

MEDIA WITNESSES: HUMAN RIGHTS IN AN AGE OF DIGITAL MEDIA

DANIEL JOYCE*

Abstract

This article examines the impact of media witnesses in the field of human rights, looking especially at the rise of citizen media and the use of the Internet and social media by activists and international organizations. Despite the need to interrogate the technological determinism underlying many claims for digital media technologies, the development of ‘citizen media’ is a promising avenue for international law. New technologies can help actors connect with each other, engage new audiences, and potentially also assist with documentation, evidence gathering and compliance. But such possibilities bring dangers and difficulties which will not easily be resolved.

This article examines the methodology of ‘witnessing,’ its significance for the media and for human rights, and their fusion in the context of digital media forms. These developments occur against a backdrop of the increasing significance given to the role of publicity in the international system. I argue that these processes are emblematic of broader moves towards mediated advocacy in the human rights sector, a phenomenon I term the ‘mediatization’ of international law.

* Daniel Joyce is a Lecturer at the University of New South Wales (UNSW) Faculty of Law. He is also the Director of the New Media and Human Rights Project, Australian Human Rights Centre, UNSW. The author wishes to acknowledge the excellent research assistance of Emily Collett made possible by UNSW Law’s Early Career Research Support Scheme, along with audiences in Sydney, Melbourne and Miami who have pushed him to think more carefully about new media witnessing and its possibilities. This article was completed whilst a visiting fellow at the Lauterpacht Centre for International Law in Cambridge. The author is particularly grateful to the organizers of the Social Media and Human Rights Symposium at St. Thomas School of Law and to the editors and staff of this Journal.

Introduction

In this article I aim to examine the impact of media witnesses in the field of human rights, looking especially at the rise of citizen media and the use of the Internet and social media by activists, Non-Governmental Organizations (NGOs) and international organizations. Despite the need to interrogate the technological determinism underlying many claims for digital media technologies, I argue that the development of ‘citizen media’¹ is a promising avenue for international law. New technologies can help actors connect with each other, engage new audiences, and potentially also assist with documentation, evidence-gathering and compliance. But I also argue that such possibilities bring dangers and difficulties, which will not easily be resolved. The ambition of this article is to point to ways in which we might begin to understand some of these changes and to step back from particular instances of technological development to ascertain whether and how things have really changed since the development of social and digital media.

In section I, I begin by considering what digital media is and then look at the phenomenon of ‘witnessing’ in section II, examining the rise of social media witnessing as a human rights methodology. I argue that these processes are emblematic of broader moves towards mediated advocacy in the human rights sector, a shift I term the ‘mediatization’ of international law. In section III, I consider four case studies: Abu Ghraib, Wikileaks, the Arab Spring and Kony 2012. I then move to section IV, where I consider the role which publicity is playing in the international system. Publicity has become linked to notions of international community and the legitimacy of the international system.

In section V, I move to consider our hopes and fears for mediated witnessing within human rights. Traditionally, the difficulties associated with enforcement have underscored some of the turn to normative modes of communication, especially in the

¹ ‘Citizen media’ refers to non-professional forms of media, made available and economically possible through the development of technologies allowing for self-publishing.

field of human rights. What I wish to explore are the ways in which the very processes of communication themselves are now being heralded as being a constitutive part of the normative force of international law. In section VI, I conclude by arguing that greater account needs to be taken of digital media activism in examining the turn to communicative power in the field of human rights. I point to the ways in which witnessing via digital media can be linked to the creation of communities of concern.

I. 'New' Media Forms

The media, like culture, is notoriously difficult to define. In this article, I am primarily focused on the news-generative forms of digital media and the information networks of social media, such as Facebook and Twitter. But it would be a mistake to view 'social media' only in terms of certain platforms with current popularity. Social media can be seen as a dimension of new forms of digital media including "websites and applications that enable users to create and share content or to participate in social networking."² The term 'new media' conveys a sense of the ability to broadcast in digital media beyond the traditional categories of radio, newspaper or television and to do so instantly and to a global audience 'online.'³ Increasingly, there is a trend towards 'convergence,'⁴ where various forms of media are accessible in concentrated form through one platform, such as the Internet or mobile telephone networks. In the context of rapidly changing media ecology, the newness of new media is itself being challenged and the term 'digital media' is preferable.

Developments in technology and scholarship in the field of media studies now characterize audience reception in a more

² *Social Media Definition*, OED.COM, <http://oxforddictionaries.com/definition/english/social%2Bmedia> (last visited Aug. 15, 2013).

³ PETER STEVEN, *THE NO-NONSENSE GUIDE TO GLOBAL MEDIA* 27-30, 67 (2003).

⁴ See *NEW MEDIA WORLDS: CHALLENGES FOR CONVERGENCE* (Virginia Nightingale & Tim Dwyer eds., 2007).

interactive register. John Thompson emphasizes communication as a process of transmission, but concedes that this movement is not “entirely monological or one-way.”⁵ This two-way street is also recognized in traditional protections for free speech, as in Article 19 of the ICCPR which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁶ The collapsing of time and space in globalized forms of digital media places greater emphasis on active and critical audiences.

New technologies and formats have intensified the interactive nature of media online, bringing with them hopes for greater engagement with, and indeed production by, audiences. Such interactive change online has been heralded in the shift to ‘Web 2.0,’ a now familiar term used to describe the move towards user-generated content and the development of networked and social media formats.⁷ This interactivity, whilst a challenge for the traditional news economy and for media regulators, offers a genuinely transformative shift in terms of participation in human rights campaigns, discourse and awareness. Although many of the formats are of general application—think of Facebook, Twitter, Skype, Wikipedia, YouTube and the myriad apps and platforms emerging for interactive communication and collective knowledge online or via mobile devices—human rights activists, scholars and the media themselves have begun to adapt to these changes and to use many of these new technologies to document abuses, to publicize and co-ordinate their campaigns for change, to advocate for remedial action, and to lobby governments and international institutions.

A difficulty with analyzing these changes is that they are rapid and on-going. Little empirical and sustained analytical work

⁵ JOHN B. THOMPSON, *THE MEDIA AND MODERNITY: A SOCIAL THEORY OF THE MEDIA* 25 (1995).

⁶ International Covenant on Civil and Political Rights (ICCPR), art. 19, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171.

⁷ Web 2.0 is a term which seeks to capture the more interactive and collaborative possibilities of the Internet.

has been done to test and map out their contours.⁸ As with all debates concerning law and technology, there is a need to both engage with and understand these questions at the level of technology, and also to view changes as part of a broader historical development with perhaps as many continuities with the past as instances of radical transformation from it. In earlier work, I have been fairly cautious and critical of claims that the internet and social media are ‘game changers’ or that a genuine paradigm shift has occurred,⁹ but I now think that despite the ever-present danger of lapsing into utopian and futurist visions of technologically-driven liberal democracy, we do need to take seriously and harness these new possibilities for interaction and engagement.

None of this is to avoid the politics involved in advocating for particular forms of redistribution or for preferred outcomes, but it seems foolish to ignore the possibility that new media forms, whilst bringing familiar tropes and questions with them, might also provide ways through previous difficulties with participation and engagement on the international plane. Indeed, as I have argued:

‘New media witnessing,’ despite its critics, does offer a powerful new avenue for human rights campaigning. Perhaps its power is strongest in the areas of communication and coordination. It could prove to be the case that in our hopes for ‘new media witnessing’ we have exaggerated and fetishised the idea of connection as an end in itself. What we need to focus on, after all, is not connection for connection’s sake, but the quality of the connection achieved through new media activism.¹⁰

⁸ An important exception here can be found in the work of Sarah Joseph, a scholar who has turned increasingly to social media as a means for communication and also as an important object of study for human rights. See Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT’L & COMP. L. REV. 145 (2012).

⁹ See Daniel Joyce, *Human Rights and the Mediatization of International Law*, 23 LEIDEN J. INT’L L. 507 (2010) [hereinafter Joyce, *Human Rights*].

¹⁰ Daniel Joyce, *New Media Witnessing and Human Rights*, 20 HUM. RTS. DEFENDER 23, 26 (2011) [hereinafter Joyce, *New Media Witnessing*].

Thus, the challenge is not to simply ‘connect,’ but to interact and engage with each other through these new mechanisms for communication. To do so involves a re-appraisal of earlier human rights methodologies of fact-finding,¹¹ naming and shaming, and perhaps most significantly a revival of ‘witnessing.’ In this sense, the key question remains whether these new forms of media are truly ‘social’ in the sense of being constitutive of community. One potential way in which the sociality¹² of digital media can emerge is through the development of interactive forms of witnessing. But it will often not be enough to ‘like’ a campaign for change. Important criticisms of the ‘slacktivism’ involved in social media networking need to be addressed.¹³

Also of concern is the de-professionalization involved in moves towards citizen-generated and social media. Whilst there is excitement about the ‘democratic’ potential of collective knowledge and ‘free culture,’¹⁴ there is the danger with the rise of the amateur and the eclipse of the professional, that traditionally familiar and trusted sources of information will dissipate and in their place will come the logic of algo that the lure of the instant will replace the space and time needed for critical reflection and advocacy.

In the media industry itself, de-professionalization brings the threat of economic decline and the possibility that public interest media and investigative journalism will increasingly depend on government and philanthropic support in a way already familiar to human rights organisations and NGOs. The danger here is that the benefits of the ‘new’ will coincide with the demise of the ‘old.’

There is of course still a need for old media and for time-

¹¹ Philip Alston & Colin Gillespie, *Global Human Rights Monitoring, New Technologies, and the Politics of Information*, 23 EUR. J. INT’L L. 1089 (2012).

¹² David Howarth, *Libel: Its Purpose and Reform*, 74 MODERN L. REV. 845(2001).

¹³ Joseph, *supra* note 8, at 150-52. ‘Slacktivism’ is a term used as critique of a mode of activism which is said to be passive due to its reliance on communication and the Internet rather than older forms of protest on the streets.

¹⁴ See LAWRENCE LESSIG, *FREE CULTURE: THE NATURE AND FUTURE OF CREATIVITY* (Penguin Books 2004), for a discussion of free culture.

intensive and professionalized forms of investigative media. The hope is that, instead, social media will come to complement traditional forms of expertise and locations for trusted information. Despite the rise of social media, there is ample evidence of the need for traditional media to perform its watchdog role in domestic democratic societies, and in international society. We can think of countless examples from Watergate through to the role played by the Guardian journalist, Nick Davies, in the uncovering of the phone hacking scandal in the United Kingdom that has subsequently come to engulf the Murdoch media empire and which has led to re-appraisal of media regulation there.¹⁵ Whether given enough credit and status within the traditional analysis of international law-making, the traditional media clearly plays a significant role.¹⁶ As Alan Boyle and Christine Chinkin note, “[a]n often discounted participant in international law-making is the media, whose role in making instantly generated images available worldwide may hasten legal change.”¹⁷

Indeed, human rights and, specifically, the right to freedom of expression has provided a framework for the protected position of the media, which is seen in turn as a vehicle for and defender of freedom of expression and “one of the cornerstones of a democratic society.”¹⁸ The changes which have occurred in the media landscape

¹⁵ See *Phone Hacking*, THE GUARDIAN, <http://www.guardian.co.uk/media/phone-hacking> (last visited July 25, 2013); see THE LEVESON INQUIRY <http://www.levesoninquiry.org.uk/> (last visited July 25, 2013); see *Independent Media Inquiry*, DEP’T. OF BROADBAND, COMM. AND THE DIGITAL ECON., http://www.dbcde.gov.au/digital_economy/independent_media_inquiry (last updated July 8, 2013), for a similar analysis in Australia.

