) enlarge our perceptions of beauty; (3) enhance our feelings for others, and so on. *Id.* at 1994, 2017.

³³ Justice is the rectification of human error. ADLER, *SIX GREAT IDEAS* 139 (1981). It draws a line in politics beyond which liberty and equality cannot go. It services peoples' needs and restores their endowments, i.e., the legal and political fictions furnished by politics. *Id.* at 188, 192.

³⁴ RAWLS, *supra* note 32, at 274-282. See Benson, *The Basis of Corrective Justice and Its Relation to Distributive Justice*, 77 IOWA L. REV. 515, 536 (1992).

³⁵ In the illustration "c" stands for commodification. The media occupies the space between management and labor and mediates what we perceive about our surroundings.

ourselves, forms of violence that make death impermanent, and duplicates of the instruments we use in business. Our conduct is reduced to zeros and ones. What we do is captured in equations (Figure 2).³⁶

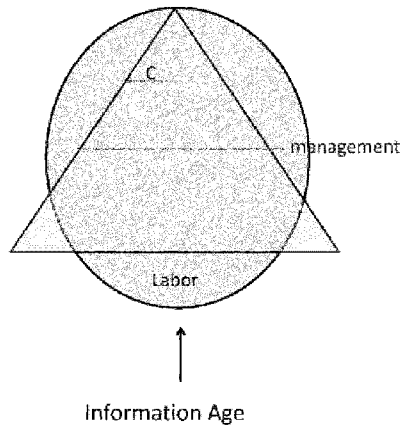


Figure 1 Information Age

$$K(\text{Words} + \text{Conduct} + \text{P-up} + 1 - 303 + k \frac{\pi}{n}) (k = m \times m)$$

$$Pf + \frac{\Delta^k}{r} = K$$

Figure 2 Mathematical Narrative

C. *The Bog*

Information swamps us. Printed words and speech have given way to sounds and images, repeated ad nauseum, to drain icons (traditional and religious symbols) of their meaning to a point where people feel empty, bewildered, and wrong footed in their environment.

There is an informational glut.³⁷ Our senses are drowning in the stuff.³⁸ As consumers of information in a technopoly³⁹ maybe we're the endangered

³⁶ In this illustration "k" stands for contracts. When words, conduct, and computer pop ups surface on a recurring basis; buyers and sellers know about them (that is the stuff in the parenthesis to include 1-303); the minds of the parties have met. *Specht v. Netscape Communications Corporation*, 306 F.3d 17 (2nd Cir 2002). When sellers perform a beneficent act on a recurrent basis (that is the material in the denominator of that fraction) and buyers (depicted as delta) knowingly and deliberately accepts the beneficences, there is a contract. *Register.Com v. Verio, Inc.*, 356 F.3d 393 (2nd Cir. 2004).

³⁷ SHENK, DATA SMOG 102 (1997) [hereinafter SHENK].

³⁸ *Id.*

³⁹ POSTMAN, THE SURRENDER OF CULTURE TO TECHNOLOGY, LOC. 1620/52% (1992) (Kindle).

ones (Figure 3)?⁴⁰ Because people have incomplete and incoherent pictures of their surroundings, they believe everything.⁴¹ Few have ciphers to discern what to discard. Nobody knows anything.⁴² Everybody knows all there is to know.⁴³ Folks are primed to make mistakes.⁴⁴

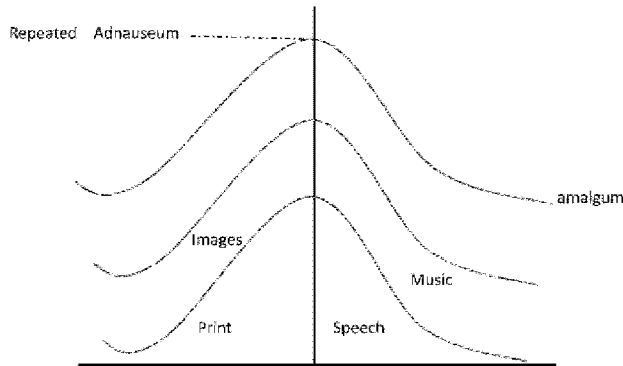


Figure 3 Informational Glut

D. *The Problem*

What's the problem? Put bluntly it's plutocracy (six firms control what we perceive);⁴⁵ shared monopolies⁴⁶ (they homogenize what we know); bottleneck monopolies⁴⁷ (they pinch the flow of information) and reporters (who feed us half truths spawning inferences that cannot be corroborated by facts) leaving consumers of information with shallow pools of ideas, facts, new innovations and scientific discoveries to debate in a democracy.

E. *The Solution*

What's the solution? We should break up shared and bottleneck

⁴⁰ *Id.* LOC. 1635/52%.

⁴¹ FULLER, WHAT'S HAPPENING TO THE NEWS 91 (2010) [herein after cited as FULLER].

⁴² *Id.* at 89.

⁴³ PUSEY, JURGEN HABERMAS, LOC. 1115?37% (1987) (Kindle) [hereinafter J. HABERMAS].

⁴⁴ FULLER, *supra* note 41, at 69, 80.

⁴⁵ Porter, *The Media Baronies*, in WHAT'S NEWS 98-99 (1981). See *Who Owns What on Television*, <http://www.neatorama.com/2008/07who-owns-what-on-television/> [hereinafter WHO OWNS WHAT ON TELEVISION]. They are General Electric, Time Warner, Walt Disney Company, News Corporation, Columbia Broadcasting System (CBS), and Viacom. *Id.*

⁴⁶ Shared monopolies presuppose entities with monopoly power engaged in parallel behavior. *Carpet Group Intern v. Oriental Rug Association, Inc.*, 256 F.Supp.2d 249, 285 (D.N.J. 2003); *Hawkins Amusement Enterprises, Inc. v. General Cinema Corporation*, 850 F.2d 477, 490 (9th Cir. 1988). Cf. *Precision CPAP, Inc. v. Jackson Hospital*, 2010 W.L. 797190 (M.D. Ala.); *Santa Products, Inc. v. Sylvester & Associates, Ltd.*, 121 F.Supp2d 729 (E.D.N.Y. 1999).

