Official channels are things like grievance procedures, ombudsmen and courts. They are supposed to resolve problems and provide justice. However, trust in official channels can be misplaced: in many cases they may give only an illusion of a solution. In *Official Channels*, Brian Martin tells what he has learned about formal procedures set up to deal with problems associated with whistleblowing, sexual harassment, plagiarism, Wikipedia and other issues. He says it is unwise to put too much reliance on official channels and that more emphasis should be put on developing skills, changing cultures and exploring alternatives.

Brian Martin is emeritus professor of social sciences at the University of Wollongong, Australia. He is the author of 20 books and hundreds of articles on dissent, nonviolent action, scientific controversies and other topics.

Brian Martin

Official Channels

Brian Martin
Official Channels

IRENE PUBLISHING
www.irenepublishing.com

IRENE PUBLISHING

Official channels

Brian Martin

CONTENTS

Acknowledgements

Preface

My ideas about official channels — such as grievance procedures, ombudsmen and courts — have been developing for a very long time.

In 1980, Michael Spautz, a senior lecturer at the University of Newcastle, was dismissed from his tenured position. At the time, I was investigating cases of suppression of dissent. After hearing about Spautz's experiences, I began corresponding with him and ended up writing articles about his case.

Spautz had raised concerns about alleged flaws in the research carried out by a recently appointed professor in his department. One of the striking features of his story was that when he attempted to raise these concerns through the proper academic channels, they led nowhere. Instead, university procedures were turned against Spautz himself.

After he was dismissed, Spautz continued to seek justice through official channels, mainly the courts. For decades, he was a persistent complainer, one who starts with a seemingly legitimate concern and then, when rebuffed, refuses to let it drop.

In 2018, Spautz died. After discussions with his daughters, I wrote a long blog post about his story.[1] In it, I

---

1 "A disastrous quest for justice," *Brian's Comments,* 29 August 2018, https://comments.bmartin.cc/2018/08/29/a-disastrous-quest-for-justice/. This post contains links to many documents about the Spautz case.

commented that it provided me with an important lesson about the shortcomings of official channels.

Later, as I studied more cases of suppression of dissent, often the same pattern appeared: formal procedures to address problems didn't work, at least not the way you might expect. After I became president of Whistleblowers Australia in 1996, I heard from whistleblowers every week. As recounted in chapter 2, many of them repeated the same story: grievance procedures and watchdogs (organisations intended to stop wrongdoing) were unhelpful.

In the early 2000s, I developed the backfire model. When powerful groups do something seen as unjust, they regularly use a variety of methods to reduce public outrage. One of them is to use or set up official channels, such as government-initiated inquiries, that gave an appearance of providing justice, usually without much substance. In formulating this component of the model, I was influenced by my prior experience with whistleblowers, but soon discovered plenty of evidence that the same methods are used in many other circumstances.

One of my collaborators on backfire dynamics, Truda Gray, left a sheet of paper for me with this note: "A book about official channels?" At the time, this topic was too big and too hard, but the idea stuck with me.

One of my other collaborators on backfire was Steve Wright, an authority on the "technology of repression": tools used for surveillance, crowd control and torture. Steve recognised that regulations to control the trade in torture technologies often gave only an illusion of protection, but nevertheless maintained hope that some such regulations would have a significant beneficial effect. We discussed

this issue many times over the years. Steve's comments helped me remember that official channels are not necessarily ineffective. It was just that often they are.

In 2013, I started writing an introduction to this book, but before long set the text aside and worked on other projects. It took quite a few years to think through how to present my ideas about official channels.

Initially, my plan was to look at the different roles played by official channels, for example being attackers or misleading symbols. Then, after figuring out the main roles, I would describe one or more case studies to illustrate each role and draw on academic writings about regulatory capture, which addressed one particular role.

However, this plan never felt quite right. Part of the problem was that organisations seldom conform to a single role. They are always more complex. But there was something more. Through conversations and reading, I was continually reminded that many people have a deep belief in official channels. When these channels don't work, then the feeling is that they *should* work, so the solution is to fix them or support them or rebuild them until they do. An academic analysis would not begin to address this feeling.

Eventually I turned to a writing approach that has affinities with autoethnography, which involves using one's own life experiences to search for wider understanding. For writing about official channels, this means telling about my experiences learning about them. I haven't fully adopted the autoethnography approach but have used it to help structure my accounts. Because I have had a longer and deeper interaction with whistleblowing, that is the longest chapter.

The main purpose of the book therefore is not to provide a detailed analysis of official channels, but rather to provide a plausible case that they are not necessarily the only or most effective way to deal with problems. Instead, attention needs to be paid to developing skills, changing cultures, organising collective action and investigating alternative ways to achieve goals. This is a simple enough claim that may seem obvious on the surface. By telling about my own engagements with these issues, and about what I've learned in some of my studies, I hope to offer encouragement to think more widely about official channels. The system — the ways things are set up, everything from courts to elections — is so familiar that it seems inevitable, the only possible way. Examining the shortcomings of official channels and, more importantly, the shortcomings of relying so heavily on them provides a window into a different way of seeing the world and what it might be.

1
Introduction

It was March 1993. I came to Canberra for a two-day conference on intellectual suppression and whistleblowing. The first day, which I had helped organise, was on intellectual dissent. The second day was on whistleblowing. Afterwards, there was a meeting of Whistleblowers Anonymous, a group set up just two years previously. At the meeting the group was renamed Whistleblowers Australia.

I knew about whistleblowing. It means speaking out in the public interest. A typical whistleblower is an employee who sees a problem at work, such as corrupt practice or hazards to the public, and reports it to authorities. This seems like an honourable thing to do, but it is often unwelcome to those higher up in the organisation.

I had read about whistleblowing for quite a few years. But there is nothing quite like hearing whistleblowers tell their stories. At the meeting of Whistleblowers Australia, each of those attending — perhaps a dozen people — was invited to introduce themselves and tell a bit about their background. I was amazed to hear story after story of dismaying experiences.

Vince's story
One of those present was Vince Neary, an engineer who worked for State Rail, the government body that ran the railway network for the state of New South Wales. Origi-

nally from Britain, Vince had years of experience at State Rail. He spoke calmly and clearly, in a mild, almost unassuming way. He was the opposite of a firebrand.

Some years previously, Vince had seen two problems. The first was unsafe signalling practices, which posed a danger to passengers and crew. The second was misappropriation of funds. He was in charge of projects and large amounts of money were requisitioned with no work being done. It seemed to be fraud.

In 1987, Vince complained to his superiors about the unsafe signalling practices and misappropriation of funds. What should have happened? If someone of Vince's experience and seniority said there was a problem, then it makes sense to imagine that his concerns would be investigated. If his concerns were correct, then the problems should be addressed. On the other hand, if his concerns were found to be incorrect, then the organisation was vindicated.