¹⁶ See International Council on Human Rights Policy, *Journalism, Media and the Challenge of Human Rights Reporting* (2002), available at http://www.ichrp.org/files/reports/14/106_report_en.pdf (referring to an early analysis of the role which the media plays in reporting human rights issues).

¹⁷ ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 20 (2007).

¹⁸ U.N. Human Rights Committee, General Comment No 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, 12 (Sept. 2011). See, in particular, paragraph 3 which notes that “[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.” *Id.* at

have also been recognized in the United Nations Human Rights Committee's latest General Comment dealing with freedom of expression and opinion, which points to the increasing significance of new media formats to both the human rights framework and in particular the exchange of information and opinions:

States parties should take account of the extent to which developments in information and communication technologies, such as Internet and mobile-based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.¹⁹

Given these developments, I argue that it is timely to begin to investigate more fully the possibilities and problems associated with human rights-related witnessing in a digital media environment.²⁰

II. Witnessing

Witnessing can be understood from a variety of perspectives. Here, I wish to set out some of the key strands of witnessing as a human rights methodology as well as discussing some of its potential limitations. I begin by examining the informational and evidentiary aspects of witnessing, before considering limitations such as spectacle, and finally I look to the ways in which the news media and human rights both share a concern with witnessing.

¶ 3.

¹⁹ U.N. Human Rights Committee, *supra* note 18.

²⁰ There is also a need to re-assess regulatory concerns and rationales. See Kathy Bowrey, *Why Global Regulation of Information and Communication Technologies Needs to be Taken More Seriously*, 1 *TRANSNAT'L LEGAL THEORY* 459, 474 (2010).

A. Gathering and Transmitting Facts and Information

At a basic level, witnessing is an informational process. To witness is to gather facts and information to be used subsequently to inform wider audiences of events, crises or violations, usually with either a preventative or restorative purpose. In this sense, the human rights witness acts much like the traditional journalist or investigator, bringing news and stories to our attention with the intention of triggering a response in policy terms. This informational role can assist with understanding and analysis. And increasingly new technologies of data analytics are being used to develop predictive and early warning capabilities. Social media and tools such as Google maps have been harnessed to great effect in coping with natural disaster management and there is scope for more capability to be developed in this area.²¹

This systemic significance of information can be placed in a broader context. The philosopher Bernard Williams, in his call for the possibility of truth and truthfulness as a defense against tyranny, closely allied the role of information with the framework of liberal democracy, whilst recognizing the politics of information, its uses and potential misuse.²² He wrote:

Rather than appealing specifically to the democratic element, we may argue for governmental and more generally political truthfulness by relating it directly to liberty, which for many people is the central element in the liberal complex. The falsification or suppression of information is an important limitation of liberty itself and

²¹ See also Patrick Meier, *New Information Technologies and their Impact on the Humanitarian Sector*, 93 INT'L REV. RED CROSS 1239 (2011) (explaining the activities of the Harvard Humanitarian Initiative, Ushahidi, the Standby Volunteer Taskforce and associated discussion); see also Alston & Gillespie, *supra* note 11, at 1109-1114.

²² BERNARD WILLIAMS, TRUTH & TRUTHFULNESS: AN ESSAY IN GENEALOGY 211(2002).

impedes the exercise of liberty in many areas.²³

Another useful illustration of a liberal, yet perhaps more optimistic, approach to the informational role of the media in international life can be found in Amartya Sen's work and the role he gives to an independent press in his theory of development as freedom. Sen is keen to emphasize the role of information in the prevention of famines and sees a free press and democracy as contributing "greatly to bringing out information that can have an enormous impact on policies for famine prevention," such as early warnings.²⁴ He also writes of the way in which a free and independent media can bring pressure to bear on corrupt governments. Overall, he gives the media a big role as a watchdog, as a facilitator of rule of law and good government policy, and as a check on "insensitive and callous policies."²⁵

Joseph Stiglitz adopts a similar approach to the media. Stiglitz writes of the need for an "active and critical" media to make sure that the big decisions in the move to globalization reflect "the general interest of society."²⁶ This is a common concern that the media is there as a democratizing force in the development of public policy, encouraging debate, accountability, and crucially in economic terms, the passing and availability of information.

In international relations literature the idea of the pervasive impact of information in decision-making has focused on the question of the sourcing for such information and the potential for bias emerging in the presentation of such information in a commercialized media context. The so-called 'CNN effect' is a case in point here.²⁷ At present, the de-professionalization of media and the rise of social networking as equally powerful conduits of

²³ *Id.*

²⁴ AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 181 (1999).

²⁵ *Id.* at 183, 281.

²⁶ JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 165 (2001).

²⁷ See further Eytan Gilboa, *The CNN Effect: The Search for a Communication Theory of International Relations*, 22 *POLITICAL COMMUNICATION* 27 (2005).

information pushes us to think about the effect of ‘Facebook’ or ‘Twitter,’ which have been argued to play a significant role in uprisings during the Arab Spring, in the organization of the Occupy movement in the wake of the Global Financial Crisis, and in a range of social and political movements.

Like many others, I first took to Facebook as a graduate student, when it seemed a very private and insular place. Facebook has rapidly expanded from being a tool to keep up with friends and acquaintances, to presenting a challenge to email, providing a mechanism for organizing protests and increasingly for advertising and commercial activity. I resisted using Twitter until a colleague in the human rights community declared that he had stopped relying on mainstream and traditional media for human rights news and tracked human rights developments almost entirely through Twitter and other forms of social media. This seemed a shocking claim at the time. Now I expect that this would hardly raise an eyebrow. Twitter is of course incredibly reductive in its limits on characters,²⁸ but it is a tremendous locus for information and exchange, to rival and supplement traditional forms of media, and it is especially useful for the distribution of specialized forms of news. It is also instant and can be a very direct form of information transfer, giving users connection to events unfolding in situ. But Twitter and other emergent social media do not represent the end of the traditional media and, indeed, much of what users find themselves exchanging online comes from traditional mediated sources as much as directly from ‘the field.’

B. Evidentiary, Moral and Remedial Witnessing

Twinned with the informational role of witnessing is the notion of the witness as the giver of truthful evidence, upon which dispute resolution and justice processes have relied for their integrity and in terms of proof. This evidentiary dimension is especially important in the international realm where evidence is so hard to

²⁸ 140 characters or less per post.

come by – a process often resisted by states and perpetrators.²⁹ Where journalists have been used as sources of evidence, now social media can potentially provide a rich source of evidence, but as discussed below, trust and authenticity remain in issue, especially given the possibility for the manipulation of evidence and the role in which anonymity can play in sourcing evidence. There remain significant dangers for sources in either old or newer media formats.³⁰ Indeed, Alston and Gillespie reflect that “[n]ew technologies make it harder to protect the identity of information sources in order to avoid the harassment of witnesses or the persecution of sources.”³¹

Nevertheless, one thinks here of the enduring significance of the witness as truth-teller in court and as a moral guardian. To witness thus comes with responsibilities, to communicate and to act upon what you have seen and to give evidence formally if required. In an online environment it is harder to verify the accuracy of such evidence and harder of course to compel its production and test its veracity. Despite the potential of crowd-sourcing and data analytics, this remains a significant hurdle for digital media witnessing as a methodology for human rights.³²

There is of course another dimension at play here. At times, witnessing is seen to play a significant remedial function in and of itself. In the court room the very act of there being a judge and jury

²⁹ See *Evidence Before International Courts and Tribunals*, BRITISH INST. OF INT’L AND COMPARATIVE LAW, <http://www.biicl.org/evidence/> (last visited July 25, 2013).

³⁰ The arrest and prosecution of Bradley Manning, a Wikileaks source, is a case in point.

³¹ Alston & Gillespie, *supra* note 11, at 1122 (exploring the efforts of both Wikileaks and TOR to protect anonymity of activists online). See also TOR, <https://www.torproject.org/> (last visited Oct. 24, 2013).

³² Crowd sourcing is the use of citizen-gathered information and data analytics is the field of analysis of the big data sets now collected through our digital and online interactions. See also Kenneth Neil Cukier & Viktor Mayer-Schoenberger, *The Rise of Big Data: How it’s Changing the Way We Think About the World*, FOREIGN AFF. (May/June 2013), available at <http://www.foreignaffairs.com/articles/139104/kenneth-neil-cukier-and-viktor-mayer-schoenberger/the-rise-of-big-data>.

(or a public audience) to witness victim testimony can provide catharsis and resolution. Concerned citizens have, at times, also involved themselves as public witnesses to human rights-sensitive legal processes and events both to offer their solidarity and to draw attention to underlying issues and concerns, but also to safeguard participants and symbolize a level of public pressure requiring an adequate response.

At times the witness is central to the process of truth-telling and justice. The truth commission process is a case in point with its mantra of revealing as healing and its engagement with mediatization of its processes as a means to an end.³³ The archetypal transitional justice experiment in South Africa had an explicit media strategy and domestic (and international) audiences came to understand its power and significance through the nightly televising of proceedings. Television will always retain a particular resonance, but the audio-visual has migrated online, and now YouTube and similar mechanisms host content ranging from commercial mass entertainment to amateur and institutional content with public policy and even human rights significance.³⁴ Yet to act as a witness will not ensure a just or equitable outcome, nor sadly will it always ensure the safety of vulnerable subjects and participants. Sometimes attention can bring danger not resolution. This dimension is something journalists have been acutely aware of and many have died or been injured in telling important human rights-related stories. The witness can become the victim.³⁵

³³ Ron Krabill, *Symbiosis: Mass Media and the Truth and Reconciliation Commission of South Africa*, 23 *MEDIA, CULTURE & SOCIETY* 567 (2001).

³⁴ See, e.g., UN Channel, YOUTUBE, <http://www.youtube.com/user/unitednations> (last visited July 25, 2013).

³⁵ See COMMITTEE TO PROTECT JOURNALISTS, <http://www.cpj.org/> (last visited Aug. 15, 2013) for recent statistics regarding the ongoing targeting of journalists.

C. Limitations: Spectacle and Blindness

Of course, there remain significant limitations to the mediatization of human rights-related content and to the methodology of witnessing online. The first is the danger of spectacle. Despite the demands of open justice, courts and tribunals have sought to guard against ‘trial by media’ and to avoid the rigor of legal process being subverted to the demands of entertainment and spectacle. This remains a further methodological problem for witnessing. The spread of information and potential evidence online may result in problems in terms of safeguarding the rights and security of accused persons and victims. Privacy and associated ethical concerns abound; often mediatization may involve simplification of complex narratives. This process can result in distortion rather than empowerment for victims.