⁴⁷ *Byars v. Bluff News Co, Inc.*, 609 F.2d 843, 856 (6th Cir. 1979). See also Hailine, *Matchpoint: Agents, Antitrust, and Tennis*, 64 U. OF DETROIT L. REV. 481, 495 FN. 119 (1987).

monopolies and, thereafter, allow the surviving bits to create, innovate, and enrich our pools of ideas. We should fund public broadcasting at the university level where thinking and producing something takes place.⁴⁸ We should goad journalists into producing a journalist's code—giving peers the power to punish members for deviations.⁴⁹ Journalists (men and women who produce the news) should park their ideological impulses before they publish.⁵⁰ They should weed out falsehoods and verify facts to minimize phony inferences.⁵¹

When broadcasters make an ism (e.g., anti-Semitism, sexism, or racism) the spine for a documentary; that is, prop up something awful and feed the thing (giving audiences the option to feel revulsion and think poorly of a group and, thereafter, scapegoat somebody whose vulgarity is secretly their own) the viewer should file complaint letters and legal complaints with the Federal Communications Commission.⁵²

Moving pictures are irritants. Some fuel the worst impulses in us. They generate inferences that cannot be corroborated by facts. When that is the case film critics should make producers, screen writers, and actors accountable for what they show us. We are, after all, what we do and what we see. What we perceive is *a reality* and, for some, a reason for doing something dastardly.

F. *Alternative Reality*

I am reminded of alternative realities. An exposé like the above is an antidote for worlds that accommodate too much madness. Rightly or wrongly our world is mad. It's lost the symbols and the markers for ignorance (people operating without machinery to cope with the demands of the 21st Century). We (collectively) don't know what it means to be illiterate (too many know too little about English grammar, the digital world and its language, and how it works). Too few, if any, have a working definition for truth. The question is: What do we do about this problem? The short answer is to write something spectacular to rescue truth and fight ignorance. (It means thinking deep, analyzing and produce something.) It comes down to mining what one sees in life and refining the cache so others can grasp it.⁵³

⁴⁸ We could use a spectrum tax levied against commercial broadcasters to fund public broadcasting. It would be one or two percent take of their gross revenues. Abel, *The Last Word*, in *WHAT'S NEWS* 268 (1981).

⁴⁹ *Id.* at 261-62.

⁵⁰ FULLER, *supra* note 41, at 151.

⁵¹ *Id.*

⁵² SERAFYN, *infra* note 113, at 1217-18.

⁵³ Davies, *Literature and Technology*, in *THE MERRY HEART* 171 (1996).

III. CHILDHOOD

Ordinary people influenced how I saw the world.

A. *Mama Dorothy in the 50's*

There were family conversations at my grandmother's house. Sunday dinners—stocked with every food imaginable—were lively. The author was a preteen then, seated at the big table. Relatives representing different generations were verbal, argumentative, and talked about everything under the sun. Some things uttered stuck with the author. One relative said the following:

People are what “haunts their minds” and the trash they leave behind. Dry and passionless people make the world ugly. People should get a grip. They should cope with their fears and devilish things they do to others. The world is (after all) a dying place. Everything slows and stops operating. To cope with losses prompted by change youngsters must gather as much happiness as they can manage for themselves.

In their mind the world was divided into capitalist, managers, and laborers. The capstone (capitalist) was a trademark for something, an adjective, and a noun. It described folk with money. Efficiency was their religion. The goal was to milk people for profits. There was competition. It was ferocious. Life was cruel. Everybody was selling everything. There was waste.

B. *Brooding Teenager*

1. Fredrick Hayek

Fredrick Hayek occupied the author's mind. Society addressed parity⁵⁴ (giving the sick, elderly and weak money for subsistence) and privation⁵⁵ (giving the poorest among us food, clothing, and shelter). Everything else was left to the market (i.e., personal happiness, aspirations, property, liberty, freedom, independence, and the option to make contracts).⁵⁶

Certainty, order, stability was the thing. Everybody obsessed about them. People “gave no quarter, took no quarter, and expected none”. Life was a tough and a cruel business. In scrums to win goodies government couldn't side with contestants or groups.

⁵⁴ HAYAK, THE ROAD TO SERFDOM 132-133 (1994).

⁵⁵ *Id.*

⁵⁶ *Id.* at 146.

Oligarchies ran things. Aldermen, legislators, policemen, union leaders, private sector contractors, criminals, newspaper owners, reporters, and the like, aided them. Conversations with these folk were curt, pragmatic, and shorn of sentimentality. Among folk whose lives they influenced “might made right”. He who had the gold made the rules.

2. Thomas Hobbes

Hobbs was the rage. People coped with other peoples’ needs, impulses, and lust.⁵⁷ They dealt with chaos and upset; competition, predation, rituals, chance, and luck. Social life was what was immediate and important to everybody and law (a euphemism for a system, social helmsmen, professional rule makers, and edicts called into action by the sovereign when shame and banishment did nothing to anybody).⁵⁸

People lived dull and routine lives. Ignorance was on the rise. Local newspapers fed readers pap (e.g., the latest sports accounts and the shenanigans of celebrities). Truths and falsehoods were irrelevant.⁵⁹ The question was: whether the information packed a wallop.

3. Netherworld

Being in the media was glitzy.⁶⁰ It made people heroes;⁶¹ created hero worship⁶² and prodigalism; a belief system that accommodated bizarre notions; nefarious people; funny ideas and mavericks making odd statements that got published and piled everywhere until the piles rolled over everybody everywhere. Law was an oligarch’s response to maverick vituperations or tweaks to rules to accommodate them.

Inequality was the norm. Equality was doled out to appease someone.⁶³ There was factual equality (universal recognition that people were biologically the same). There was negotiated equality (individuals and groups striving against norms to wrest concessions from society) and situational equality (social badges signifying a station firmly fixed, or status won, and the courtesies afforded the holders).

⁵⁷ Hobbes, *Leviathan*, CHAP. 13 at 185, 187.

⁵⁸ *Id.* at 202.

⁵⁹ LASCH, *THE CULTURE OF NARCISSISM* 74 (1978) [hereinafter LASH].

⁶⁰ FULLER, *supra* note 41, at 20 (2010).