However, there was no investigation. Instead, Vince was ignored or ostracised.

Vince continued with his story. Two years later, he made a complaint to the chief executive of State Rail. This led to some action. A task force was set up, but it didn't support Vince's claims: it said there were no problems. However, Vince did not receive a copy of the report, so he continued to raise his concerns.

In early 1990 he made a complaint to his local member of state parliament, who referred the matter to the Minister of Transport, who cited the task force findings. Then Vince made a complaint to the state ombudsman, who declined to investigate. Next, in August 1990, he made a complaint to

the Independent Commission Against Corruption, which in February 1992 announced an inquiry, but then cancelled it.

Also in August 1990, Vince complained to the Auditor-General, which undertook an investigation and produced a lengthy report. However, despite taking the complaint seriously, the Auditor-General's report seemed to have no effect on practices at State Rail.

Vince hadn't forgotten about the 1989 task force report that was being used to say everything was okay. In September 1990, he requested the report through Freedom of Information legislation. State Rail opposed its release. At the Whistleblowers meeting where Vince was telling his story, he hadn't yet obtained the report, but he eventually did the next year, in 1994.

In January 1991, Vince made a new complaint to State Rail. This led to a report being commissioned, and this time it vindicated him. But it also signalled an escalation of reprisals. Over the next two years, Vince was demoted, referred to psychiatrists, attacked in state parliament, had his pay stopped and finally was dismissed.

It was a horrific story. Vince had tried all sorts of means to raise his concerns. State Rail management seemed to do the right thing by setting up a task force, but refused to show its report to Vince and spent hundreds of thousands of dollars trying to prevent its release. The various agencies Vince approached didn't seem to help. Vince ended up losing his job. His career was over.

What about all the agencies that he approached? The ombudsman wouldn't investigate. The Independent Commission Against Corruption announced an inquiry but then cancelled it. In contrast, the Auditor-General made a

significant investigation and wrote a long report. I later talked to someone in the Auditor-General's office who said it was a bit unfair of Vince to see its report as inadequate. The problem was that the Auditor-General had no power to correct problems in State Rail.

So what happened to Vince? In 1995 he reached a settlement with State Rail. He received a considerable sum of money, setting him up for the rest of his life. However, part of the settlement agreement was a silencing clause. Vince couldn't say publicly how much he had received, nor say anything about the matters of dispute.

Is all well that ends well? Vince had some tough years before he received the settlement, but he ended up with some financial compensation. But he was hardly a winner. After all, he lost his job and his career. He never worked again for a salary.

Actually, Vince was one of the lucky ones. Many whistleblowers lose their jobs and receive little compensation, or none at all.

What's the problem?

We heard Vince's perspective. The other side of the story was State Rail. What happened with signalling systems? What happened concerning the alleged corrupt practices, with a million dollars unaccounted for?

It is common in cases of whistleblowing for nearly all the attention to be on the whistleblower, with disputes over whether the whistleblower is doing their job properly, is mentally balanced, has violated any rules or regulations or has been treated fairly. The story is about the whistle-blower, with the result that the original problem is almost

forgotten. The end of the story is when the whistleblower is discredited and ousted, perhaps compensated or very occasionally vindicated. But seldom does the story, at least as told in public, include information about whether the alleged problem in the organisation, the one that the whistleblower spoke out about, was dealt with.

Organisations are complex entities, so often it is not easy to determine what is going on. In State Rail, signalling systems have many features, some working well, some perhaps not so well. Vince claimed there were problems, but were they serious ones? What is not publicly known is what, if anything, State Rail did in relation to signalling systems. If changes were made, were they helpful? Then there is the issue of corruption. If Vince's concerns were correct and State Rail monies were being siphoned off to individuals, this was likely to be something bigger than just what he suspected. However, there is little public information about the scale of corruption in State Rail or about what has been done to deal with it and prevent it.

Another State Rail whistleblower, Lesley Pinson, alleged corruption in the organisation. She lost her job, and for quite a few years was a key figure in Whistleblowers Australia.

Over the years, I've talked with hundreds of whistleblowers. They report all sorts of reprisals, including ostracism (shunning, sometimes called the cold shoulder), petty harassment, reprimands, referral to psychiatrists, demotion, dismissal and blacklisting. This is bad enough, causing financial, health and relationship problems. But in some ways, one of the worst things is the failure of watchdog agencies to address their concerns. Just like Vince's

experience, whistleblower after whistleblower reports that these agencies — the ones that are supposed to address problems in organisations — don't help.

Official channels

Vince's story helped me focus on the shortcomings of official channels, namely the organisations and processes that are supposed to fix problems. Vince tried a series of official channels: his boss, State Rail management, the state ombudsman, an anti-corruption commission, a parliamentarian and the state auditor-general — and none of them worked, at least not to his satisfaction. If it had just been Vince's story, it could have been ignored, because after all he might have been wrong and State Rail management right. But there were too many other similar cases to ignore. Then I started looking at the shortcomings of official channels in a range of other contexts, from sexual harassment to elections.

Official channels have a great hold over people's imagination. When one agency fails in some way, it is seen as a localised issue, with no implications for agencies in general. I wanted to point to shortcomings inherent in the system of official channels, and decided to approach the topic by telling what I have learned over the years.

Chapter 2 is about whistleblowers in Australia and their reports of dealing with official channels. The strange thing is that politicians, journalists and whistleblowers themselves see official channels as the source of salvation, yet the goal of protection is like an ever-receding mirage.

In chapter 3, I tell about my experiences on university sexual harassment committees. It is another story about the

widespread belief in formal procedures despite plenty of evidence that these procedures often don't work very well.

For both adverse treatment of whistleblowers and for the problem of sexual harassment, I saw a preoccupation with official channels at the expense of other options. Several other options are worth considering. One is to increase people's understanding and skills to address problems. "People" here refers to everyone, not just whistleblowers and targets of harassment. A second option is to change the culture so that reprisals and harassment are simply not done, because they are implicitly understood as inappropriate. A third option is collective action: mobilising groups of people to apply pressure for change, or to change things directly. A fourth option is to find different ways to address the problems. There may be other options, too, depending on the issue.

Chapters 4 through 8 address additional areas where official channels may give only the illusion of being a solution, yet where emphasis on them discourages other options. Chapters 4 and 5 examine plagiarism and Wikipedia. Chapter 6 looks at how official channels can operate to reduce outrage over police beatings, massacres of civilians, torture, genocide and other cases in which a powerful group is the perpetrator of an injustice.

In systems of representative government, elections serve to legitimise rule by politicians, and deserve special attention as an official channel, covered in chapter 7. In chapter 8, I present a variety of examples to show that the same sorts of issues arise in different contexts, in various countries. Chapter 9 offers a few summary comments.