Secondly, there is the issue of attracting and maintaining audiences when attention spans are short. Social media cycles are even faster than those of traditional media outlets. This can result in attention and agendas shifting to the detriment of those affected. Human rights narratives, whilst powerful, are often confronting and this may contribute to audiences switching off or at least averting their gaze. To some extent we see what we choose to see. A related problem here is that the legal process surrounding human rights often makes for bad viewing. As a teacher I have found that showing classes human rights content online, as an aid to discussion and learning, can excite and trigger interest, but it can also do the opposite. Watching international criminal trials online can be turgid in the same way that court process in a domestic setting rarely if ever lives up to the excitement of fictionalized courtroom drama.

D. Witnessing, the News Media and Human Rights

The news media and human rights activism share the methodology of witnessing.³⁶ The significance of being a witness to events underpins the role of the investigative journalist and foreign correspondent who bring us new facts and translate their experiences for wider audiences.³⁷ Being physically present as observers adds to their projection of authority and perceived expertise; also involved is the question of trust – an attempt is made to establish a relationship with audiences built on the experiential position of the witness. But the role of the media as a provider of information is rarely neutral and the ethical position of the media professional as witness is far from certain.³⁸ Within the field of human rights, activists and NGOs perform a similar function, bringing greater awareness of thematic concerns, specific violations and providing channels for the victims of abuses to have their stories heard and their experiences made public.

Witnessing is a concept with theological roots,³⁹ but notions of bearing witness have become secularized within human rights discourses.⁴⁰ This idea appeals in the sense that to bear witness carries a sense of acknowledgment of another's suffering or a situation of injustice. But knowledge does not always translate to

³⁶ See Diane F. Orentlicher, *Bearing Witness: The Art and Science of Human Rights Fact-Finding*, 3 HARV. HUM. RTS. J. 83 (1990) for an earlier articulation of this methodology of witnessing in a human rights context. See JOHN DURHAM PETERS, *SPEAKING INTO THE AIR: A HISTORY OF THE IDEA OF COMMUNICATION* (1999) for a detailed analysis of witnessing and communication.

³⁷ See generally DENISE LEITH, *BEARING WITNESS: THE LIVES OF WAR CORRESPONDENTS AND PHOTOJOURNALISTS* (2004); *MEDIA WITNESSING: TESTIMONY IN THE AGE OF MASS COMMUNICATION* (Paul Frosh & Amit Pinchevski eds., 2011).

³⁸ AVISHAI MARGALIT, *THE ETHICS OF MEMORY* 149 (2002).

³⁹ See also Jenny Beard, *The Confessional Framework of Rule of Law Development: How to Offer Salvation to Willing Legal Subjects*, 75 NORDIC J. INT'L L. 409 (2006) (explaining the theological foundations of rule of law development programs).

⁴⁰ COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS: CRITICAL LEGAL THOUGHT AT THE TURN OF THE CENTURY* (2000).

acknowledgement, and witnessing by itself can also act to distance the suffering of others.⁴¹ Here, there is the accompanying danger that the journalist or human rights activist will speak for the victim and appropriate their experience for other ends or simply mistranslate such experiences to fill the need for 24-hour news coverage and our desires for ‘international justice.’⁴² An ongoing criticism that lingers is simply that witnessing time and again fails to translate into meaningful action or remedy - that there is a danger that witnessing by itself will fulfill our need to ‘do something’ about human rights, without actually calling into question our own responsibilities. In addition, critics like Stanley Cohen have argued that the “current cultural worship of the confessional mode. . . neither encourages identification with other specific victims nor creates a universal sense of kindredship.”⁴³

In the international human rights framework, naming and shaming is a central tool in the armory of enforcement.⁴⁴ Even though human rights investigations remain confidential to ensure state participation and to protect victim privacy, the pull of publicity remains strong and the model of an activist civil society empowered by NGOs is driven in large part by the technique of naming and shaming human rights violators and other forms of publicity and investigation such as human rights monitoring and fact-finding. However, as will be explored in greater depth below, the desire for greater publicity, while bringing with it the perception of legitimacy associated with transparency and greater participation, can also bring associated criticisms of human rights voyeurism and stereotyping. Victims are accorded pre-designated and simplified categories of participation and their experiences become the fodder for strategic

⁴¹ SUSAN SONTAG, *REGARDING THE PAIN OF OTHERS* (2003); STANLEY COHEN, *STATES OF DENIAL* (2001); LUC BOLTANSKI, *DISTANT SUFFERING: MORALITY, MEDIA AND POLITICS* (1999).

⁴² ‘International justice’ is a term used to cover the fields of international criminal law, transitional justice and human rights where accountability is sought for international wrongs.

⁴³ COHEN, *supra* note 41, at 167.

⁴⁴ ‘Naming and shaming’ is a term used to describe the method of human rights enforcement which involves publicity of violations to exert pressure on perpetrators and on states to address issues of accountability.

advocacy.

Despite the validity of such criticisms, human rights as a field is, in many other ways, strengthened by its symbolic and rhetorical character. The popular success of human rights as a discourse lies precisely in its appeal to broader notions of normativity and justice on the basis of authentic individual and intersubjective experience. Journalists and activists attempt to act as translators of such experiences for wider audiences and mass consumption. This process of mediatization of international law⁴⁵ carries dangers of simplification and distortion, but can also provide important channels for information and knowledge within the international system.

This witnessing role has triggered many responses to human rights crises and situations. One can think of the good media role in historical contexts from coverage of humanitarian outrages, such as the bombing of Guernica during the Spanish Civil War, through to coverage of the discovery of the death camps at the end of the Second World War, to the expose of the My Lai massacre in the Vietnam War and the role of the media during that era in exposing the folly of war.⁴⁶ In recent times, much has been made of the impact of social media in assisting the coordination of advocacy and activism directed to social and political change as in the Arab Spring.⁴⁷

There are many examples of the power of new forms of media witnessing in effecting change and in communicating human rights situations to broader audiences.⁴⁸ New and old forms of media are also used to increasing effect in the developing litigation of international criminal courts and tribunals and in educating affected communities about their work – what is termed ‘outreach.’⁴⁹ Human

⁴⁵ See Joyce, *Human Rights*, *supra* note 9 for more detailed treatment of this concept.

⁴⁶ PHILIP KNIGHTLY, *THE FIRST CASUALTY: THE WAR CORRESPONDENT AS HERO AND MYTH-MAKER FROM THE CRIMEA TO IRAQ* (2004).

⁴⁷ Joseph, *supra* note 8, at 157-67.

⁴⁸ See Michael Kirby, *Human Rights, Twitter and the New Technology*, UTS GRADUATION OCCASIONAL ADDRESS (2009), available at http://www.law.uts.edu.au/pdfs/michael_kirby_graduation_speech.pdf, for further discussion.

⁴⁹ Janine Natalya Clark, *International War Crimes Tribunals and the*

rights activists are connecting online and using social networking sites as a means for organization, and online media such as YouTube as a means to achieve their advocacy goals. So too are institutional actors such as the United Nations and the International Criminal Court (ICC).

As discussed above, the possibilities and limits of witnessing are far from fixed and I now turn to examine four case studies to illustrate the complexity of these processes, before examining in greater detail our hopes and fears for digital media witnessing.

III. Four Case Studies

A. Abu Ghraib

An important example of this complex, and at times contradictory, role is the digital media spectacle concerning the abuse of prisoners held at Abu Ghraib prison in Iraq. As well as assisting with compliance, it is evident that citizen media can also be implicated in violations. A defining media event of the Iraq conflict in 2003 was the publication of photographs of Iraqi prisoners taken in humiliating and degrading contexts by US prison guards at the Abu Ghraib prison in Baghdad. Many of the photographs of the prisoners were sexually explicit and featured grinning American captors giving a 'thumbs up' of approval at the ill-treatment of their prisoners. The images were taken on digital cameras and subsequently reached the US media which 'broke' the story as a 'scandal,' representing for many the worst of the excesses of the occupying forces.⁵⁰ The images taken at Abu Ghraib detention centre act as both a series of amateur trophy photos and as a self-generated indictment - an invitation to degrade and to judge. This invitation has led to vigorous debate about the practice of torture and

Challenge of Outreach, 9 INT'L. CRIM. L. REV. 99 (2009).

⁵⁰ Seymour Hersh of the *New Yorker* broke the story in the mainstream press. Seymour Hersh, *Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How far up does the responsibility go?*, THE NEW YORKER (May 10, 2004), http://www.newyorker.com/archive/2004/05/10/040510fa_fact.

the limits of the law.⁵¹ The images were published and re-published as they spread virally online and throughout the world's media.

What makes Abu Ghraib especially fascinating is that it points to the way a media event may today be generated by amateurs influenced by popular culture, translated through old and new media filters, and received by audiences in diverse contexts. The infamous pictures constituted both violation and indictment, mobilizing international legal argument, and triggering actions by and against the U.S. Administration. Further, media investigation also suggests that those who took the photos may, in part, have done so to record their protest at what was occurring and due to a pervasive unease with what was happening.⁵² Yet it is these very photographers who have been punished as participants, not as witnesses. In the process, their pictures etched in our collective imagination a series of images with iconic and lingering significance not just for early 21st century torture, but also for our relationship to the media and international law.

In his examination of the history and development of the public execution with its ritualized audiences, Foucault writes of the "ambiguous" role of the people and their right to witness, a right which in a sense could act also as a check on abuse of power.⁵³ Perhaps the spread of the images from Abu Ghraib should be understood as a return to the ritualized form of public spectatorship of torture – a form of spectatorship that makes the audience both outraged *and* aware of our own complicity in degrading the victims. It is our very viewing which contributes to and in a sense extends the power of torture, yet might also instil the necessary outrage to do something about it.

Yet the move within media theory to greater recognition of active audiences and a focus on reception, rather than solely on

⁵¹ See PHILIPPE SANDS, *TORTURE TEAM: DECEPTION, CRUELTY AND THE COMPROMISE OF LAW* (Allen Lane 2008); *THE TORTURE DEBATE IN AMERICA* (Karen J. Greenberg ed., 2005).

⁵² PHILIP GOUREVITCH & ERROL MORRIS, *STANDARD OPERATING PROCEDURE: A WAR STORY* (2008).

⁵³ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 58 (Alan Sheridan trans., 1991) (1977).

production and dissemination of media, leads us to re-consider in a more hopeful mode the possibilities for the media in terms of compliance, and for a productive and engaged relationship between the media and international law. The example of Abu Ghraib illustrates that the media is both implicated in the degradation of victims and a vehicle to ensure compliance and space for debates over future prevention. If the media is implicated, then so too are their audiences. In this way, mediatization of violations can remind us all of our responsibilities to one another, of the limits of witnessing, and the complexity of media power within such processes.