⁶¹ *Id.*

⁶² *Id.*

⁶³ That is the essence of Republican candidate Mitt Romney’s 47% rant at a dinner with secret donors in Florida. *Full Transcript of Mitt Romney Secret Video/Mother Jones*, <http://www.motherjones.com/politics/2012/09/ful-transcript-mitt-romn...>

Sadly and quite abruptly—amidst new technology, social change, foreigners, and fear—things turned sour. On the cusp of the millennium society peered into the abyss. The remnants of the author’s generation—the trash—decided to restore apartheid in America.⁶⁴

4. Dotage

Regrettably nothing’s changed. The nation is divided into capitalists (copula), managers (middle piece), and labor (base). Everybody’s competing with everybody and selling everything to everybody. Competition is fierce.⁶⁵

People huddle in fragmented informational environments. Media pounds on us every day—doing everything it can to get into our brains.⁶⁶ Ads brimming with temptress,⁶⁷ novelty, and spectacle⁶⁸ get beamed into our heads.⁶⁹ When they pop up in the conscious mind they spark impulses to buy things.

It is a weird place. News competes with rival diversions for our attention.⁷⁰ When the brain reaches informational overload, old fashion emotions determine “what’s waste”.⁷¹

It is a postmodern world. There are no master narratives or definitive reads. Authority is meaningless. Nobody trusts anybody. Everybody has their beliefs but, in a primitive way, abandons them for the beliefs of the herd.⁷² The law is literally what the numerical majority says it is. In this

⁶⁴ What they are doing is troubling. ZEZEK, *supra* note 3, at 46. Making non-European Americans show their papers; privatizing instruction for the young; and last, but not least, making the cost of healthcare fiscally prohibitive so one group (whites) statistically fair better than others. Gordon, *Poll Vaulting*, ABA JOURNAL 19 (Vol. 98, No. 9, Sep. 2012). See *Poverty: United States Census Bureau*, www.census.gov...Poverty. It is tribal behavior. People with collective perceptions, shared values, and affiliations are imposing their will on others. J. HABERMAS, *supra* note 35, at LOC. 732/26%. See Isaacson, *The Effects of Poverty on Health*, in BEYOND CIVIL RIGHTS: THE RIGHT TO ECONOMIC SECURITY 102-115 (The Center for Civil Rights, University of Notre Dame Law School 1976). See WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 151 (1991); KALLAWAY, *APARTHEID AND EDUCATION* 8 (1990); Saltman, *Putting the Public Back in Public Schooling: Public Schools beyond the Corporate Model*, 3 DEPAUL J. SOC. JUST. 9, 33 (2010) [hereinafter Saltman].

⁶⁵ See THUROW, *THE ZERO SUM GAME* 138-139 (1985). There are different forms of capitalism in the 21st century. The first is authoritarian (China); the second is domination (United States); the third is welfare (Europe); the fourth is populist (Latin America). Each nudges the other around the world to capture turf occupied by another. ZEZEK, *supra* note 3, at 166.

⁶⁶ SHENK, *supra* note 37, at 103.

⁶⁷ *Id.* at 102.

⁶⁸ *Id.* at 106.

⁶⁹ FULLER, *supra* note 41, at 60.

⁷⁰ *Id.* at 108.

⁷¹ *Id.* at 49, 73, 81.

⁷² *Id.* at 110.

setting, the bad man's theory has sway.⁷³ In day to day conflicts with people the question is: what does he believe the community will do about his deeds?⁷⁴

5. Fancy Machines

Computers have come on the scene.⁷⁵ After programming they do everything. They learn from experiences; modify their programming to accommodate change and, in so doing, show intelligence (making choices for us, forming intentions, reaching decisions, giving and withholding assent).⁷⁶ They are entities in their own right and legal personalities against whom people have moral claims.⁷⁷ Since we programmed them they are us. Respondeat superior makes us accountable for their conduct.⁷⁸

6. Modern Perspective

People are camped on a noisy plain.⁷⁹ It's dotted with machines, computers, and dominant and subordinate relationships. Settlers are presented with people's differences; told to cope with them; and ordered to accept their permanence. Everybody has a life task—to find his place in the world. To that end folk have to learn something, conquer somebody, and defend their holdings against those who would take their stuff from them.⁸⁰

It is a deadly game—full of dramatic episodes—that offers winners no assurance that the outcome of one contest is binding on the next.⁸¹ Everybody is free in the game. But the price for freedom is fear, insecurity, and anxiety.⁸² The game's goal is to destroy differences to make way for order and stamp out fear.⁸³ But the goal is unattainable.

Encounters with unusual people everywhere and, if they will, run-ins with odd things make contest results too fluid and indeterminate to draw concrete lessons from one scrum to the next; and, as with all human encounters, contests, and experiences, when people are confused and

⁷³ Holmes, *Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

⁷⁴ See DEFLEM, HABERMAS AND MODERNITY 58-59 (1996).

⁷⁵ Allen & Widdison, *Can Computers Make Contracts*, 9 HARV. J. L. & TECH. 25 (1996).

⁷⁶ *Id.* at 26.

⁷⁷ *Id.* at 35-36.

⁷⁸ *Id.* at 41.

⁷⁹ BAUMAN, POSTMODERNITY AND ITS DISCONTENTS 120 (1997).

⁸⁰ *Id.* at 122.

⁸¹ *Id.* at 123.

⁸² *Id.*

⁸³ *Id.* at 124.

perplexed by their environment they do the human thing—retreat from the big mysteries to embrace what’s intelligible within their comfort zones and available to them.⁸⁴ They use *their* language and their beliefs to make truths out of their surroundings. What they discard is collected by other perplexed people with *their* language and their beliefs to construct competing truths for themselves.⁸⁵

IV. NEWSPAPERS

A. *Newsmakers*

Reporters aren’t doing their jobs for us.⁸⁶ They aren’t giving us facts⁸⁷ or sufficient facts⁸⁸ so we can make independent judgments about our surroundings and public affairs. Investigative journalism has given way to attack journalism.⁸⁹ Neutral journalism (Walter Lippmann’s Model)⁹⁰ has given way to emotional commentary.⁹¹

Reporters have to check their prejudices before they write and rein in their ideological impulses before publishing something. (Ideology, after all, masks what’s happening to society and what causes peoples’ angst.)⁹² They must discipline themselves to do whatever to weed out falsehoods, and verify facts, to trap inferences that could mislead the public.⁹³ But the author digresses.