In the appendices I've placed some material deriving from my original conception of this book. Appendix 1 outlines a series of roles that official channels can play. Appendices 2 and 3 are accounts of two particular Australian regulatory bodies, not intended to laud or condemn them but rather to illustrate several of the roles they play or inhabit. I picked these two bodies simply because I've learned a bit about them. My hope is that others will try to observe the roles illustrated here in other contexts, in order to gain greater understanding and provide better guidance for those seeking justice.

2
Whistleblowing

Whistleblowers are people who speak out in the public interest. A typical whistleblower is an employee who notices a problem at work — for example, a discrepancy in accounts, bullying, favouritism in appointments, or dangerous work practices — and reports it to someone in authority. Usually the first person notified is the boss. If the boss doesn't address the problem, there are other possibilities. Internal to the organisation, there may be grievance procedures, the human resources unit, the boss's boss and the board of management. External to the organisation there are various watchdog agencies, for example an ombudsman, auditor-general or anti-corruption body, and others depending on the organisation. Requests can be made to politicians. Legal actions can be commenced: the courts constitute a high-prestige formal channel.

The key feature of official channels is that they are supposed to provide justice. Someone who has a concern is searching for a person, agency or process that has some authority to investigate, determine whether there is a problem and, if there is, to address it.

Whistleblowers sometimes go to the media. The media, including both mass media and social media, are not official channels. They have no formal responsibility to rectify injustices. However, the media are often the most effective avenue for whistleblowers.

In chapter 1, I told the story of Vince Neary, a whistleblower in State Rail. Over the years, I've heard many stories like Vince's. His is worth telling because it so nicely illustrates the persistence with which many whistle-blowers pursue one official channel after another, despite each official channel failing to address the original concern.

Whistleblower stories

When I heard Vince's story, Whistleblowers Australia had only recently been formed. Initially I was not heavily involved, but then in 1996 I became the national president. It was an eye-opening experience.

At the time, awareness about whistleblowing was surging. The New South Wales branch of Whistleblowers Australia was quite active, holding a "caring and sharing" meeting every week in Sydney at which people were invited to attend, tell about their experiences and receive advice from experienced members. Some people would come for just one or two meetings, tell their stories and then depart, with or without some useful suggestions about how to proceed.

I attended a few of these meetings, enough to gain a good impression of the dynamics and to confirm what regulars told me about the meetings. In the 1990s, the term "whistleblower" had some level of stigma. It was linked to the Australian expression "dobber" meaning a snitch or informer. To dob on your mate (your friend or co-worker) was seen as a low act. Most whistleblowers were not dobbing on their mates but reporting problems higher in the organisation, but the dobber label often stuck. Some of those who attended the caring-and-sharing meetings started

their stories by saying "I'm not a whistleblower, but …", then proceeding to tell a classic whistleblower story.

Media coverage of whistleblowers, often presenting them as heroes, gradually changed public perception of whistleblowing. Years later, the term became for some a badge of honour, sometimes adopted by individuals who simply had a dispute with a co-worker, or some grievance about their treatment.

When I became president of Whistleblowers Australia in 1996, I thought I knew a fair bit about the issues. Lots of others assumed I did too! I was contacted by numerous whistleblowers wanting to tell me their stories.

It is quite common for whistleblowers to start at the beginning and provide a blow-by-blow account of their experiences: "I spoke to the manager on Friday 24 July. Ten days later, I received a letter from the head office. I wrote a reply on 10 August and arranged a meeting." And so on.

One feature of these lengthy stories became a recurrent theme: the shortcomings of official channels. Quite a few callers from New South Wales said they had made a submission to the state's Independent Commission Against Corruption (ICAC), but their matter was not addressed. ICAC sometimes referred their complaints to their employers and sometimes their identity was compromised, and they were worse off than before.

So predictable were the reports about the uselessness of official channels that occasionally I could anticipate what a whistleblower would tell me. They might say, "Then I went to the ombudsman" and I would interject "That didn't work, did it?" and they would say "How did you know?"

I knew because I had heard it so many times before. Besides, if an agency had fixed the problem, then probably this person wouldn't be ringing Whistleblowers Australia for advice.

I heard all sorts of stories, but I only heard one side. Those of us in Whistleblowers Australia are volunteers, giving advice and information in our spare time. We do not have the capacity or the authority to investigate complaints or to even to check out claims by contacting employers. The people who contacted us might have been telling us concocted stories. They might have been delusional. They might have been a source of trouble at the workplace and adopted the mantle of whistleblower.

We were contacted by all these sorts of people, and sometimes it was hard to tell the difference. Sometimes I knew callers were delusional, when they told me that a device had been implanted in their brain to control their thoughts. Sometimes I guessed they had a grievance at work, because that was the only issue they raised. In a few cases, people who claimed to be whistleblowers turned out not to be quite what they claimed. One visitor to the weekly meetings of the NSW branch of Whistleblowers Australia said he had been to prison. That didn't automatically discredit him, because in worst-case scenarios whistleblowers are framed for crimes and imprisoned. However, information emerged that this particular fellow had lied about the reason he had gone to prison: it was for paedophilia.

In the NSW branch, our policy and practice was to respond to all enquiries without trying to make a judgement about the bona fides of the enquirer. In other state branches, members of the executive would try to determine whether

someone was a genuine whistleblower before offers of assistance were made. I liked the NSW branch approach. By not insisting that enquirers be vetted, we avoided the risk of causing further harm to individuals who had already been subject to continued disbelief and repeated reprisals. We did not set up a hierarchy separating genuine whistleblowers from those who didn't meet some arbitrary criteria. We created more good will among those we helped. Anyway, it usually didn't matter whether someone was a whistleblower or actually the cause of problems at the workplace. Our advice would help whistleblowers but not do much harm otherwise.

Although in most cases it was impossible to judge the accuracy of what people told us, nevertheless the commonalities were unmistakable. They usually involved raising some concerns at work, being subject to various types of adverse actions (reprisals), going to a person, procedure or agency to address the problem, and failing to get any satisfaction. The part about not obtaining satisfaction was striking. It made me think much more about official channels and reflect on experiences in other domains besides whistleblowing.

Some relevant research
If it had only been my personal experience listening to whistleblowers tell their stories, I would have been cautious about generalising. But there was some evidence suggesting that what I heard was typical.

In the 1990s, Bill De Maria at the University of Queensland undertook pioneering research on whistleblow-

ing.[1] He sent out invitations to whistleblowers to participate in a survey, and obtained a large body of data. One of the questions on the survey concerned official channels, namely responses by external agencies to disclosures. The results were stunning. In one quarter of the cases, the agency took no action. In 40% of cases, the response was negative, most commonly because the agency investigation did not proceed. In about one in six cases, the agency referred the matter to another agency. Finally there were positive outcomes, with wrongdoing substantiated and whistleblowers protected. This occurred less than one out of ten approaches to an agency. In other words, whistleblowers felt that agencies helped them in only about ten percent of approaches. Some whistleblowers approached several agencies, so their odds were improved, but even so these were discouraging findings.