B. *Wikileaks*

A further case study of significance is Wikileaks.⁵⁴ The Wikileaks site is a source of direct leaked information. Its founder Julian Assange has claimed to offer a new model of scientific journalism with relevance for the free flow of information of significance to both defenders of free speech and human rights.⁵⁵ Some of the material which Wikileaks has published and provided to the mainstream media relates to human rights violations and echoes other models for direct human rights media such as Witness.⁵⁶ But is it a media organization or an NGO? And should we consider Julian Assange as a journalist? It is interesting here to think of the original support he garnered within the 'old media,' bunkering down in the Frontline Club in London, and at one time being represented by Mark Stephens and Geoffrey Robertson, two well known media lawyers in the United Kingdom.⁵⁷

⁵⁴ See CHARLIE BECKETT & JAMES BALL, *WIKILEAKS: NEWS IN THE NETWORKED ERA* (2012) for a deeper analysis than is possible in this article.

⁵⁵ See Raffi Khatchadourian, *No Secrets: Julian Assange's Mission for Total Transparency*, *THE NEW YORKER* (June 7, 2010), http://www.newyorker.com/reporting/2010/06/07/100607fa_fact_khatchadourian; Tim Wu, *Drop the Case Against Assange*, *FOREIGN POLICY* (Feb. 4, 2011), http://www.foreignpolicy.com/articles/2011/02/04/drop_the_case_against_assange.

⁵⁶ See WITNESS, <http://www.witness.org/> (last visited August 9, 2013).

⁵⁷ Anthony Faiola & Rebecca Omonira-Oyekanmi, *Wikileaks founder granted*

There has been an explicit attempt by Assange and his supporters to invoke both a revolutionary new media image, but to draw on old media legal protections and functional identity in efforts to defend the role of Wikileaks against charges that in uploading often un-redacted and leaked information it poses a threat to national security and personal privacy. The Wikileaks website makes the following significant claims:

WikiLeaks is a not-for-profit media organisation. Our goal is to bring important news and information to the public. We provide an innovative, secure and anonymous way for sources to leak information to our journalists (our electronic drop box). . . The broader principles on which our work is based are the defence of freedom of speech and media publishing, the improvement of our common historical record and the support of the rights of all people to create new history. We derive these principles from the Universal Declaration of Human Rights.⁵⁸

Wikileaks can be seen as one of many attempts to harness digital media for human rights and investigative purposes. It has released information and provided a mechanism for anonymous sources on a wide range of issues from allegations of torture and ill-treatment, government secrecy and intelligence operations, violations of humanitarian law and efforts to suppress free speech and corruption.

The organization's emphasis on the role of information and transparency and their avowal of a connection to democracy echoes the original claims made for the press as the fourth estate and also connects with the hopes more broadly held for digital media and

bail, but not yet freed, THE WASHINGTON POST (Dec. 14, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/14/AR2010121400895.html>.

⁵⁸ *What is Wikileaks?* WIKILEAKS, available at <http://wikileaks.org/About.html> (last visited July 25, 2013).

technology within the field of human rights.⁵⁹ This role of information within the international system is further emphasized by one final hope for digital media in relation to evidence and fact-finding – namely the claim that new forms of media will help to address the weakness of fact-finding and evidentiary processes at the international level.⁶⁰

Indeed, efforts to archive human rights material and evidence online and the proliferation of human rights reporting on the web go some distance towards addressing these concerns. An example here of such efforts is the Artemis project based at Yale which archives material relating to truth commissions in a form that may be more readily accessed by scholars and the public.⁶¹ The renewed interest in fact-finding and evidence in the human rights community can be linked in part to the new possibilities for interaction and communication available online.⁶²

But Wikileaks as an organization has also faced significant criticisms regarding the manner in which it has released such information and its failure to minimize the threats to national security, personal privacy and safety.⁶³ These are all of course issues raised by the ongoing de-professionalization of the mainstream and

⁵⁹ See generally JENNIFER ROBINSON, *Wikileaks, Disclosure, Free Speech and Democracy: New Media and the Fourth Estate* in MORE OR LESS: DEMOCRACY & NEW MEDIA 144, 144-73 (Helen Sykes ed., 2012).

⁶⁰ See also Daniel Joyce, *Fact-Finding and Evidence at the International Court of Justice: Systemic Crisis, Change or More of the Same?*, 18 FINNISH Y.B. INT'L L. 283 (2007).

⁶¹ See *The Artemis Project for Truth Commission Testimonies*, THE SOUTH AFRICAN TRUTH & RECONCILIATION COMMITTEE, <http://ylsmediaserv.law.yale.edu/webwork/trc2005/artemis.htm> (last visited Apr. 18, 2013); see also *The Avalon Project*, YALE LAW SCHOOL, <http://avalon.law.yale.edu/> (last visited Apr. 18, 2013) (displaying a similar site which archives and makes instantly accessible material relating to the Nuremberg trials, alongside other material relating to international law across the ages).

⁶² See generally CENTER FOR HUM. RTS. AND GLOBAL JUSTICE, <http://chrgj.org/project/2012-14-theme-human-rights-fact-finding-methods-and-evidence/> (last visited July 25, 2013).

⁶³ Philip Dorling, *US Calls Assange "Enemy of the State,"* SYDNEY MORNING HERALD (Sept. 1, 2012), available at <http://www.smh.com.au/opinion/political-news/us-calls-assange-enemy-of-state-20120927-26m7s.html>.

institutional media and also more broadly by the ethics of representation and dissemination of sensitive human rights information.⁶⁴

The problem for Assange and his many supporters is that, despite the ongoing activities of the organization, he now has become the main story and his efforts to avoid extradition to Sweden have largely overshadowed the continuing growth of the organization as a new media mechanism for the exposure of issues of human rights concern.⁶⁵ While Wikileaks and Assange remain under tremendous pressure from governments and others they have targeted, the methodology espoused with its blending of journalism and technology will likely prove to be of enduring significance. But Wikileaks also illustrates the difficulties posed, even with new technology, in protecting anonymous sources and the increasing pressure which will be placed on private digital media and internet companies to hand over relevant data and files which might reveal the identity of sources.

The media's focus may have initially been upon Assange and his extradition tussle, but Bradley Manning, one of Wikileaks' sources, has ultimately not been able to maintain his anonymity and has been prosecuted for his role in leaking the diplomatic cables provided both on the Wikileaks website and to major traditional media organizations such as the *New York Times* and *The Guardian*.⁶⁶ Manning has also given significant testimony that he

⁶⁴ Makua Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201 (2001).

⁶⁵ Estelle Sherbon, *Assange Becoming a 'Cult', Says Jemima Khan*, SYDNEY MORNING HERALD (Feb. 7, 2013), available at <http://www.smh.com.au/opinion/political-news/us-calls-assange-enemy-of-state-20120927-26m7s.html>; see also John Pilger, *Assange Hate Is Real Cult*, THE GUARDIAN (Feb. 14, 2013), available at <http://www.guardian.co.uk/commentisfree/2013/feb/14/assange-hate-is-real-cult>.

⁶⁶ As of the writing of this article, U.S. Army Private First Class Bradley Manning has been found guilty by a military court of 17 charges relating to the leaking of state secrets, though he was found not guilty of 'aiding the enemy.' He has yet to be sentenced, but faces a lengthy period in custody. Ed Pilkington & Adam Gabbatt, *Cold Comfort for Manning as Army Court Seals His Fate*, THE GUARDIAN, 31 July 2013, at 1, available at <http://guardian.newspaper>

was motivated by rather traditional concerns to give the public access to information regarding ongoing conflicts in Iraq and Afghanistan – to make the world a better place.⁶⁷ He, in fact, claims to have tried to release this information through traditional media channels, *The Washington Post* and *New York Times*, prompting the judge in his trial to ask the prosecutor whether this would have made a difference to prosecutors (it would not).⁶⁸ Yochai Benkler has thus argued that the implications of Manning’s prosecution (for aiding the enemy by “leaking information to the press for general publication”) “go well beyond Wikileaks, to the very heart of accountability journalism in a networked age.”⁶⁹

C. *Arab Spring – Revolution 2.0?*

The political unrest experienced from early 2011 onwards in the Arab World, particularly in Egypt, Tunisia, Libya and Syria, has focused attention on the role played by social media in the emergent movements for change.⁷⁰ It is clear that social media has had a significant catalytic effect, but as Sarah Joseph has argued, “social media alone did not cause the revolutions and demonstrations,” rather it was an important tool for those dissatisfied with corruption, oppression, social inequality and living standards.⁷¹ It was a tool

direct.com/epaper/viewer.aspx; *Bradley Manning: Less than Treachery*, THE ECONOMIST, (Aug. 3, 2013), available at <http://www.economist.com/news/united-states/21582534-next-sentence-less-treachery>; see further *USA v. Bradley Manning: Selected Case Files*, FED’N AM. SCIENTISTS (last updated July 15, 2013), available at <http://www.fas.org/sgp/jud/manning/>.

⁶⁷ *Bradley Manning: Less than Treachery*, *supra* note 66.

⁶⁸ *Id.*

⁶⁹ Yochai Benkler, *The Dangerous Logic of the Bradley Manning Case*, NEW REPUBLIC (March 1, 2013), <http://www.newrepublic.com/article/112554>.

⁷⁰ Joseph, *supra* note 8, at 145-46.

⁷¹ See Joseph, *supra* note 8, at 157-67, for an in depth and nuanced analysis; see also Nagwa Abdallah, *The Role of the Media in the Democratic Transition in Egypt: a case study of the January 2011 Revolution*, REUTERS INSTITUTE FELLOWSHIP PAPER, UNIVERSITY OF OXFORD (2011), available at https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/fellows_papers/2010-2011/The_Role_of_the_Media_in_the_Democratic_Transition_in_Egypt.pdf

used in combination with traditional forms of mass protest and demonstration.

I turn here to briefly examine Wael Ghonim's use of Facebook at the time to explore one instance of the impact of social media on political change in Egypt.⁷² Wael Ghonim was born and raised in Egypt. After completing his MBA, he joined Google, eventually becoming its head of marketing for Google Middle East and North Africa. Ghonim was based in Dubai and was not actually in Egypt in the time leading up to the revolution (although he returned to Cairo for the 25 January 2011 rally that led to the occupation of Tahrir Square). Ghonim describes himself as someone who, for many years, was never particularly interested in Egyptian politics. He says that he, like many Egyptians, was simply disenfranchised, as political activism and engagement seemed pointless under the Mubarak regime.

It was not until the emergence of Mohamed Mostafa ElBaradei, the former chief of the International Atomic Energy Agency, in Egyptian politics that Ghonim became politically active, particularly online, in efforts to mobilize and organize ElBaradei's supporters. In June 2010, Ghonim came across images and footage on Facebook of the murder of Khaled Said, who had been beaten to death by two secret police officers. This inspired Ghonim to start a Facebook page 'Kullena Khaled Said' or 'We Are All Khaled Said.' The page brought Egyptians together online to demand justice for Said. As Ghonim recollects:

I was quite unengaged when it came to politics – a typically cautious, easily intimidated Egyptian who did not

(analyzing in the Egyptian context); *see also* Malcolm Gladwell, *Does Egypt Need Twitter?*, THE NEW YORKER BLOG (Feb. 2, 2011), <http://www.newyorker.com/online/blogs/newsdesk/2011/02/does-egypt-need-twitter.html>.