B. *The Future*

Some of us have lived long enough to see the future become history. When the author was a child television changed everything. In the author’s grandchild’s lifetime (Griffin Roy Simon’s) the digital revolution has overturned everything.⁹⁴ Living in cyberspace is cool. It is a seek-and-find medium.⁹⁵ Chance (being the medium’s trait) has left users without sure

⁸⁴ *Id.* at 115.

⁸⁵ *Id.* at 117.

⁸⁶ SHENK, *supra* note 37, at 106-107.

⁸⁷ LASCH, *supra* note 59, at 74.

⁸⁸ *Id.* at 76.

⁸⁹ FULLER, *supra* note 41, at 21.

⁹⁰ *Id.* at 12.

⁹¹ *Id.* at 69.

⁹² ZEZEK, *supra* note 3, at 38. *See also* FULLER, *supra* note 41, at 51.

⁹³ FULLER, *supra* note 41, at 141.

⁹⁴ Cohen, *The Media that Needs Citizens: The First Amendment and the Fifth Estate*, 85 S. CAL. L. REV. 1, 14 (2011) [hereinafter COHEN].

⁹⁵ *Id.*

paths to all the news (aside from the salacious stuff) and stories that folk need to know about public affairs. The future belongs to digital presentations.⁹⁶ The questions are: (1) who is the audience and (2) how do journalists pitch their stories to them?

C. *The Answer*

For the record the audience is policy oriented wonks (people who read *The New York Times*),⁹⁷ news sophisticates⁹⁸ (people who want tightly edited bits of news from the British Broadcasting Corporation (BBC)), and everybody else (people wallowing in entertainment).⁹⁹

Journalists have to use the techniques of rival media to get their product out.¹⁰⁰ Dabs of cinema's jump-cut kinetic imagery (i.e., presenting stories thru film from different perspectives in the same viewer time),¹⁰¹ memoirs (using the perspective of the presenter to curry sympathy and empathy), and revelations should do the trick.¹⁰²

But what do journalist and consumers of journalism do about distortions, fabrications (mixing fiction and fact), staging, and outright lies?¹⁰³ What rules can they make to arrest these things and, by implication, slow the growth of ignorance?¹⁰⁴

V. ELECTRONIC MEDIA

“Whatever’s here (both good and bad) was always here” and “whatever disappeared (broadcasting remedies that did not stick) deserved to disappear”.¹⁰⁵ There are core and penumbra cases.¹⁰⁶ When it’s core, that is, when legal principles suits the facts, courts deploy logic to settle things. When it’s penumbra (the principles are ill fits) judges use reasons to settle things.¹⁰⁷ They resort to what ordinary men think words mean (heuristics),¹⁰⁸ the meanings ascribed to legal terms in other settings,¹⁰⁹

⁹⁶ *Id.* at 87.

⁹⁷ *Id.* at 64.

⁹⁸ *Id.* at 64, 67.

⁹⁹ *Id.* at 67.

¹⁰⁰ FULLER, *supra* note 41, at 167-170.

¹⁰¹ *Id.* at 168.

¹⁰² *Id.*

¹⁰³ COHEN, *supra* note 94, at 6 (2011).

¹⁰⁴ *Id.*

¹⁰⁵ ZEZEK, *supra* note 3, at 29.

¹⁰⁶ Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593, 607 (1958)

[hereinafter H. L. A. HART].

¹⁰⁷ *Id.* at 611.

¹⁰⁸ *Id.*

public policies, analogies, perceptions of what society needs,¹¹⁰ established norms (courtesies accorded others in public), and ethics (freedom, liberty, fairness, and so on).

A. *Broadcasting*

The First Amendment protects heated one sided outbursts and sharp accounts of newsworthy events.¹¹¹ But it doesn't protect staging, cropping, hoaxes, distortions, and fabrications of broadcast worthy items. A television owner's directive ordering employees to crop the news for ideological or economic reasons and, in the worst cases, firing someone for ignoring his order are reasons to take his license.¹¹²

The *Serfyn Case* put network news' duties and its obligations to the Federal Communication Commission's (FCC) in sharp relief.¹¹³ There was a TV broadcast on CBS. The title was *The Ugly Face of Freedom*.¹¹⁴ There was a voice-over about Ukraine history¹¹⁵ and interviews¹¹⁶ (time spent with celebrities, non-celebrities, and yeomen who were made to represent the views and attitudes of all people similarly situated).¹¹⁷

There were questions and answers; statements about public ignorance; a blurb about hatred and ethnic strife; an opinion about the nation's active dislike of Jews; a slur captured on camera; a mistranslation of the slur; emotionally charged language (interspersed with what appeared to be Neo Nazi footage);¹¹⁸ followed by a voice-over by an American celebrity summing up, if not affirming, what the audience thought it saw on television.¹¹⁹

The broadcast focused on an *ism*¹²⁰—anti-Semitism in the Ukraine. It allowed something awful to thrive. It gave the viewing audience the options to (1) feel revulsion and (2) scapegoat somebody who was vulgar but

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 609.

¹¹¹ *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

¹¹² RAY, FCC: THE UPS AND DOWNS OF RADIO-TV REGULATION 13 (1990). See *Hunger in America*, 20 FCC 2d 143,150-151 (1969).

¹¹³ *Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998) [hereinafter SERAFYN].

¹¹⁴ *Id.* at 1217.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 1221. See Levi, *Reporting the Official Truth: The Revival of the FCC's News Distortion Policy*, 78 WASH. U. L. Q. 1005, 1033-1039 (2000) [hereinafter Levi].

¹¹⁸ SERAFYN, *supra* note 113, at 1217.