In some cases, the respondents reported, they were worse off after going to an agency. How could this be? Some agencies referred the matter back to the whistleblower's employer, leading to further reprisals.

Bill wrote several articles based on his research, and in 1999 his book *Deadly Disclosures* appeared. It is highly pessimistic about the prospects for whistleblowers in Australia. From my perspective, it provided independent

---

1 William De Maria and Cyrelle Jan, "Behold the shut-eyed sentry! Whistleblower perspectives on government failure to correct wrongdoing," *Crime, Law & Social Change*, vol. 24, 1996, pp. 151–166; William De Maria, *Deadly Disclosures: Whistleblowing and the Ethical Meltdown of Australia* (Adelaide: Wakefield Press 1999).

confirmation of what I was hearing over and over from whistleblowers who contacted me. It reinforced my scepticism of the value of official channels.

Perhaps, though, Australia is an exception, and things are much better elsewhere. The obvious place to check was the US, which was at least a decade ahead of any other part of the world in terms of trying to provide protection for whistleblowers.

The US experience
The term "whistleblower" got its start in the US. Ralph Nader helped organise a conference in 1971 and a book was published based on the conference.[2] Rising awareness led to the introduction of various processes and laws for protecting whistleblowers and addressing their disclosures. As well, several organisations were set up to support whistleblowers. Of these, prominent was the Government Accountability Project (GAP), which took on a small percentage of whistleblowers cases, providing legal support. As well, GAP offered advice to whistleblowers and publicly promoted the cause of whistleblowers.

In Whistleblowers Australia, GAP was best known for a manual giving advice for whistleblowers. Initially circulated as a booklet, it was later published as a book under the title *The Whistleblower's Survival Guide: Courage without Martyrdom*.[3] The title is revealing. It is a challenge for

2 Ralph Nader, Peter J. Petkas and Kate Blackwell, eds., *Whistle Blowing: The Report of the Conference on Professional Responsibility* (New York: Grossman, 1972).

3 Tom Devine, *The Whistleblower's Survival Guide: Courage*

whistleblowers to survive in their jobs, or to maintain a decent life after losing their jobs or their careers. Whistleblowers need courage to challenge corruption and dangers to the public, but courage is wasted if it does not lead to change. All too often, whistleblowers sacrifice their livelihood for little effect: they are martyrs.

The Whistleblower's Survival Guide offered insightful general advice. We in Whistleblowers Australia who had talked to numerous whistleblowers could vouch for all this advice. The *Guide* provided this in a cogent way. It also provided an assessment of the various avenues in the US for making disclosures. There were so many of these that this information made up half the book. It was sobering reading, because none of the avenues was particularly promising. An example was hotlines offered by organisations. Employees could ring a phone number and register a concern or complaint. The problem, according to the *Guide,* was that hotlines seldom worked. Nothing would be done about the matter reported, and the caller sometimes would be marked out for reprisals. (This was before the advent of anonymous hotlines.) Hotlines gave only the appearance of addressing concerns.

And so it went through nearly all the avenues for reporting problems. They were not promising, according to the *Guide,* and were to be used only with caution. The main exception was the False Claims Act. Dating from the Civil War and updated by Congress in the 1980s, it allowed whistleblowers to make disclosures when the US government

---

Without Martyrdom (Washington, DC: Fund for Constitutional Government, 1997).

had been defrauded. If the government thought the matter was worth pursuing, it could join the whistleblower in legal action to recover monies and, if the action was successful, the whistleblower would receive a portion of the monies. In a few cases, this has amounted to millions or even tens of millions of dollars. Most impressively, the False Claims Act actually worked, at least for the government, recouping billions of dollars from corrupt operators.

One sign of the effectiveness of the False Claims Act was relentless pressure from businesses to neuter or repeal the act. However, although the act recouped billions of dollars for the US government and rewarded some whistle-blowers handsomely, it was not an easy road, nor for them quite as wonderful as it might seem. Whistleblowers who tried to invoke the act faced two obstacles. The first was getting the government to join them, and this didn't always occur. Without government legal support, few whistleblow-ers can afford to pursue the long legal effort involved. The second obstacle was time and effort. Legal actions often took years and required arduous preparation.

For successful cases, the financial reward for some whistleblowers was generous, but seldom enough to compensate for what they lost. Nearly all whistleblowers using the False Claims Act lost their jobs, and often their careers. They never worked again. Would a $1 million pay-out compensate for 20 years of salary? More importantly, work is an important source of meaning. It is a big sacrifice to lose a career in order to tackle corruption.

The point here is that even the False Claims Act, undoubtedly the most effective piece of whistleblowing legislation in the US, is far from providing ideal outcomes

for whistleblowers. If you're going to lose your job in pursuit of a good cause, it is certainly better to receive generous compensation than nothing at all. But it is remote from the optimal outcome, which is to remain in the job and perhaps receive a bonus or promotion for being a good corporate citizen.

In Australia, the US False Claims Act has been an inspiration to whistleblower supporters, some of whom have been agitating since the 1990s to introduce an Australian version of the act. However, the idea is usually dismissed out of hand, often with the argument that if people are acting in the public interest, they shouldn't receive a private benefit.[4]

Problems with whistleblower laws

Introduction of a law protecting whistleblowers sounds like a great idea. If an employee speaks out about corruption or hazards to the public, they can claim to have made a "protected disclosure" and invoke the law to ensure they are not subject to reprisals. In principle, this should make whistleblowing much safer. In practice, it seldom does, and in the worst-case scenario it makes things riskier.

Employers, when they know about whistleblower laws, can get around them. Employers do not send letters to workers saying, "You're being fired because you raised concerns over corruption." Adverse actions can be quite subtle. Rosters are changed, making work more difficult.

---

4 In contrast, within workplaces, salaries and bonuses are routinely used to motivate workers, even when their jobs involve serving the public interest.

Requests for equipment or leave are lost, delayed or rejected. Co-workers are less friendly or stay at a distance (they are afraid for their own jobs). A unit is "restructured," causing employees to lose their jobs. In court, proving that such actions are reprisals for whistleblowing can be difficult.

In Australia, there are whistleblower laws in every state and territory, and federally. Yet only in rare instances have the laws been invoked against an employer for taking reprisals against a whistleblower. The laws might be fine on paper but are useless if they are not actually used as intended.

In the US, there is a different way in which the intent of whistleblower laws is frustrated. Judges, when ruling on whistleblower cases, regularly support employers. The lead sentence of one article about this summarises the problem: "A top watchdog investigated 190 cases of alleged retaliation against whistleblowers — and found that intelligence bureaucrats only once ruled in favor of the whistleblower."[5] Congress, when passing laws, wanted whistleblowers to be protected, but courts sabotaged this intent.[6]

Another problem with many whistleblower laws is that they only offer protection when disclosures are initially made internally to the organisation, typically to managers or special units. This sounds reasonable but is a recipe for

5 Kevin Poulsen, "US intelligence shuts down damning report on whistleblower retaliation," *The Daily Beast,* 2 November 2018.