⁷² *See generally* WAEL GHONIM, REVOLUTION 2.0: THE POWER OF THE PEOPLE IS GREATER THAN THE PEOPLE IN POWER (Fourth Estate, 2012). The following section draws principally on this personal account, not to set the historical record, but to provide one insight into the potential significance of social media within the movement for political change in Egypt in 2010-2011. The broader situation in Egypt is complex and in flux and is beyond the scope of this article.

dare protest against the regime. When I created the “Kullena Khaled Said” page, the whole point was to connect with others just like me.⁷³

For a repressed young population, social media provided a relatively safe avenue through which they could articulate and vent their dissatisfaction with the regime. The page was designed to be an open forum and, according to Nagwa Abdallah, became a space where citizens could “monitor the government and hold it accountable.”⁷⁴

Whilst it is important to not overstate its significance, the page does illustrate how social media can be used to disseminate information and provide an alternative space for communication where there is otherwise a relative lack of media freedom. The energy surrounding the ‘Kullena Khaled Said’ page was part of a broader trend in Egypt at the time to bypass traditional state-controlled media and engage in social media, but also significant was the emergence of an independent traditional press and a blogging culture.⁷⁵ As Joseph argues, transnational broadcasters such as Al Jazeera played a further and complementary role.⁷⁶ Another significant factor in terms of coordination and organization of the protests were political organizations such as the Muslim Brotherhood, who subsequently took power in the elections which followed the demise of Mubarak’s government, only to then have that power taken away by the Egyptian military.

Social media, as illustrated by the ‘Kullena Khaled Said’ page, allowed people to create and distribute eyewitness accounts of key events and to document their personal experiences; challenging the misrepresentations in Egypt’s mainstream media. The page also demonstrates the limits of social media, as Ghonim’s ultimate goal was to bring online activism “onto the street.”⁷⁷ Ghonim

⁷³ Ghonim, *supra* note 72, at 293.

⁷⁴ Abdallah, *supra* note 71, at 35.

⁷⁵ *Id.* at 23-24.

⁷⁶ Joseph, *supra* note 8, at 162.

⁷⁷ *See* Ghonim, *supra* note 72, at 67-68.

acknowledges that social media alone would not have been able to bring down Mubarak – something more was always required. He also understood that action on the streets and action online fed one another – the more action there was on the ground, the more interaction he observed on the page and vice versa.⁷⁸ Ghonim was detained (and later released) by authorities, an event which illustrates the dangers involved in such online activism. This development, however, coincided with further publicity for his page and the movement for political change to which it had contributed.

Despite its limitations, it is clear that social media played a significant communicative and informational role in the protests which ultimately led to the fall of Mubarak. The Facebook page provides one illustration of its utility. Social media was one of a wide range of significant factors, but of course, as Joseph recognizes, this turn to social media may in turn “change the way oppressive States confront the medium” in the future; the state may co-opt social media for its own purposes.⁷⁹ Indeed, the government attempted to shut down the Internet in Egypt, though citizens turned to their mobile devices in response, assisted by Twitter.⁸⁰

It is also important to recognize that while many applaud the use of social media to assist in fomenting radical change in the context of Egypt, in London in 2011 young disenfranchised citizens were using similar mechanisms to coordinate riots in response to deepening economic and social hardship, and the same governments which applauded the use of social media and the internet in the Arab spring, responded with calls for a social media clampdown.⁸¹ Context is key in analyzing our responses to such events. This in

⁷⁸ *Id.* at 84.

⁷⁹ Joseph, *supra* note 8, at 167-68.

⁸⁰ *Id.* at 176-177.

⁸¹ See Josh Halliday & Juliette Garside, *Rioting Leads to Cameron Call for Social Media Clampdown*, THE GUARDIAN (Aug. 12 2011), <http://www.guardian.co.uk/uk/2011/aug/11/cameron-call-social-media-clampdown>; see also Stephen Humphreys & Yoriko Otomo, *Carnival in the Capital: How England's Riots Recall a History Stretching Back to Dionysius*, OPEN DEMOCRACY (Aug. 18 2011), <http://www.opendemocracy.net/ourkingdom/stephen-humphreys-and-yoriko-otomo/carnival-in-capital-how-englands-riots-recall-history->.

turn illustrates that the power of social media and the significance of political context are often more complex than can be conveyed in a tweet or an update, or in the subsequent analysis of a Facebook page. As this article goes to press, the Egyptian military has intervened to remove the democratically elected President Morsi and control the influence of the Muslim Brotherhood. The Arab Spring continues to defy easy categorization and any transition from spring to summer seems far from certain.

D. Kony 2012

On 5 March 2012, a non-profit group called ‘Invisible Children’ uploaded a video titled ‘Kony 2012’ to YouTube.⁸² The video went viral – it was watched over 30 million times in 48 hours – and it was shared across social media platforms including Facebook and Twitter.⁸³ The film called for the capture and arrest of the leader of the Lord’s Resistance Army (LRA), Joseph Kony, by the end of 2012. It explained that the LRA forcibly recruits children to fight in their conflict for power, detailing the atrocities they are forced to commit and are subjected to. The purpose of the video was to engage people (largely young people) to place pressure on the United States government to maintain the presence of military advisors in Uganda to assist the Ugandan army in its efforts to capture Kony. The film claims, “The problem is 99% of the planet doesn’t know who he is. If they knew, Kony would have been stopped long ago.” The key premise is that knowledge and awareness will result in meaningful action. The video begins with a statement about the power of social media and the interconnectivity of contemporary society. Rather than overwhelming viewers with the plight of millions of children and their suffering, the beginning of the film narrows in on the personal story of the film maker, his own child and

⁸² *KONY 2012*, YOUTUBE, <http://www.youtube.com/watch?v=Y4MnpzG5Sqc> (last visited July 25, 2013).

⁸³ See Josh Halliday, *Kony 2012 Documentary on Ugandan Warlord is Unlikely Viral Phenomenon*, THE GUARDIAN (Mar. 8 2012), <http://www.guardian.co.uk/world/2012/mar/08/kony-2012-joseph-rao-kony>.

his involvement with Invisible Children, as well as the story of a single former LRA child soldier called Jacob whom he had met in Africa. Included is an interview with Luis Moreno Ocampo, the head prosecutor in the International Criminal Court. The film explains that Joseph Kony was the first person to be indicted by the ICC, however little is said about what the ICC is or what will happen to Kony if he is captured and arrested. Ocampo invokes the notion of a Facebook world where we share ideas and protect one another.

The methodology of action suggested by the film is premised on notions of publicity and celebrity; by encouraging people to watch and share the film and to put posters regarding Kony everywhere it is hoped that Kony will become a household name and action will be taken to arrest him and liberate the children. The film finishes with an action plan involving a pledge, seeking ongoing donations and in return offering supporters an action kit for postering and publicity. It is hoped that a community will be formed through the sharing of the film itself and the aesthetic is very much one of ‘DIY international justice.’

Soon after the video emerged, so too did a blog titled ‘Visible Children.’⁸⁴ The first post was a powerful critique of the video and Invisible Children, including the following assessment:

Is awareness good? Yes. But these problems are highly complex, not one-dimensional and, frankly, aren’t of the nature that can be solved by postering, film-making and changing your Facebook profile picture, as hard as that is to swallow. Giving your money and public support to Invisible Children so they can spend it on supporting ill-advised violent intervention and movie #12 isn’t helping. Do I have a better answer? No, I don’t, but that doesn’t mean that you should support KONY 2012 just because it’s *something*. Something isn’t always better than nothing. Sometimes it’s worse.⁸⁵

⁸⁴ VISIBLE CHILDREN, <http://visiblechildren.tumblr.com/> (last visited July 25, 2013).

⁸⁵ *We Got Trouble*, VISIBLE CHILDREN (March 8, 2013), available at

260 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 8]

On 5 April 2012, a second video was posted on YouTube entitled ‘Kony2012: Part II – Beyond Famous.’⁸⁶ The second video didn’t attract nearly the same level of attention as the first installment. It attempts to address some of the criticism leveled at the first video, emphasizing the role of the campaign in raising awareness about the situation regarding the LRA in Central Africa. It makes it clear that the activity of the LRA has moved beyond Uganda and into neighboring countries. Less emphasis is placed on the previously proposed course of action for bringing Joseph Kony to justice in the ICC. Rather, the video considers that the key is strengthening the ongoing efforts of the African Union and state governments to capture and arrest the LRA leadership. In order to strengthen those efforts, the video suggests that we must make it known to our governments that this is an issue we care about - “your voice changes everything.”

There is a shift also in terms of the motivation espoused by Invisible Children. It appears that Kony 2012 is to serve two functions – to stop Kony and the LRA’s violence, but also to give voice to a new generation. Practical in-country measures are discussed such as early warning radio systems, communications strategies to encourage defectors from the LRA, rehabilitation programs and education. Despite responding to criticisms and acknowledging that the situation is complex and that Invisible Children is only one of many organizations working on the issue, some core themes remain: stories can change lives and inspire young people to act; progress has been achieved through the film and social media campaign; the peace process has failed; there is a global community made possible by the digital revolution; and this increases our interconnection and responsibility to protect one another (reference is made to the responsibility to protect doctrine).⁸⁷ Overall, there is a message that the objective of making Kony famous is underway, but now the work of making him and the LRA

<http://visiblechildren.tumblr.com/post/18890947431/>.

⁸⁶ *KONY 2012: Part II – Beyond Famous*, YOUTUBE, http://www.youtube.com/watch?v=c_Ue6REkeTA (last visited July 25, 2013).

⁸⁷ See ANNE ORFORD, *INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT* (2011) for a brilliant analysis of the development of this concept.

accountable for their crimes must begin. As with the first film, the next goal is to mobilize supporters to participate in the ‘Cover the Night’ action.⁸⁸

Several significant criticisms can be made of the original film and the overall methodology employed. The video is simply not informative and it makes false promises. The situation concerning the LRA in Central Africa is complicated, far more complicated than is portrayed in the video. As Mark Drumbl states: “The image of child soldiering that *Kony 2012* communicates to the public is not representative of the complexities of child soldiering as a whole.”⁸⁹ The film succeeded in raising consciousness, but more was needed, at the very least more time. One year later ‘Kony 2012’ is illustrative both of certain strengths, but also serious limitations of social media witnessing as a tool for effective change. Perhaps the film set the bar too high for itself and a re-assessment of its effect will be possible in the event of Kony’s capture. Unfortunately, in the short time allowed, Kony’s moment of online celebrity did not lead to his arrest. At present, Kony remains on the run and the posters that appeared overnight in 2012 have withered to be replaced by other concerns. Invisible Children continues to campaign online⁹⁰ and debate in mainstream journals regarding efforts to capture Kony is ongoing, but the campaign itself struggles with the reality of the “short attention spans” of those it had sought to engage.⁹¹ Those committed to such forms of advocacy, such as Sam Gregory at

⁸⁸ The ‘Cover the Night’ event was part of a strategy to mobilize the public and translate the success of the online campaign onto the streets with Kony’s image on posters to be plastered in public spaces. It was viewed at the time as a failure. Rory Carroll, *Kony 2012 Cover the Night fails to move from the internet to the streets*, THE GUARDIAN (April 21, 2012), <http://www.guardian.co.uk/world/2012/apr/21/kony-2012-campaign-uganda-warlord>.