¹¹⁹ *Id.*

¹²⁰ ZEZEK, *supra* note 3, at 45. It is an aspiration (a social attitude in which something vulgar thrives). *Id.*

secretly like them.¹²¹

Some Ukrainian-Americans thought the documentary distorted Ukrainian life.¹²² It was defamation and group libel. For these reasons and the angst the broadcast engendered in folk, a handful filed a complaint about the show¹²³ and petitioned the FCC to lift the Columbia Broadcasting System's license.¹²⁴

The commissioners accepted the petition for relief but dropped nine of the twelve counts. They tackled three (parsing the evidence *ad seriatim*) to find the accusations flimsy and the overall complaint unworthwhile.¹²⁵

On appeal, the United States Court of Appeals reversed the FCC determination.¹²⁶ The Commission was denied the option to parse evidence *ad seriatim*.¹²⁷ Facts in a complaint and pleadings, said the court, were enough to establish a *prima facie* case.¹²⁸ Complainants could use circumstantial evidence to establish a pattern of broadcast distortion.¹²⁹ The Commission could draw inferences about bad motivations from obvious and egregious inaccuracies.¹³⁰ The FCC could second guess the broadcaster's editorial choices with regard to sources and depth of research.¹³¹ CBS had to investigate and verify the truth of inflammatory claims before a broadcast. Complaint letters filed with the FCC had to be included in Commission deliberations.¹³² "Where there is smoke", said the court, "there is fire."¹³³

After remand of the case to the FCC the critics fired back. The court, they said, went too far. They ran rough shod over collected wisdom about free speech; marginalized FCC expertise; put ugly tread marks in the First Amendment; wrecking the bulwark erected to protect freedom of the press.

B. Second Take

There was more. This was a penumbra case.¹³⁴ The court used its authority to stop folk who (1) showcased anti Semitism and (2) fed the

¹²¹ See ZEZEK, *supra* note 3, at 45-46.

¹²² SERAFYN, *supra* note 113, at 1218.

¹²³ *Id.* at 1216.

¹²⁴ *Id.*

¹²⁵ *Id.* at 1216.

¹²⁶ *Id.* at 1219-1220.

¹²⁷ *Id.* at 1220.

¹²⁸ *Id.*

¹²⁹ *Id.* at 1221.

¹³⁰ LEVI, *supra* note 117, at 1042-1043.

¹³¹ *Id.*

¹³² SERAFYN, *supra* note 113, at 1222.

¹³³ *Id.* at 1220.

¹³⁴ H. L. A. HART, *supra* note 106, at 611.

public's appetite for this stuff. The broadcast maligned Ukrainians; made them anti Semites; left the viewing audience with a false inference about the country; giving viewers the option to feel revulsion and, thereafter, scapegoat somebody.

C. *Deeper Meaning*

Everybody's got convictions.¹³⁵ Folk use them to navigate in the world.¹³⁶ Truth is ascribed to ideas and convictions that sustain us. When we bump into the world, with our convictions, we react to what we see. Gratuitous violence beamed to us is immoral.¹³⁷ Deeds sowing hatred and anger are immoral.¹³⁸ Acts captured on film that kindle angst and anxiety are immoral.¹³⁹ Programming generating inferences that lead audiences away from the truth are immoral.¹⁴⁰ *In the Seryfyn* authorities stopped that.

D. *Legalese*

There is a saying. Government should keep its hands off the print press.¹⁴¹ Broadcasters are subject to regulations.¹⁴² Private entities shouldn't

¹³⁵ REICH, *supra* note 15, at 16.

¹³⁶ HAIDT, *infra* note 158, at LOC. 3290/41%-LOC. 3300/41%. There are competing views about our surroundings. *Id.* at Loc. 4063/51%. Families are the basic units. *Id.* at Loc. 2786/35%. They circumscribe autonomy. *Id.* at Loc. 2940/37%. There are family networks and other nesting arrangements (e.g., churches, military organizations, and so on) that do the same. *Id.* at Loc. 2945/37%, Loc. 2949/37%, Loc. 2974/37%. Members of these arrangements punish deviants and freeloaders who threaten the group arrangement. *Id.* at Loc. 3372/42%. They (settlers) gravitate towards liberty (the right to be left alone), *id.* at Loc. 3246/41%, and equality (banning together) when bullies strive, *id.* Loc. 3230/41%, indeed, control everybody and everything. *Id.* at Loc. 3033/38%. They believe people should keep what they earn, *id.* at Loc. 3132/39%; authorities should disgorge cheaters of ill-gotten gain, *id.* at Loc. 3290/41%; and karma. *Id.* at Loc. 3149/39%. Folks are the cause of what they receive.

¹³⁷ Riley, *On the Telos of Man and Law: An Essay concerning Morality and Law*, 64 IND. L.J. 965 (1989). Morality is what we think *man is*. Families, schools, trade unions, local government, law and customs give us hints. *Id.* at 969. It is at the very least harmony with one's self; harmony with others (e.g., friendship, suppressing impulses to do violence, and doing justice); and striving to keep this stuff for one's self. It's nurturing life and health, probing for truths, seeking beauty, playing and working and, in so doing, perfecting what one does well. *Id.* at 971. Immorality (in this context) is anything or anybody doing whatever to disrupt things and peoples strivings. *Id.*

¹³⁸ *Id.* at 972.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *New York Times v. Sullivan*, 376 U.S. 254, 283 (1964) (holding newspaper autonomy protected under the First Amendment); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S.241, 248 (1974) (holding *access regulations* violate the principle that authorities may not fiddle with a newspaper's editorial freedom to print what it thinks fit).

¹⁴² *National Broadcasting Co. v. United States*, 319 U.S. 190, 226-27 (1943); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390-92 (1969).

dam the streams of information that feed the lakes of public opinion. Journalist, bloggers, stringers, and would-be journalists must extend courtesies to others that we expect others to accord us. What we think and say aloud is our business—not others.

This ditty is inspirational, aspirational, catchy but useless. It doesn't do anything for us in the short run. If markets regulate the information fed to us—indeed what libertarians want everybody to embrace as a suitable substitute for FCC regulation—there's no assurance that debate about newsworthy items will turn out analytical, robust, and factual. We have too few broadcasters trawling for information¹⁴³ and a dearth of field reporters feeding us “on the scene versions” of world events.¹⁴⁴ Nobody in broadcasting is calling out anybody for broadcast misinformation. Six firms fish for us and catch stuff.¹⁴⁵ We eat what they serve. He who collects the data makes the news.