6 On this and several other points, see Robert G. Vaughn, *The Successes and Failures of Whistleblower Laws* (Cheltenham: Edward Elgar, 2012).

keeping challenges under control. Internal processes keep information out of the public eye, allowing managers to cover their tracks.

In many cases, laws are designed to limit the scope of protection. They might cover only some types of employees, such as government workers but not those in private enterprise. They might have provisions to penalise employees who make disclosures that are allegedly vexatious. In Australia, because agencies do not invoke the laws on their own initiative, the whistleblower may have to go to court to seek protection or restitution. This is an onerous task, especially for a dismissed former employee with little money, who needs to fight a lengthy court battle against an opponent with plenty of money to cause delays, mount appeals and in other ways wear them down.

Whistleblower laws, while looking good on paper, may not accomplish much in the face of other laws that enable silencing of dissenters. Government employees are under a legal obligation not to reveal information they acquire on the job. In Britain, this is called the Official Secrets Act; in Australia, there is another name, state services acts, but the effect is the same. These acts are seldom invoked but they serve as a form of intimidation — they frighten employees.

Defamation law can inhibit speech. Saying anything that harms someone else's reputation is to be guilty of defamation, called slander when it is verbal and libel when it is published. Whistleblowers are sometimes threatened with being sued for defamation. Defamation law is one of a number of laws regularly used against free speech in what are called Strategic Lawsuits Against Public Participation

or SLAPPs.[7] These sorts of actions are a misuse of the legal system by powerful groups to deter citizens from engaging in otherwise ordinary activities such as protesting against a real estate development. In the US, where SLAPPs were first identified, many states have passed anti-SLAPP laws, but in Australia there is no legal protection.[8]

The Australian government passed a law in 2014 making it a criminal offence for national security workers to reveal information and for journalists to report it. So if a worker contacts a journalist about corruption in a spy agency, and the journalist writes a story about it, they can go to prison for five or ten years.

To make things worse, the Australian government also passed legislation requiring telecommunication companies and Internet service providers to retain metadata for two years. Metadata includes details about phone calls, including caller and receiver numbers and times when calls were initiated and completed, but not what was said. This information can be used to figure out who is calling who. If a journalist publishes a story, police can obtain information about everyone who called the journalist. This means the identity of whistleblowers is potentially compromised.

The Australian government touts the country's whistleblower laws. Meanwhile, it retains or passes various

---

7 George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia, PA: Temple University Press, 1996).

8 On SLAPPs in Australia, see Greg Ogle, *Gagged: The Gunns 20 and Other Law Suits* (Sydney: Envirobook, 2009); Brian Walters, *Slapping on the Writs: Defamation, Developers and Community Activism* (Sydney: University of New South Wales Press, 2003).

other laws — official secrets, defamation, national security, metadata retention — that can easily be used against whistleblowers. This suggests that Australian whistleblower laws give only the appearance of protection.

The problems go beyond Australia. In January 2020, Mark Worth, executive director of Whistleblowing International and of the European Center for Whistleblower Rights, sent an email inviting participation in their global network of activists. The email started this way:

> With the spread of new whistleblower laws being passed in all regions — including the recently approved EU Directive — more and more people are expecting to be protected from retaliation if they report crime, corruption and public health threats.
>
> Unfortunately, as we very well know first-hand, a vast majority of whistleblower laws and systems do not adequately work in real-life cases. They essentially serve as traps — enticing people to come forward with inside information, but leaving them defenseless against being fired, sued, prosecuted, threatened or attacked.

Official channels: shortcomings

Based on my experience talking with whistleblowers and reading studies of what happens to whistleblowers, I came to a preliminary assessment of the shortcomings of official channels. They:

• usually focus on technicalities
• rely on experts
• are slow
• give only the appearance of solving problems
• seldom challenge those with the most power.

Official channels usually focus on technicalities. In other words, they are procedural: they follow rules for dealing with issues, and this means that much of their work deals with technicalities. In many cases, the result is that the central issues become peripheral. Many whistleblowers most of all want justice to be done, but agencies instead seek documentation about who said what and when, and whether a particular regulation was followed.

Official channels rely on experts. Because they are rule-bound, they depend on specialists in dealing with the rules. In courts, this means lawyers. Because of the reliance on experts, non-experts cannot easily understand, use or effectively challenge the processes and decisions in official channels.

Official channels are often slow. An agency may take months or even years to address a complaint. Meanwhile, the original problem remains unaddressed.

Official channels often give only the appearance of justice, not the substance. Because of the credibility of official channels, people think they provide solutions to problems, but in many cases this may be only an illusion.

Official channels seldom work when they challenge groups with a lot of power. They may work fine in other circumstances.

This catalogue of problems may make it sound like official channels are totally useless, are fatally compromised or are staffed by incompetents. Not so. Most of the staff in watchdog agencies and other bodies tasked with dealing with problems are hard-working and sincere. Many of them achieve extraordinary results in difficult circumstances. The problems with official channels are not primarily due to failures of people; they are predictable consequences of the way the whole system is set up.

It's useful to take a step back and ask, "Why would anyone expect official channels to work?" Whistleblower laws are a case in point. A whistleblower can be thought of as a person who speaks truth to power. In the most dramatic instances, whistleblowers speak out about corruption that implicates senior management. To speak of justice in such cases is to expect that some junior figure in an organisation, by shining the light on a problem, can bring down top figures and fundamentally change operations. If heed were taken of whistleblowers all over the place, it would be revolutionary: systematic corruption would be challenged and organisational hierarchies jeopardised. From everyday observation, this rarely happens. Instead, the whistleblowers suffer, with their jobs and careers sacrificed, yet seldom with much impact on power structures.

It is reasonable to expect that official channels can operate satisfactorily when low-level operations and personnel are affected, namely when the power structure is not at stake. Official channels are least likely to be effective when major systems and top-level figures are involved. The trouble is that official channels seldom have sufficient power to tackle the biggest problems. Therefore, when

looking at the shortcomings of official channels, it is useful to keep a focus on power differences. Without sufficient power to bring about change, it is more likely that official channels will give only the illusion of justice.[9]

Organisational power and corruption
The fundamental reason why whistleblower protection fails so often is straightforward, even simple. However, it is based on a perspective different from the usual one, and therefore can be hard to appreciate. Here I present the reason in simple terms, recognising that reality is complex.

To begin, it is necessary to accept that some people try to do things that others see as wrong, such as cheating, stealing, exploiting and even murdering. Some of these people get caught when they are young and are punished. Others, though, rise to high places.