⁸⁹ Mark A Drumbl, *Child Soldiers and Clicktivism: Justice, Myths, and Prevention*, 4 J. HUM. RTS. PRAC. 481, 481 (2012).

⁹⁰ See, e.g., INVISIBLE CHILDREN, <http://invisiblechildren.com/kony/> (last visited July 25, 2013); see *What Happened to Kony 2012?*, VIMEO (March 4, 2013), <http://vimeo.com/61062998>, for their latest film.

⁹¹ See Drumbl, *supra* note 89, at 484; see Benjamin Runkle, *#Kony2013: Why the Manhunt is Taking So Long – And How it can Succeed*, FOREIGN AFF. (Nov. 14, 2012), available at <http://www.foreignaffairs.com/articles/138429/benjamin-runkle/kony2013?page=show>, for the argument that more time is needed.

Witness, urge us to consider both its strengths and weaknesses, in terms of video advocacy, before wholly dismissing it. The lesson to be learned for Gregory is to consider more fully the need for “drillability” or greater depth of message alongside the film’s obvious merits in terms of “spreadability.”⁹² The question remains, however, whether this format, including its reliance on social media, can offer the depth of engagement required. As with all the case studies examined the picture which emerges is one of complexity.

IV. The Demand for Publicity

Before turning to further consider the mediated activism within the sphere of human rights, I want to highlight the fact that media witnessing is occurring in a broader context where publicity and transparency are increasingly key values within the international sphere. International institutions are responding in a variety of ways to this demand for publicity. International organizations such as the UN, along with a variety of international courts and tribunals, now have highly sophisticated communications strategies and a digital media presence in the form of cutting edge websites that allow for direct citizen participation with international trials, thematic human rights campaigns, international policy-making and so on. This digital media presence is especially strong in the related field of international criminal law where the websites of the ICC and International Criminal Tribunal for the former Yugoslavia (ICTY) allow for the webcasting of trials, archiving of media and provide links to social media.⁹³ The ICTY website features a section specifically representing the ‘voice of the victims’ taken from testimony given at the tribunal and the first trial at the ICC of Thomas Lubanga had its very own website.⁹⁴ The ICC now has its

⁹² Sam Gregory, *Kony 2012 Through a Prism of Video Advocacy Practices and Trends*, 4 J. HUM. RTS. PRAC. 463, 466 (2012).

⁹³ See INT’L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, <http://www.icty.org/> (last visited July 25, 2013); INT’L CRIMINAL COURT, http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx (last visited July 25, 2013).

⁹⁴ *Voice of the Victims*, ICTY, <http://www.icty.org/sid/105> (last visited Apr. 25, 2013); *The Lubanga Trial at the International Criminal Court*, LUBANGATRIAL,

own YouTube channel and Twitter and Flickr feeds.⁹⁵

The United Nations engages the media in efforts to strengthen its claim to legitimacy in a variety of ways. It undertakes both public relations and its own media work, whilst also involving itself in the development and control of local media in peace-keeping and post-conflict operations. The UN's information and media bureaucracy, the Department of Public Information (DPI), has formed a central part of the Secretariat from the early days of the organization. The DPI was created by General Assembly resolution and is overseen by the General Assembly's Committee on Information.⁹⁶ The DPI has embraced social media in its activities, declaring on its website that the: "integration of social media platforms, including social networking tools such as Facebook, Twitter, Tumblr, Flickr and YouTube, is an increasingly important component of the Department's communications strategies."⁹⁷

We can see that public relations activities, including those launched on social media platforms, are contributing to the agenda-setting capabilities of the UN. But much of this work is also premised on the notion that it is the UN that is the legitimate actor to deal with situations of global concern and to coordinate the multilateral actions of its members, and that its actions reflect broad consensus. This is contested, and increasing public relations activity in the social media sphere will not address the deeper divisions and the underlying question of whose interests are served by the UN and whose forgotten or ignored.

Nevertheless, in all these various initiatives the UN is responding to the perception of the media's significance (including

<http://www.lubangatrial.org/> (last visited Apr. 25, 2013).

⁹⁵ See *Int'l Criminal Court*, TWITTER, <https://twitter.com/IntlCrimCourt> (last visited July 25, 2013); *Int'l Criminal Court*, YOUTUBE, <http://www.youtube.com/IntlCriminalCourt> (last visited July 25, 2013); *Int'l Criminal Court*, FLICKR, <http://www.flickr.com/photos/icc-cpi/> (last visited July 25, 2013).

⁹⁶ U.N. General Assembly Resolution 13(1), Annex 1, Recommendations of the Technical Advisory Committee on Information Concerning the Policies, Functions and Organization of the Department of Public Information, at A/RES/13(1) (1946).

⁹⁷ See, e.g., *Strategic Communications Division*, DEPARTMENT OF PUBLIC INFORMATION, <http://www.un.org/en/hq/dpi/scd.shtml>.

that of social media). The UN reflects in this respect a broader trend which can also be discerned in the publicity activities of non-state actors, whether NGOs, transnational corporations or activist movements.⁹⁸ This brings us to consider more fully the turn to media witnessing as human rights activism.

V. *Media Witnessing as Activism – Our Hopes and Fears*

Elsewhere I have examined, as a case study, the NGO Witness and the way it helped to pioneer the role of digital media and video technology as offering new forms and techniques of human rights documentation, lobbying and advocacy.⁹⁹ Now many other NGOs large and small also have highly sophisticated web presences and media strategies. For example, the NGOs Human Rights Watch (HRW) and Amnesty International (Amnesty) have their own Twitter news feeds on human rights themes.¹⁰⁰ Amnesty has a human rights blog, online videos and advocacy at a site called ‘Protect the Human,’ while HRW also offer multimedia content and online videos on their website.¹⁰¹ I have in earlier work examined the role of communication in the international system and the role played by NGOs in what I have termed the ‘mediatization’ of international law.¹⁰² This involves the embracing of techniques of publicity and public relations by a wide range of actors from IGOs such as the UN (as discussed above) to NGOs and also increasingly

⁹⁸ See CLIFFORD BOB, *THE MARKETING OF REBELLION: INSURGENTS, MEDIA, AND INTERNATIONAL ACTIVISM* (2005) for a study of the public relations and marketing strategies of activist groups; see also Cohen, *supra* note 41, at 18, 164, and Lindsey N. Kingston & Kathryn R. Stam, *Online Advocacy: Analysis of Human Rights NGO Websites* (forthcoming), 5 J. HUM. RTS. PRAC. 75 (2013).

⁹⁹ Joyce, *New Media Witnessing*, *supra* note 10.

¹⁰⁰ See *AmnestyInternational*, TWITTER, <https://twitter.com/amnesty> (last visited July 25, 2013).

¹⁰¹ See Human Rights Watch, TWITTER, <https://twitter.com/hrw> (last visited July 25, 2013); *AmnestyInternational*, TWITTER, <https://twitter.com/amnesty> (last visited July 25, 2013); see AMNESTY.ORG.UK, <http://www.amnesty.org.uk/> (last visited July 25, 2013) for the Amnesty blog and online videos; HUMAN RIGHTS WATCH, <http://www.hrw.org/multimedia> (last visited July 25, 2013).

¹⁰² See Joyce, *Human Rights*, *supra* note 9.

to the level of the individual in international law as illustrated in the creation of citizen-generated media with human rights themes and content.

The re-situating of debates around witnessing and human rights in the context of digital networks and mediated forms of connection in the form of social media has been accompanied by a familiar mix of idealism regarding the transformative potential for technology and age-old anxieties about its dangers. Whilst we can be hopeful for the Internet and other digital media routes offering a revival of human rights methodologies and messages, we can also see such mechanisms as being accompanied by serious ethical concerns.

As we all know, Facebook, Twitter, You Tube, and indeed the Internet more broadly, are sites for both information and misinformation, for connection and disconnection, for free speech and incitement. For example, the lure of online human rights representations is also accompanied by ethical questions concerning a certain form of human rights voyeurism and moralism. Also one might ask whether such media witnessing leads to direct action and change or rather operates to obscure the need for action by offering up witnessing as itself a viable and effective tool for change? Unfortunately, despite the perceived significance of the global media in ushering in new forms of interconnection, little empirical work has been done to test such propositions.¹⁰³

A. *Hopes*

The use of digital media in human rights activism, as in the examples discussed above, engages a variety of responses, some predicated on our hopes and others on our fears. In terms of our hopes, there is an accompanying desire for interconnection and the argument that technology will bring greater means of interactivity and connection.¹⁰⁴ This is important and feeds into our conception of

¹⁰³ Birgitta Höijer, *The Discourse of Global Compassion: The Audience and Media Reporting of Suffering*, 26 MEDIA CULTURE & SOC'Y 513 (2004).

¹⁰⁴ See Margaret McLagan, *Circuits of Suffering*, 28 POL. AND LEGAL

what might constitute an ethical and interdependent international community. There are those who see such a notion as a dangerous fiction and one that is used as a legitimizing device: action and intervention is predicated on the demands of such a community; or the democratic deficit is sought to be filled by such a concept.¹⁰⁵ Here we can see that digital media witnessing and activism might be implicated in the formation of global publics and audiences for human rights narratives. But are we convinced by the idea that technology is formative of community, or is it part of a process of alienation and fragmentation?

A further argument for increased engagement with digital media technologies is that they might lead to better enforcement of human rights. Hence, the Internet and social networking sites are seen as offering new ground for old strategies of naming and shaming. Here communication is seen as action.¹⁰⁶ But Stanley Cohen and others have called this power of digital media witnessing into question. He wrote critically of the Witness methodology: “However informative, reliable and convincing they are, accounts of atrocities and suffering do little to undermine overt forms of denial. Humanitarian organizations are living relics of Enlightenment faith in the power of knowledge: *if only people knew, they would act.*”¹⁰⁷

Further, the communicative possibilities of digital media and the availability of information are seen as strengthening of human rights enforcement capabilities and institutional capacity. In part, this is reflective of a broader notion of technology bringing progress

ANTHROPOLOGY REVIEW 223 (2005), for an example of this hopeful view of new media witnessing; Meg McLagan, *Introduction: Making Human Rights Claims Public* 108 AM. ANTHROPOLOGIST 191 (2006).

¹⁰⁵ See *infra* Part V.B.

¹⁰⁶ A significant theoretical contribution regarding this connection with attention to ‘communicative action’ has been a core concern of the work of Jürgen Habermas. It is beyond the scope of this article to explore these ideas in any depth, but for a useful attempt to bring these ideas to the sphere of human rights. See Varun Gauri & Daniel M Brinks, *Human Rights as Demands for Communicative Action* (Policy Research, Working Paper No. 5951, 2012), available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2012/01/18/000158349_20120118161520/Rendered/PDF/WPS5951.pdf.