In the news, reporting should be more than interest group battles—an “I will get mine in a crisis at your expense” spectacle. FCC regulations imposing duties upon broadcasters should bring about nobler things. They should produce truthful, useful, and reliable programming and, we hope, a consensus about what we think about our world and the threats to us all. To do nothing along this line and in a case like *Seryfyn is* irresponsible. Democracy is the victim. Inaction assures the failure of our founders' experiment.

E. A Thought

America is zany. It accommodates a ruling caste,¹⁴⁶ ordinary folk, broken people, tortured souls, and demons.¹⁴⁷ Property perches on top of this arrangement. The market is in the middle. (It shields property.) Democracy is on the bottom. It is a cauldron where gents from every stripe strive to collect things that make living worthwhile.¹⁴⁸ Downward pressures from the market determine what strivers know. On the commercial side broadcasters tell us what to purchase.¹⁴⁹ On the non-commercial side (where the news makes a buck) broadcasters determine what we know (Figure 4).¹⁵⁰

¹⁴³ Osnos, *Elegy for Journalism?*, 89 FOREIGN AFF. 131, 134 (2010).

¹⁴⁴ *Id.*

¹⁴⁵ *Who Owns What on Television*, *supra* note 45.

¹⁴⁶ Judges, *Bayonets for the Wounded: Constitutional Paradigms and Disadvantaged Neighborhoods*, 19 HASTINGS CONST. Q. 599, 690 (1992). See BATZELL, PROTESTANT ESTABLISHMENT 24-25 (1964).

¹⁴⁷ *Id.* at 683-84.

¹⁴⁸ ZEZEK, *supra* note 3, at 183.

¹⁴⁹ LASH, *supra* note 59, at 71-74.

¹⁵⁰ REICH, *supra* note 15, at 38.

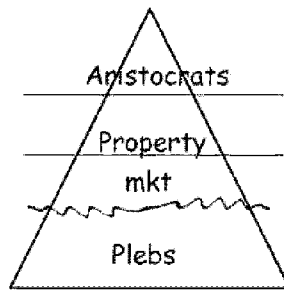


Figure 4 Society

F. Proposals

1. Scheme-A

We could create broadcast monopolies; scatter them; and give them control over all news outlets. With no incentive to compete monopolies could differentiate product; upgrade output; broaden the audience base; enhance revenues; and make profits.¹⁵¹

2. Scheme-B

We could break up monopolies and scatter small broadcasters across the commons (with their basic pay cable channels and Video Cassette Recorder (VCR) technology tied to rental and sale of video tapes). With price discrimination they could upgrade the quality of all broadcasting.¹⁵²

Sadly, neither scheme comes to grips with the trouble posed by *Seryfyn*. With nobody calling anybody out for false inferences and group liable both will roam free over the airwaves.

G. A Newsmaker's Cosmology

We come from a bubble that burst.¹⁵³ It produced nothingness (a reality with phantoms that we can't describe in words).¹⁵⁴ There is a pulse in nothingness (a heaving where proto beings wink in and out of existence).¹⁵⁵ There is a realm for beings (a space accommodating objects subject to weights and measures).¹⁵⁶

¹⁵¹ Baker, *Giving the Audience What it Wants*, 58 OHIO ST. L.J. 311, 341-42 (1997).

¹⁵² *Id.* at 345-46.

¹⁵³ HOLT, *supra* note 3, at Loc. 3026/49%.

¹⁵⁴ *Id.* at Loc. 835/13%.

¹⁵⁵ *Id.* at Loc. 958/15%.

¹⁵⁶ *Id.* at Loc. 617/10%.

This latter realm is subject to dogmatic and scientific questions. The dogmatic questions are subject to myths, partial evidence gathering, speculation, and decisions. There are good and bad decisions. The best ones (never harbingers of the total truth) are leavened by history—what makes life rational, people happy and living worthwhile.¹⁵⁷

H. Dogma

Some people in this realm are innately bright. They pound out ideas with intuition and deep thought. Some believe reason reins-in passions.¹⁵⁸ Others believe reason is a servant.¹⁵⁹ Folk, they argue, have software in their brains. When it bumps into worldly things it sparks feelings and values.

Explosions in the brain (and the debris left behind) matter to the owner. They are stances against the world (e.g., something's good or bad; threatening or non-threatening; fair or unfair; just or unjust; dangerous or non-dangerous; and so on). Reason rationalizes what comes from these events. Movies, blogs, and bloggers, and inept reporting reinforce them.

VI. FILM

Some film package fiction with facts.¹⁶⁰ Others produce inferences¹⁶¹ that lead viewers away from the truth.¹⁶² When film uses a celebrity to endorse (ever so slightly) a point of view—e.g., the equanimity of leaders; the power of reason; the force of rhetoric; and the innate ability of the legal system to mete out justice—it is suspect. Conflation and distortion give directors too much license to turn history on its head.

Docudramas seed suspicion, anger, fear and anxiety. Some make drama a suitable substitute for evidence. Should film directors use drama to tout a hypothesis? The answer is yes. Should they hawk a hypothesis as truth? The answer is *no*.

When film sacrifices details for argument, metaphors, and symbols, there is a problem. When it stages events—professing to the audience that what they see is genuine—they've done the audience a disservice. The appearance of real people can trivialize them. It stereotypes some; damages

¹⁵⁷ HABERMAS, *supra* note 20, at 253.

¹⁵⁸ Haidt, *The Righteous Mind*, Loc. 1543/19% (Kindle) [hereinafter Haidt].

¹⁵⁹ *Id.*

¹⁶⁰ ZEZEK, *supra* note 3, at 54. Ignorance about history leaves viewers without tools to discern the truth. Lebel, *Misdirecting Myths: The Legal and Cultural Significance of Distorted History in Popular Media*, 37 WAKE FOREST L. REV. 1035, 1055-56 (2002) [hereinafter Lebel].

¹⁶¹ ZEZEK, *supra* note 3, at 55-56.

¹⁶² *Id.* at 59.

their reputation; publicizes private facts; puts some in a false light; and last, but not least, appropriates their names and likeness for profit.