For many practical purposes, most people are honest most of the time. They might cheat a little, for example by speeding while driving or when declaring their income for tax purposes. Even if most people are honest most of the time, that still means some people are not honest. For example, people with antisocial personality disorder — commonly called sociopaths or psychopaths — have little empathy and look out only for themselves. Psychopaths

---

9 There is a connection here with the work of Murray Edelman — *Politics as Symbolic Action: Mass Arousal and Quiescence* (Chicago: Markham, 1971) and *The Politics of Misinformation* (Cambridge: Cambridge University Press, 2001), among others — who analyses how the symbolic environment, especially political action, helps maintain elite power.

have characteristics that are helpful for some worthwhile purposes, but also can cause immense damage.[10] Some rise to positions of power. Only a few per cent of the population are psychopaths, but that is enough to mean that some behaviour is corrupt. To deal with social problems, it is unwise to rely on the innate goodness of people.

There is also evidence that normal people can do horrible things, such as hurting others. Being normal psychologically is not a protection against doing harm.[11] For example, most killers in genocides, such as Nazi killers during the Holocaust, are psychologically normal — few of them are psychopaths. What people will do, and what they will let others do without intervening, depends greatly on the circumstances. Only a few German men who were drafted into killing squads asked not to participate, even though there were few penalties for seeking to leave. When evil behaviour is the norm, only a relatively small number of people will try to stop it.

To this can be added a feature of human psychology epitomised by a famous saying by Lord Acton: "Power tends to corrupt and absolute power corrupts absolutely." Acton's aphorism has been confirmed by careful research

---

10 For contrasting approaches, see Paul Babiak and Robert D. Hare, *Snakes in Suits: When Psychopaths Go to Work* (New York: HarperCollins, 2006); Kevin Dutton, *The Wisdom of Psychopaths: Lessons in Life from Saints, Spies and Serial Killers* (London: Heinemann, 2012).

11 Steven James Bartlett, *The Pathology of Man: A Study of Human Evil* (Springfield, IL: Charles C. Thomas, 2005).

that shows exactly the sort of psychological processes that operate when one person has power over another.[12]

In a small group of equals, the corrupting influence of power is limited, though there still can be personal disputes and attempts at dominance. The corruptions of power are minimised in small groups that are voluntary and where members have a common aim, for example amateur musicians playing for their own enjoyment.

In large hierarchical organisations, for example militaries, government departments and corporations, those higher up have considerable power over those further down. To this can be added other systems of power, including male domination, ethnic domination and religious domination, with the result that an organisation can be a seething interplay of systems of power. Within the organisation, those seeking power are more likely to rise, and some of them will have antisocial tendencies. All of them are vulnerable to the corruptions of power.

In addition, large organisations are set up to limit accountability of those at the top. Those at the top have the most power within the organisation — that's obvious enough. Only when subordinates combine together do they have a chance of bringing down those at the top. This happens only rarely. Trade unions can be thought of as

---

12 Dacher Keltner, *The Power Paradox: How We Gain and Lose Influence* (London: Penguin, 2017); David Kipnis, *The Powerholders* (Chicago: University of Chicago Press, 1976); David Kipnis, *Technology and Power* (New York: Springer-Verlag, 1990); Ian Robertson, *The Winner Effect: How Power Affects Your Brain* (London: Bloomsbury, 2012).

groups of subordinates who band together. However, unions usually are only concerned about wages and conditions, not addressing high-level corruption. Therefore, in most cases accountability is only possible when there is an equally powerful force acting outside the organisation, one that targets corruption.

So here is the setting: in a large organisation, there is almost bound to be bad behaviour, and sometimes there is systematic corruption. Those at the top are especially prone to abuse their power. The organisation, to remain stable in the face of competition and threats from other organisations, is set up to protect those at the top and, even more importantly, to maintain the system of hierarchy. It is therefore continually vulnerable to corruption.

In this scenario, a lone employee speaks out, saying there is a problem. If the problem implicates those higher up — either as perpetrators or as knowingly allowing the problem to persist — then this lone employee has no chance. What is involved is truth (about corruption) pitted against an entrenched system of power. Truth hardly ever wins in this scenario.

Next: bring in whistleblower protection. Grievance procedures are introduced within the organisation and external watchdogs are set up. Now imagine that the procedures and watchdogs actually made it possible for truth to win over hierarchical power. This would mean that a single employee could bring down an entire organisation, or at least bring down a whole swathe of senior managers.

Empirically, this occurs only very rarely. Given that bad behaviour and systemic corruption are commonplace, where are the examples of major organisations that have

been radically reformed solely on the basis of an employee who spoke out? All the evidence is to the contrary: it is the lone employee who loses out.

Consider the following examples.

- Massive corruption in military procurement
- Criminal action by pharmaceutical companies in selling drugs known to be dangerous, falsifying data, faking authorship of scientific papers
- Involvement of police in criminal activities
- Cover-up of paedophilia in churches
- Intentional killing of civilians during wars.

These are all examples of activities that break laws but where for years or decades perpetrators were not brought to justice. Those who challenged abuses were more likely to suffer.

Even more difficult to challenge are institutionalised injustices, in which unfairness is officially okay. The easiest way to protect power and wealth is to promote laws and processes that serve the interests of the powerful and wealthy.

- Tax loopholes that benefit the wealthy
- Lack of enforcement of the rules of war
- Copyright and patent systems that mainly benefit pharmaceutical companies, Hollywood producers, software manufacturers and genetic engineering companies
- Laws that exempt companies from social obligations
- Laws and legal traditions that treat white-collar crime more leniently than petty crime by the poor.

Only when the employee speaking truth has powerful allies is there a chance of significant change. These powerful allies might be other employees, supporters in another major organisation, campaigning groups or members of the public agitated by media coverage.

Let's look at grievance procedures and watchdog agencies. Do they operate like powerful allies or help mobilise powerful allies? Usually not. Grievance procedures operate inside the organisation and are normally confidential, minimising the possibility of mobilising support. Watchdog agencies usually have limited powers and operate without publicity, again minimising the possibility of mobilising support. It seems that these procedures and agencies are set up in a way that ensures that they are very unlikely to ever be a serious threat to organisational hierarchies. That's exactly what is observed in practice. In most cases, they serve to keep challenges contained.

Strengthening the powers of watchdog agencies seems like a good solution, and can sometimes be helpful to whistleblowers and aid corruption prevention. But few of the agencies see it as their role to mobilise constituencies that can bring about significant change.

Why whistleblower protection is fundamentally flawed
Anthony Evans provides an insightful framework for understanding whistleblowing and the failure of official channels.[13] Evans draws on a framework developed by

---

13 Anthony J. Evans, "Dealing with dissent: whistleblowing, egalitarianism, and the republic of the firm," *Innovation: the European Journal of Social Science Research,* vol. 21, no. 3,

anthropologist Mary Douglas using the concepts of grid and group.