¹⁰⁷ COHEN, *supra* note 41, at 185.

and its disciplinary effect on behavior. But such hopes have yet to be tested empirically. Increased information about human rights violations may not lead directly to behavioral modification. Linked in with this narrative of technology as progress is the notion of the increased efficiencies that such advances may bring, along with the collapsing of time and space, which we broadly associate with globalizing energies.

Another dimension to such arguments for digital media witnessing in the field of human rights is the idea that transparency by itself is linked to notions of legitimacy. In addition, the pedagogical dimension of law and justice are increasingly reliant on the technologies of publicity. This role for education is aimed both at niche audiences of policy makers and experts, and at broader audiences and domestic constituencies. In part here is the notion of the ‘CNN effect,’ but more broadly we can see digital media activism as an attempt to engage with new audiences and to influence and set agendas.

Broadly, then, the use of digital media signals for the hopeful a site for greater participation within international human rights law and a means to counter what some term the ‘democratic deficit’ in global governance. Citizen-generated media and open source and collaborative technology represent for some an opportunity to revive the public sphere and the investigative watch dog function now lying partly tarnished within the domain of old media.¹⁰⁸ Molly Beutz Land has argued for ‘networked activism’ as a revival of human rights methodology and a means of supplementing the rather professionalized bureaucracies of large human rights NGOs.¹⁰⁹ She writes that “a model of networked activism would help ensure both deep participation and broad mobilization by encouraging the formation of highly participatory small groups while providing opportunities for those small groups to connect with one another.”¹¹⁰

¹⁰⁸ Clay Shirky, *The Political Power of Social Media*, FOREIGN AFFAIRS (Dec. 20, 2010), available at <http://www.foreignaffairs.com/articles/67038/clay-shirky/the-political-power-of-social-media>.

¹⁰⁹ Molly Beutz Land, *Networked Activism*, 22 HARV. HUM. RTS. J. 205 (2009).

¹¹⁰ *Id.* at 206.

Land, while optimistic as regards the potential for peer production and networked activism in the field of human rights, also notes that citizen-generated activism might compete with established NGOs and that “the introduction of new voices could have a destabilizing effect.”¹¹¹ Further, she questions whether amateur activists will have the requisite level of fact-finding and the necessary contacts to effectively lobby for change. Overall, while aware of the dangers of overstating the democratic and participatory effects of technology, Land argues that it can have a complementary effect on human rights activism.¹¹²

The relationship between the media and human rights is multifaceted and human rights standards themselves have a clear role to play in regulating and shaping the activities of the media, including its newer forms. In 1983, Ithiel de Sola Pool wrote of the need to re-think regulation of communication in the light of technological change, but to ensure that this was done “under the conditions of freedom established for the domain of print through centuries of struggle,” so as not to lose “that great achievement. . .in a confusion about new technologies.”¹¹³ His focus remained largely upon ‘free societies’ in the Cold War period and was driven by the First Amendment and a conception of new technologies as being as potentially emancipatory as the printing press.

More recently, Perry Keller has published an important monograph on the development of European and International Media Law through the lens of a commitment to liberal democracy.¹¹⁴ But despite his commitment to liberal democracy and his view of the role which media and new media play in that respect, Keller also recognizes that:

the implications of the right to freedom of expression remain contentious. There is certainly no universal or even

¹¹¹ Land, *supra* note 109, at 241.

¹¹² *Id.* at 243.

¹¹³ ITHIEL DE SOLA POOL, *TECHNOLOGIES OF FREEDOM* 10 (1983).

¹¹⁴ PERRY KELLER, *EUROPEAN AND INTERNATIONAL MEDIA LAW: LIBERAL DEMOCRACY, TRADE, AND THE NEW MEDIA* (2011).

general consensus that this right bears an exclusively liberal democratic meaning and, as influence over global affairs shifts away from the western democracies, that goal will not be achieved in the foreseeable future.¹¹⁵

Although free speech and the increasing flow of information, due to the connective possibilities of the Internet, are rightly conceived as facilitative of the broader international human rights framework, we cannot simply assume that technology will always be emancipatory in its operation and effect. And these anxieties regarding the appropriate regulatory template for the international regulation of digital media are matched by fears concerning the use and effects of digital and social media within the field of human rights.

B. Fears

Just as these hopes may be seen as re-mobilizing the narrative of human rights and situating it in new and interactive contexts, there come fears that digital media will bring new problems (or resituate old ones). To begin with there is a fear that the experiential basis of witnessing might be lost in translation with digital media. Or that new forms of media might be used not only for human rights purposes, but to further terrorism or to incite violence and division. In addition, there is the concern that we are overly reliant on private and commercialized formats for much new media witnessing such as You Tube, Twitter, Facebook or Google. Does this give too much power to the largely unregulated (or self-regulated) world of Internet entrepreneurialism?

One major effect of the mediatization of the field of human rights is the tendency for activists and NGOs to stereotype or simplify and to rely on standardized tropes within human rights narratives as projected through digital media representations. Whilst the active element of digital media production can in some sense be

¹¹⁵ KELLER, *supra* note 114, at 5.

seen to allow for more direct involvement by citizenry in the creation of their own media and its distribution online, the longstanding concern regarding the representation of 'the victim' within human rights discourse remains, even where the victim is potentially the creator of such content.

Further, the notion that information is everywhere may act to entrench the silences that exist and the lack of coverage of certain human rights situations. Stanley Cohen has written that new communications technologies may add to problems related to de-contextualisation, and he argues that: "[n]ew communications technology will make each problem more visible, but less comprehensible."¹¹⁶

Another fear associated with the advent of digital media in the field of human rights is the concern that the community formation associated with interactive and communications technologies is untested and may indeed be highly ideological. Thus, scholars like David Kennedy critique notions of an international community of concern as imagined through the lens of global public audiences for the media. He writes: "The transformation of the first world media audience, as that audience is imagined by the media, into the 'international community' is itself an astonishing act of disenfranchisement."¹¹⁷

Indeed, the Internet is viewed by many not as a place of democratic deliberation and interconnection, but as an anarchic place of fragmentation and commodification.¹¹⁸ Old forms of commodification may find new locations in new media. For example, Birgitta Höijer writes that "media reporting on distant suffering may also be part of more cynical commercial interests, in which the media sell human tragedies in a global market place."¹¹⁹ This may change with the advent of citizen and alternative media outside the commercial media orbit, but will it always?

¹¹⁶ COHEN, *supra* note 41, at 288.

¹¹⁷ DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM 22-23 (2004).

¹¹⁸ See Joyce, *Human Rights*, *supra* note 9.

¹¹⁹ Höijer, *supra* note 103, at 516.

Perhaps our greatest fear concerning the use of digital media is that this will not always be used ‘for’ human rights. Indeed terrorist groups have been amongst those most successful at co-opting digital technology to help communicate and shape their message and political concerns, and authoritarian governments are increasingly adept at using these tools for repression and surveillance.

There are also significant privacy and data protection concerns involved with the digital mediatization of human rights suffering and advocacy.¹²⁰ The danger being that to protect human rights through a communicative framework can come at the cost of violating other human rights such as fair trial or privacy concerns. Human rights as a methodology has mechanisms to deal with and attempt to balance or resolve such conflict, but proportionality, or abuse of rights, or statements of compatibility will not always avoid resulting damage and this difficulty needs to be kept in view.

Malcolm Gladwell has labelled efforts to revive activism online ‘slacktivism.’¹²¹ He is critical of the assumption that social networks are effective forms of activism, arguing that the weak ties they generate “seldom lead to high risk activism.”¹²² Whilst making an important criticism of the ways in which activity online can act as a substitute for activity on the streets, perhaps Gladwell misses the significance of communication *as* action and also their interaction and ability to complement one another. From this perspective his critique appears nostalgic for the street protests of the sixties and seventies and perhaps accordingly a little dated.

Gladwell is joined in his criticism of the claims made for the democratic and revolutionary potential of social media by the critic Evgeny Morozov. In a blistering critique, Morozov labels such digital utopianism ‘The Net Delusion,’ which is driven by what he

¹²⁰ EVGENY MOROZOV, THE NET DELUSION: HOW NOT TO LIBERATE THE WORLD 270-74 (2011) [hereinafter MOROZOV, THE NET DELUSION].

¹²¹ Malcolm Gladwell, *Small Change: Why the Revolution will not be Tweeted*, THE NEW YORKER (Oct. 4, 2010), available at <http://www.gladwell.com/pdf/twitter.pdf>; see Joseph, *supra* note 8, at 150-52.

¹²² Gladwell, *supra* note 121; see also Drumbl, *supra* note 89, at 481 (suggesting others have coined the term ‘clicktivism’).

calls ‘cyber-utopianism’ and ‘Internet-centrism.’ He calls importantly for a more nuanced and quantified assessment of the power and perils of social media and the claims made for Internet freedom.¹²³ Morozov also makes the significant point that technology is itself political, helping to explain the complexity and contradictory aspects of its usage and effects.¹²⁴

Despite the need to recognize these significant limitations and concerns, the rise of digital and social media highlights the significance of communication for the effective operation of international law both as a normative system and an institutional framework. Morozov is right to question the assumption that communicative freedom will lead to broader political freedom and thus always assist with the human rights agenda, but he does not give up on the emancipatory possibilities of the Internet and social media and neither should we. It remains critical that in assessing these new developments we take the opportunity to give more prominence to the significance of communication on the international plane, but also recognize the ideological baggage that comes with it.

VI. *Witnessing and the Creation of Communities of Concern*

As we have begun to see, the media is viewed as a connector between and within communities, organizations and international legal mechanisms. It does appear that the media in its basic informational role as messenger helps to structure our sense of reality and community. Of the origin of nationalism, Benedict Anderson writes: “. . . the convergence of capitalism and print technology on the fatal diversity of human language created the possibility of a new form of imagined community, which in its basic morphology set the

¹²³ MOROZOV, *THE NET DELUSION*, *supra* note 120; *see also* Evgeny Morozov, *Why Social Movements Should Ignore Social Media*, *THE REPUBLIC* (Feb. 5, 2013), <http://www.newrepublic.com/article/112189/social-media-doesnt-always-help-social-movements>.

¹²⁴ *Id.*

stage for the modern nation.”¹²⁵

Now, some might see this process as moving in the opposite direction. Here, the media is viewed by some optimistically as one of the drivers of a developing global civil society: a project of international community beyond the nation state. The New Haven scholars Myres McDougal and Michael Reisman referred to the notion of the “world community process.”¹²⁶ This conception of a transnational community was a provocative development from the centrality of the nation-state within traditional accounts of international legal subjectivity. They wrote:

that the whole of humankind does today constitute a community, in the sense of inter-determination and interdependence. . . . The important actors in the community process, at all levels, will be seen to be individual human beings, but it will be noted that individuals identify and affiliate with, and make demands on behalf of, many different groups – including, not merely nation-states, but lesser territorial communities, international governmental organizations, political parties, pressure groups, tribes, families, and private associations of all kinds. . . . A theory about international law which would even approximate relevance must, thus, relate authoritative decision explicitly and systematically to the larger community process that envelops such decision.¹²⁷

¹²⁵ BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 46 (Verso ed., 1983, rev. ed. 1991) (continuing, for the role of the print media, books and the newspaper in the formation of ‘imagined communities’ review Chapters 2, 3 and 4 of the same work).