Film makers have the power to lord it over us.¹⁶³ In the name of truth: should they have the right and power to preach, indeed, say anything under the sun, to us? What should they share with us? That violence is the solution for insoluble problems; that what passes for evidence in film is a suitable substitute for government findings of fact about something that happened to all of us; that staging events and, thereafter, professing them to be genuine is alright; that, never mind the messy details about momentous events, a film piled high with arguments, metaphors, and symbols is worthwhile? Is that enough? Is art the truth? Are semblances of what's captured in a film enough to pacify us?

Let's pick at a film. *Amistad* is a Stephen Spielberg work.¹⁶⁴ It is a story about American lawyers and politicians embroiled in an incident on the high seas.¹⁶⁵ The tale—a story about Africans fighting for freedom and the wherewithal to return home—got lost in a docudrama about an iconic American figure trying to do the right thing.¹⁶⁶ In the film the court reached the right result for the wrong reasons. In the Supreme Court opinion (but not the excerpt read in the film) the court juxtaposed domestic law about slavery with the law of nations' account of group high jinks on the high seas.

Under domestic law subjugated people were slaves and property; slavery made everybody (men, women, and children) slaves for life; slaves had no rights; when spirited from one state to another they were subject to return by appeal.¹⁶⁷

International kidnapping, by contrast, was another matter.¹⁶⁸ When snatched from one's home and caught in rebellion on the high seas, liberated folk were free.¹⁶⁹ They were never slaves or subject to the institution of slavery.¹⁷⁰ No one owned them, said the Court. They owned themselves. They had a right to go their own way.

The Hunger Games is troubling.¹⁷¹ Children killing children evokes reticence and outrage. It is disquieting, for old man like the author, to read

¹⁶³ SHENK, *supra* note 37, at 107-108.

¹⁶⁴ LEBEL, *supra* note 160, at 1057-1060.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 1058.

¹⁶⁷ *Id.* at 1051-52.

¹⁶⁸ *The Amistad*, 40 U.S. 518, 592-93 (1841).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 596-97.

¹⁷¹ Opiel, *The Hunger Games Is an Appeal to Baser Appetites*, GLOBE AND MAIL (Monday, Mar. 26, 2012), available at <http://www.theglobeandmail.com/news/opinion/the-hunger-games-is-an-appeal-t...3/26/2012> [hereinafter Opiel].

accounts praising this work. Upon reflection it could be the film's subtexts: (1) a bovine fascination with reality television and our addiction to violence;¹⁷² (2) a belief that this is a sophisticated allegory about western culture's consumption of human labor for its own advancement and entertainment;¹⁷³ or (3) a dystopian story about natural and manmade disasters we all fear.¹⁷⁴

Whatever the subtexts might be the movie reinforces what we already know about ourselves. Life is hard; men are unfinished experiments; morality is relative; luxuries are illusions; people are things wound up for another's amusement; authority figures matter; how one views their surroundings determines morality; and so on.

Moneyball is a real problem.¹⁷⁵ It is a good film about a baseball player-now-manager's use of his baseball experiences, the acumen of an Ivy League graduate, and statistics to assemble a cheap team that won as many games as the New York Yankees.¹⁷⁶ The director took liberties with facts in this film.¹⁷⁷ How many liberties do we need to turn a docudrama into a fake? Does a fact or substantial facts rescue the work? Is art an absolute defense?

That brings me to my final point. Are film makers intuitionists? Is reason summoned to ratify their feelings? Should they use film to tout hypotheses and make arguments, indeed, persuade and manipulate others about their feelings and beliefs? Do we need diversity in film making to uncover consensuses and truths about what's going on in our lives? The jury is out.

VII. BLOGGERS

A. *The Author's Point*

Though speech has no constitutional protection *per se*, speech taking specific forms garners protection. The right to speech depends upon practices everybody or almost everybody wants to promote.¹⁷⁸ Serious

¹⁷² *Id.* See Kim, *Gatekeeping International News: An Attitudinal Profile of U.S. Television Journalists*, 46 J. BROAD. & ELEC. MEDIA 431, 447 (2001).

¹⁷³ OPPEL, *supra* note 171.

¹⁷⁴ *Id.*

¹⁷⁵ It's the intimation that math and machines are suitable substitutes for a man's experiences.

¹⁷⁶ Dargis, *Throwing a Digital-Age Curveball*, NEW YORK TIMES (Sep. 23, 2011), available at movies.nytimes.com/2011/09/23/movies/brad-pitt-in-moneyball-bennett-miller.html?pagewanted=all&.

¹⁷⁷ Gleeman, *Aaron at the Movies*, MONEYBALL REVIEW (Sep. 13, 2011), available at hardballtalk.nbcsports.com/2011/09/13/moneyball-review/.

¹⁷⁸ COHEN, *supra* note 94, at 24, 37.

bloggers should establish relationships with recognized media outlets.¹⁷⁹ When stringers and bloggers act like reporters, that is, engage in news gathering activities, the constitution should protect them and their stories about government antics, national events, and not-so-momentous events affecting all our lives.

B. The Middle

Internet broadcasters, newspapers, and cable outlets break stories every day. But they can't cover everything.¹⁸⁰ This century's bloggers fill the interstitial space left unreported by them¹⁸¹ (e.g., government antics, misdeeds ascribed to private enterprises and little known centers of power and influence). For this reason, and the need to give American democracy a nutritional boost, the fifth estate (bloggers sphere) has a right to exist.

Journalism produces news (i.e., something factual and educational that copes with anxiety and enlightens the mind). There are interpretations of the news (opinion) and arguments about the facts (debates between reporters and staff to get at the truth). The former is editorial stuff. The latter is journalism.

C. The End

For our good and the wellbeing of the nation we should suppress the impulse to snub the outliers.¹⁸² In a sea of voices bloggers should get as much airtime—to trumpet news—as private concerns, newspapers, celebrities, celebrated reporters, and cable outlets. Bloggers should do whatever to promote factual accuracy; discourage (indeed disclose) conflicts of interest; identify and marginalize *bad actors in their business*; and last, but not least, form associations to brand or standardize what they publish.

VIII. SOCIAL MEDIA

Facebook, *Youtube*, and *Twitter* give us a chance to fix some of what's wrong with journalism. Calamities around the world (e.g., the Arab Spring and the Syrian crisis) prompted some social media subscribers to post messages to friends.¹⁸³ The input created cyber libraries; gave would-be

¹⁷⁹ *Too Much Media, LLC v. Hale*, 20 A.3d 364, 368 (N.J. 2011).