When people are subject to imposed regulations, "grid" is high; when individuals can freely negotiate, grid is low. Whistleblowing typically occurs in hierarchical organisations, where people are subject to rules and a chain of command. In Douglas's terms, this is high grid, a place where free discussion is difficult between those at different levels in the hierarchy.

"Group" refers to commitment to others in a group. Whistleblowers are usually people who have a strong commitment to the organisation: they are "high group." If they had little commitment, they wouldn't bother trying to do anything about problems.

Here's the situation: the power structure is based on domination by those at the top over those below, rather than being a community of equals. But what a whistleblower does, when raising an issue of concern, is behave as if the organisation is actually open to dialogue, as if it were an egalitarian culture.

Whistleblowers may or may not believe in the chain of command. The point is that by speaking out, they are expecting an engagement that is more characteristic of an equal relationship.

September 2008, pp. 267–279. For a summary of key ideas from this article, see Anthony J. Evans, "Egalitarianism and the failure of whistleblower protection," *The Whistle* (newsletter of Whistleblowers Australia), no. 57, January 2009, pp. 8–10, http://www.bmartin.cc/dissent/contacts/au_wba/whistle200901.pdf.

Those in command see the whistleblower as a traitor, someone who has challenged the hierarchy. In fact, the very fact of this challenge may be sufficient to trigger reprisals, irrespective of what the whistleblower says, right or wrong.

Actually, the whistleblower has high commitment to the organisation, just with a conception that is different from those in command. As Evans puts it, "whistleblowers are loyal to what they deem to be the principles of the organisation, or indeed to the wider community with which they identify." There is a fundamental difference in perspective between those at the top and the whistleblower who is somewhere below.

Evans sees the challenge posed by the whistleblower as the challenge posed by an expectation of a discussion between equals — that's implicit in the whistleblower's expectation that their concerns will be examined — that confronts a system based on command and control. This, at the root, is the challenge posed by egalitarianism to a hierarchical system.

What is the solution? Official channels are the mechanism offered by the hierarchy. The idea is that someone in power will address the problem. However, Evans argues, this is fundamentally misconceived. Whistleblowing, in asking for a focus on a concern, is an egalitarian assertion: it is implicitly a request for looking at the information, at the problem, rather than acquiescing to those with formal authority.

Bringing in whistleblower laws, watchdog bodies and courts means using hierarchical bodies to address a challenge to hierarchy. They are bound to fail because the whistleblower is expecting a form of dialogue, of engage-

ment with the issues on a fair basis, and this expectation cannot be satisfied by someone in power invoking more rules.

The implication of Evans' analysis is that whistle-blower protection is a flawed approach because it does not alter systems of unequal power. To really address the whistleblower's concerns requires a change to a more egalitarian system.

Myth system or operational code?

You're walking along a downtown street and cross to the other side to get to a shop. In Australia, legally, when you're near an intersection you're supposed to cross only when the "walk" light is on. But you decided it was safe enough to cross a short distance away. Besides, loads of people were doing the same thing, none of them ever charged with jaywalking (crossing a road when there's traffic).

To understand what's going on here, it's useful to apply some labels. The official rules — the law in this case — can be called a myth system. The law says jaywalking is illegal, but most of the time the law is not enforced. The law on jaywalking is a type of myth or fiction.

What actually happens is that people routinely jaywalk and are never charged or even warned. This can be called the "operational code." People know, from experience or observation, that jaywalking is not penalised. That is the way the law is applied in practice — by not being enforced. If you know the code, namely non-enforcement, then you know when you can jaywalk without penalty.

Of course, jaywalking might be dangerous or annoy drivers. That's a different set of issues, also part of the

operational code. It's unacceptable to stand in front of moving vehicles or to shout abuse at drivers. The operational code doesn't say anything goes, but rather prescribes acceptable violations of the law.

A friend of mine in Brisbane was fined $50. His transgression? He was standing at a corner waiting for the "walk" light to go on, and stepped out onto the street one second beforehand. For a pensioner, $50 was a big payment. Half a dozen other pedestrians were at the same corner and stepped out before him, but they were younger and faster and got away.

He was outraged and wrote a letter to the newspaper. He knew the operational code, which was that pedestrians are not fined for crossing early at a crosswalk. But he was fined. It turned out that the police applied the law in a technical fashion. They applied the rules of the myth system, thereby raising money at the expense of a few unlucky pedestrians.

You're driving along a suburban street about 10km/h above the speed limit. This is nothing special. Most other drivers do the same. In fact, you become annoyed when the driver ahead of you goes 5km/h less than the speed limit, though this is quite legal.

The myth system is that people are supposed to obey the law and transgressors are subject to penalties. The operational code is that breaking the law just a little, when no one is hurt, is okay. This helps explain some drivers' outrage over speed cameras. They are a challenge to the operational code, which is that driving safely is acceptable even when laws are technically broken.

These thoughts are inspired by a book by Michael Reisman titled *Folded Lies.*[14] Reisman applied the ideas of the myth system and the operational code to US corruption issues, especially bribery.

Folded Lies was published in 1979. I read it a few years later and took some notes. The book is written in a rather abstract style, yet filled with numerous examples from US politics and administration.

Recently I came across my old notes on the book and thought, "Hey, these ideas are relevant to whistleblowing," so I obtained a copy and read it again. Reisman didn't talk about whistleblowing but his ideas are directly relevant. Here's how he explains the myth system and operational code at the beginning of his book:

> Most people learn early that there are things they can get away with; from the perspective of an observer, some social "wrongs" are selectively permitted. An observer may distinguish, in any social process, a *myth system* that clearly expresses all the rules and prohibitions (the "rights" and "wrongs" of behavior expressed without nuances and shadings), and an *operational code* that tells "operators" when, by whom, and how certain "wrong" things may be done. An operator is someone who knows the code in his own social setting — certain lawyers, some police officers, some businessmen, an agent, a kid at school. (p. 1)

---

14 W. Michael Reisman, *Folded Lies: Bribery, Crusades, and Reforms* (New York: Free Press, 1979).

In many organisations, the operational code allows things to happen that an outsider would see as wrong or even terrible. In some families, beatings of children are a routine occurrence. In some churches, sexual abuse by clergy was not penalised. In some businesses, siphoning off money for personal use is accepted. In other businesses, dumping toxic waste into public waterways is the norm.

In most of these examples, the operational code allows insiders to do things that outsiders might condemn. The outsiders are subscribers to the myth system. If they are informed about the activities, they want them stopped.

In many cases — far from all — whistleblowers endorse the myth system. They believe in honesty, fairness and the rule of law. So when they encounter damaging and dangerous activities, they want something done about them.

Those on the inside, participating in the activities, are subscribers to the operational code. They can react with fury when someone tries to invoke the myth system. After all, the operational code is *the way things are done.* Anyone who goes against this is a traitor.