¹²⁶ Myres S McDougal & W Michael Reisman, *International Law in Policy-Oriented Perspective* in *THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY AND THEORY* 103-129 (R. Macdonald & D. Johnston eds., 1983).

¹²⁷ *Id.* at 117.

In this sense, community is linked to values and the legitimacy of decision-making and associated legal processes.

Critical approaches to international law have had a more troubled relationship with notions of community. Leading scholars such as David Kennedy have critiqued the ideological function of community within the landscape of international law, showing how the ‘international community’ has been used as a rhetorical device, deployed to bolster the legitimacy of international law and to obscure the responsibility of powerful actors within the international legal system.¹²⁸ Equally, Anne Orford has argued powerfully that:

At stake in any representation of humanitarian crises and mass suffering is the self-image of the Western state, and now the international community, as sovereign, civilised, autonomous, powerful and humane. This self-constitution depends upon establishing a narrative in which the chaotic other is separate from the heroic self.¹²⁹

Yet despite such critiques, our hopes for community, a shared identity and greater connection on the international plane, persist. Often, critics of the crisis miss the underlying hopes and political investment they place in the power of radical theory and critique to lead to change and better outcomes within international law. It is my argument that a fractured conception of community in fact underlies the formation and structuring of the international law system we have, and that this is reflected in ongoing anxieties about fragmentation, constitutionalism and the public/private divide. On the one hand, adopting a domestic or parochial perspective as regards community has led to a state-focused international law. Yet this operates in competition with a powerful underlying narrative of international law, leading us from state-centered notions of community to a universal cosmopolitan future. This tension produces either: (a) in idealistic mode, a set of grander visions of

¹²⁸ See, e.g., DAVID KENNEDY, *OF WAR AND LAW* (2006).

¹²⁹ ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* 204 (2003).

constitutionalism; or (b) in pragmatic mode, a minimalist (even defensive) institutional framework of global governance.

Further, these conceptions appear exhausted by the dynamics of globalization, and challenged by contemporary forms of participation and new idealist energies in the form of activism, social movements and the expansion of the human rights community. These 'communities' themselves promote competing notions of international community. But as many have argued, the challenge of human rights is undercut by offering up individualism as a check on state power and as an alternative to more communitarian forms of participation – indeed this has tended to reinforce the position of the state.

It is here that new technologies and forms for social interaction and communication have real significance and potential - particularly in the development and deepening of transnational communities of concern, or in their mediatized form as global public audiences or networks. But these developments of course do not occur in some pure public or public international realm. Whilst we may be invested in the potential for the development of deeper connections across time, space and culture, there are other powerful forces at play, not the least of which is commerce and the market. These aspects can themselves effect the nature and quality of connection made possible online.

Thus the role of the media and information in globalization also draws into focus the role of the multinational media corporation and the issue of ownership of the media and the potential effects this may have on the delivery and content of information. As Marks and Clapham observe:

It is certainly the case that the media are not just channels for the communication of information, but complex commercial enterprises with huge advertising and other revenues and considerable political clout. . . . On the other hand, it is important not to over-generalise. The great behemoths of the culture industry do not account for the

entirety of the world's media.¹³⁰

Whilst the commodification of the Internet poses certain threats to the quality of communication and to its potential as a revived public sphere, there can of course also be direct threats posed to human rights themselves. A noticeable trend is for normative standards of freedom of expression and privacy to be increasingly influenced not just by citizens and consumers interacting with each other and with corporate entities online, but also by those corporate entities themselves. Thus, Google's decision-making about how it operates in China, or Facebook's policies concerning privacy and copyright, are contributing in very concrete ways to the shaping of these areas in human rights terms.¹³¹ From one perspective, this is to be welcomed as an example of 'corporate social responsibility.' However, responsibility to consumers or to the wider normative framework of human rights can come into conflict with underlying profit and expansion imperatives, with the logic of capitalism.¹³²

At play here is the fragmentation of normative certainty within international law and also the role of the state as against other actors – the NGO, the multinational company, the individual as either citizen or consumer.¹³³ But fragmentation from one perspective can be viewed as proliferation or expansion from another and there is also a clear trend towards the juridification of politics and policy development in the transnational regulatory space. New forms of interaction, information, communication and action are to be welcomed as offering critical energy and new forms of participation and resistance. It is here that the excitement surrounding the impact of the Internet and digital media in human rights terms may have broader significance for the field of

¹³⁰ SUSAN MARKS & ANDREW CLAPHAM, *INTERNATIONAL HUMAN RIGHTS LEXICON* 239 (2005).

¹³¹ See, e.g., *A New Approach to China*, GOOGLE OFFICIAL BLOG (JAN. 12, 2010), <http://googleblog.blogspot.com.au/2010/01/new-approach-to-china.html>.

¹³² See generally ADAM MCBETH, JUSTINE NOLAN & SIMON RICE, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 606-633 (2011).

¹³³ See further Anne-Charlotte Martineau, *The Rhetoric of Fragmentation: Fear and Faith in International Law*, 22 *LEIDEN J. INT'L LAW* 1 (2009).

international law.

Martti Koskenniemi argues that through international law there occurs a translation of “the languages of power, desire, and fear that are the raw materials of social conflict.”¹³⁴ There is though also a strand of his scholarship which examines the significance of “law as professional commitment, even a ‘calling.’”¹³⁵ Koskenniemi’s work also points to the significance of the amateur and the activist. He writes: “There is reason to reconceive international law today. But instead of changing its vocabulary into coordinating governance through empirical political science. . . it must be redeemed as a political project.”¹³⁶

Invoking “the regulative idea of universal community,” Koskenniemi concludes that “[t]he fate of international law is not a matter of re-employing a limited number of professionals for more cost-effective tasks but of re-establishing hope for the human species.”¹³⁷

It is apparent that the role of technology and, in particular, information and communication technologies can assist in generating this hope and these new forms of interaction, increasing levels of awareness concerning human rights issues and agendas. It is also relatively clear that a part of the momentum behind the rise of social and digital media is generational. Social media campaigns should not be dismissed because they do not conform to an earlier generation’s view of what constitutes appropriate forms of activism or protest. Indeed, if protest and activism are in part driven by a desire to change the present system and entrenched attitudes, institutional responses risk failing to fully evaluate the purposes and possibilities inherent in the re-situation of activist energies in digital and often non-institutional spaces.¹³⁸ Protest is driven by both a

¹³⁴ Martti Koskenniemi, *Symposium on Method in International Law: Letter to the Editors of the Symposium*, 93 AM. J. INT’L L. 351 (1999).

¹³⁵ Martti Koskenniemi, *The Fate of Public International Law: Between Technique and Politics*, 70 MODERN L. REV. 1, 24 (2007).

¹³⁶ *Id.* at 29.

¹³⁷ Koskenniemi, *supra* note 135, at 30.

¹³⁸ See generally LEAH L. LIEVROUW, *ALTERNATIVE AND ACTIVIST NEW MEDIA* (2011).

278 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 8]

desire for change and also the need to send a critical message concerning the present. Digital and social media are clearly powerful tools in this regard and offer activists new pathways, different mechanisms to engage with the public and with each other, and cheaper, instantaneous tools for campaigning and lobbying. These developments, however, do not come without dangers or difficulties, some familiar to media scholars and some particular to new formats and the online and networked environment.

Significantly, digital forms of new and social media seem to be most effective when they complement rather than replace traditional witnessing and activism. It is in this sense that I have explored both our hopes and fears for a revived methodology of human rights witnessing online; one that is more accessible and efficient, but which does not circumvent important ethical and practical difficulties which we have associated with more traditional forms of media coverage and witnessing.

The rise of citizen media is significant and needs to be better understood, not simply feared. And yet these new forms of human rights activism and advocacy have not replaced the genres of old entirely. There is still a key role for old forms of activism and old media formats, especially when such activity involves blending new and old. An important recent example can be seen with the Occupy movement, which relied on both a highly sophisticated social media presence, but whose defining form of protest and expression is familiar.¹³⁹

¹³⁹ See *OCCUPY! SCENES FROM OCCUPIED AMERICA* (Carla Blumenkranz ed., 2011).

Conclusion

There remains much optimism about the potential for digital media, and especially the Internet, to enhance the fields of human rights and international law and to re-focus their message and impact. Yet if international law is a discipline of crisis and subject to its own existential challenges, so to are the media, who face serious questions regarding their lack of regulation and responsibility.¹⁴⁰

It is increasingly difficult to analyze what is ‘old’ and what is ‘new’ about the media and to get a grip on the contours and rapid expansion of media forms. From one perspective, convergence and the read/write web mean that everyone is the media, yet from another angle the media is dead, replaced at least in its traditional news-generative and investigative modes by entertainment, opinion and commercial imperatives. The public interest effect of the traditional media is being questioned and for many the new forms of citizen-generated media appear to offer a more authentic form and a return to the Enlightenment ethos of the pamphleteer and the independent publisher.

The ‘mediatization’ of international law is at once familiar, and in the context of new forms and digital means of communication, interaction and connection, potentially genuinely transformative. The shock of the ‘new’ in terms of form and format is part of this process of ‘revival’ of the field of human rights. The message may be familiar – of naming and shaming, of bearing witness and of delivering international justice – but the medium has now become a significant aspect of the message. These developments can be seen from an historical perspective as part of a cycle of renewal and re-imagining. But there is also an important critical point to be made about the turn to digital media and our hopes for salvation through technology and information.

Whilst the new forms of digital and social media undoubtedly assist the international system’s further development and normative reach, the claim for deeper forms of connection via mediatization or

¹⁴⁰ Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MODERN L. REV. 377 (2002).

for a mediatized international public are harder to sustain. The medium may now be part of the message, but we should be wary of allowing our enthusiasm for the connective and communicative possibilities of media witnessing to substitute for the continued political project of human rights.

We are bombarded with information, and communicative possibilities are at present exhausting and potentially distracting. Yet the media cycle, and now the digital and social media cycles, are contributing to the structuring of normative commitments and to the shaping of agendas and priorities within human rights and in the field of international law. In this article I have argued for a re-appraisal of the power of the human rights message and its methodology of witnessing in the context of the availability and increasing significance of digital and social media. I have set out and attempted to provide a typology of the various hopes and fears we associate both with the field and with its mediatization. On the one hand, the hope for relevance, for change, for participation and justice; and on the other, our fears of relevance, of change, of disconnection and apathy. Perhaps what is needed instead of the triumph of hope over fear is rather an alternative view of the possibilities and necessity of both our hopes and fears, and a fuller analysis of the context in which we ultimately indulge in either.