¹⁸⁰ COHEN, *supra* note 94, at 25.

¹⁸¹ *Id.* at 17, 25.

¹⁸² *Id.* at 25.

¹⁸³ *Id.* at 37.

bloggers journalists the option to cross reference events with local subscribers; to upload pictures and video and, thereafter, talk with sources.

This was a culling process. When the informational meat is raw, bloggers ought to establish a New Media News Association to label and mark bloggers who aspire to be journalists.¹⁸⁴ The labels should be linked to pages of information about the bloggers and their sites; the pages should highlight who owns them; their major sources of funding; and searchable lists of advertisers.¹⁸⁵ Bloggers should have the option to post their stories on the web or sell them to traditional news outlets. Whatever the scheme buyers and users (traditional news outlets) ought to know what they are getting.¹⁸⁶

IX. SYNTHESIS

We are drowning in half truths. Nobody's filtering anything anymore. All information commands the same value. Inferences are treated like facts. People are making bad decisions using this stuff. What we see, learn and remember from yesterday is truth. But change makes today's truths untrue.

These observations—having made them—gin up a question. Has the media ruined the environment where the modern mind works? If cyberspace is kabuki theatre, the answer is yes.

Let's grapple with specifics. Newspapers, broadcasters, bloggers, and their antics pose problems for us. When newspapers aren't covering enough events, that is, leaving out what we ought to know about our environment, the remedy is more newspapers. When bias, prejudice, and bigotry figure into a reporter's remarks, the newspaper fraternity ought to pillory the reporter with Walter Lippmann's model for journalism.

When news dispensaries configure information to tell us what they want us to know, that's suspect. When advertorials pose as news,¹⁸⁷ they should be marked for their worth. When broadcasters crop the news for economic or ideological reasons, the FCC should lift their licenses. When they fabricate the news or distort the facts, the FCC should condition their licenses. If or when bloggers sell news to reputable news outlets, their offerings should come with by-line-marker to establish their reliability.

Films aren't above the fray. When docudramas (discussed earlier) accommodate more inferences than one can corroborate with facts, movie

¹⁸⁴ *Id.* at 80.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 81.

¹⁸⁷ SHENK, *supra* note 37, at 164.

critics should slam them. (“Money Ball” is an example.) Films are metaphors about life. They tout hypotheses, make arguments, and try to persuade audiences. They can stereotype people, damage reputations, publicize private facts, put people in a false light, and gin money out of people’s names and likeness.

X. CAUTIONARY TALE

A. *Philosophy*

The earth is a rock hurled from god knows where in space.¹⁸⁸ Men have been consigned to the planet and charged with the duty to find meaning for their existence. For eons they’ve scoured the landscape. Minions—following charismatic leaders but, sadly, now spent—have given into staining the surroundings in their image.¹⁸⁹

In the author’s lifetime cell phones, computers, and television have changed everything. Sounds and images have overtaken printed words and speech. Old fashion journalists have given way to pundits. Controlling society (settling spats between the nation’s moguls) has superseded wisdom (solving problems that improved everybody’s lot in life). Data (a torrent of information) swamps knowledge (piles of facts) Reality has gotten reduced to virtual reality. Folk who know the ins-and-outs of the internet control what we know today.

B. *Plutocracy*

Plutocrats determine what the media industry feed us. They hire media specialists who package pap. They (the media) drape themselves in myths to create self importance.¹⁹⁰ Some veiled themselves with the first amendment to protect turf, using nostalgia to both (1) push back against critics and (2) get undecided viewers to side with them.

Theodore Peterson wrote: The media pumps out too much information and opinion too rapidly for people to process. It fills spaces once occupied by people who’d engaged in face-to-face conversation. Dogma runs rampant. Nature (he wrote) gave us reason and rights to accommodate ourselves to our surroundings.¹⁹¹ Because we seek, indeed, sought truth and found some,

¹⁸⁸ HOLT, *supra* note 3, at Loc. 2694/43%.

¹⁸⁹ *Id.*

¹⁹⁰ See Green, *They Defend Press Freedom in Pursuit of the Gory Detail*, THE DRUM (Jul. 29, 2012), available at <http://www.abc.net.au/news/2012-07-26/green-the-media-mistake/4155428>.

¹⁹¹ PETERSON, *supra* note 6, at 29.

we are capable of governing ourselves;¹⁹² bring our neighbors into harmony; and tweaking public institutions that govern us.¹⁹³

Humans (in that regard) are unique. The press, he said, has to enlighten us;¹⁹⁴ furnish everybody with information about public life for discussion and debate;¹⁹⁵ keep beady eye on government;¹⁹⁶ and last, but not least, shout out warnings when our rights are put in jeopardy.¹⁹⁷

C. *Truth*

Is this true? The answer is either maybe or no. Six firms tell the media what to tell us.¹⁹⁸ Their minions tell us what to do. These entities determine the trajectory of civilization and what we do from moment to moment. Our anxieties about the future are brewing in cyberspace. Leaving the media to its own devices; getting everybody to accede to the legal doctrine of no prior restraint upon anything; and, lastly, nixing bottleneck monopolies will change little or nothing. With its largest market share lowest common denominator ethic, they'll weaken the impulse to deliver politically and culturally relevant diversity.¹⁹⁹ The instruction to local outlets is to "give them simplistic stuff" and "dumb down the audience".

CONCLUSION

Society is coarsening.²⁰⁰ Profanity is up.²⁰¹ Courtesies are down.²⁰² Information dispensaries (from blogs to traditional news outlets) have wrapped their products in titillating packages.²⁰³ False inferences are a plague. They muddle what we think about the world and what we do in it.²⁰⁴ This essay showcased some remedies. Time will tell whether people will embrace them.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 30.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Who Owns What's on Television*, *supra* note 45.

¹⁹⁹ SALTMAN, *supra* note 64, at 10-11.

²⁰⁰ SHENK, *supra* note 37, at 103.

²⁰¹ *Id.*

²⁰² *Id.* at 107.

²⁰³ *Id.* at 102.

²⁰⁴ LASH, *supra* note.59, at 76.