Whistleblowers have a chance of making a difference when outsiders widely endorse the myth system and demand that something be done about abhorrent operational codes. A good example is paedophilia, which over the years has become increasingly stigmatised. As a result, paedophilia in churches became a massive scandal.

Another example is animal welfare, for which there is a growing movement and public concern. As a result, whistleblowers who expose ill treatment of animals, for example in the live animal trade, can trigger public outrage.

On the other hand, in areas where there is little public awareness or concern about issues, the operational code can continue with little disturbance. An example is cheating on income tax. The myth is that everyone pays their fair share of tax. The operational code for big businesses and wealthy individuals is that tax dodges will be exploited to the hilt, while governments are lobbied or pressured to maintain or expand loopholes.

Now and then there are media exposés of large companies that pay little or no tax, but these seem not to create a groundswell of rage against big-company tax evasion. One reason may be that tax avoidance is a national pastime: minimising one's own tax is seen as acceptable. In other words, the operational code is that it is okay to avoid tax as long as you can get away with it. There are so many small cheaters that cheating is seen as normal.

Government regulatory bodies are supposed to ensure laws are followed and that the public is protected from unfair and dangerous activities. The myth is that these watchdogs are doing their job well and keeping corruption and abuse under control. In other words, you don't need to worry about injustice because the watchdogs are on guard.

In many cases, regulatory agencies become close to the enterprises they are supposed to regulate, and become lapdogs: they are toothless and called "captured bureaucracies." Another way of understanding lapdogs is that they have subscribed to an operational code of minimal intervention, cooperation with regulated organisations and facilitation of their activities. The public might believe there is effective regulatory oversight, but this is a myth.

Next consider whistleblower protection. The myth is that whistleblower laws, and the agencies that are supposed to implement them, actually work. The operational code is that little will be done that disturbs organisational elites. Organisations will not be seriously penalised, dismissed whistleblowers will not be reinstated, and managers who institute reprisals will not be punished. Reisman writes:

> The function of the legislative exercise is not to affect the pertinent behavior of the manifest target group, but rather to reaffirm on the ideological level that component of the myth, to reassure peripheral constituent groups of the continuing vigor of the myth, and perhaps even to prohibit them from similar practices. As elsewhere, the mere act of legislation functions as catharsis and assures the rank and file that the government is doing what it should, namely, making laws. (pp. 31–32)

Applied to whistleblowing, what Reisman is saying is that whistleblower laws aren't intended to affect the behaviour of employers but rather to encourage popular belief that the government is looking after whistleblowers. The aim is to sustain the myth of whistleblower protection while allowing organisational operational codes to continue as usual.

Whistleblowers, perhaps more than most members of the public, are subscribers to the myth system. They expect that watchdog agencies will help them and they call for better whistleblower protection. However, the most that happens is governments come up with more rhetoric and pass additional ineffective laws.

To be effective, whistleblowers need to understand the difference between the myth system and the operational code. This isn't always easy. The myth system is regularly endorsed by leaders, within organisations and in the media. So it is possible to hear heartfelt support for whistleblowers and to think that they will actually be supported. The challenge is to identify the operational code that is relevant to the situation, especially the code within an organisation. There is even an operational code within organised crime.

It is the operational code, namely the set of beliefs and practices that define what is expected and acceptable, that determines the response to a whistleblower. In general, the code within organisations is that whistleblowing isn't welcome.

This should be obvious. In Australia, governments say they support whistleblowers, but they also maintain laws that prohibit public servants speaking out, institute searches for leakers, pass laws to criminalise whistleblowers and journalists on national security matters, and do not enforce whistleblower laws when employers take reprisals against whistleblowers. To identify the operational code, look at what people do and set aside what they say.

It is also valuable to understand the power of the myth system, in particular when it can be used to challenge wrongdoing. Within an organisation, it might be common practice to cheat customers, avoid tax, dump chemicals and appoint cronies. However, outside the organisation there are two types of people who can help. Some of them are subscribers to the myth system: they think it's wrong to cheat and cause damage, and they want something done about it.

The second group of helpers are ones who see an opportunity to pursue their own interests by invoking the myth system and triggering a crusade. Reisman says, "… there may be a point where perception of discrepancy between myth and operational code becomes so great that part of the content of the myth system changes, belief in it wanes, or crusades for reassertion of the myth burst forth." (p. 24)

A crusade sounds like it might make a difference. Let's protect whistleblowers! However, Reisman says crusades are sound and fury, a lot of noise about fixing problems, but never intended to change the basic way things operate.

In a crusade, politicians pass new laws, giving the appearance that the problem is being addressed. However, the laws don't work in practice, and perhaps were never intended to. There are several ways that new laws can be neutered. Sometimes it is by narrow writing of the law. For example, early Australian whistleblower laws gave no protection to private-sector employees, or when workers went to the media.

Another way to limit the impact of a new law is to give inadequate funding to the watchdog body, or burden it with onerous bureaucratic requirements. In Australia, anti-corruption agencies are woefully underfunded. In New South Wales, the Independent Commission Against Corruption can take up only a few percent of the matters brought to its attention.[15]

Another technique is to staff regulatory bodies with incompetent staff, or ones who are sympathetic to the

---

15 See appendix 3.

industry being regulated. The Australian Securities and Investments Commission, as revealed in the royal commission, was more attuned to the top management of banks than to the revelations about corruption provided by whistleblowers.[16]

In a crusade, a few individuals may be sacrificial lambs. They are penalised, lightly or heavily, for doing what hundreds of others did. To the public, it seems like justice has been done. Sometimes, though, there are no sacrificial lambs. In the global financial crisis, not a single US banker went to prison or was even charged, except for one who was actually a good guy.

What happens in a crusade is a symbolic endorsement of the myth system. The myth in Australia is that whistleblowers are valued and protected. The song and dance involved in passing new whistleblower protection laws encourages the belief that, yes, whistleblowers actually are valued and protected. Meanwhile, the operational code is largely unchanged: power structures remain untouched and routine practices stay the same. This means that it remains just as risky as before to blow the whistle.

Reisman uses the term "reform" to refer to changes in the operational code. For him, a reform means that people's behaviour changes. This can happen for various reasons. Sometimes the popular pressure for change is so great that elites decide they need to change their practices in order to maintain their money and status.

Reisman says you sometimes can't tell the difference between a crusade and a reform until years or decades later.

---

16 See chapter 8.

For example, a reform might be quietly reverted, and some crusades eventually lead to changes in the operational code. To my mind, defining things this way just makes them confusing. Nonetheless, Reisman points to an important issue. To see whether laws are making a difference, check out the state of play down the track. Reisman:

> Even if passed, "reform" legislation, that is, legislation actually *intended* to change the operational code, is not equivalent to reform, for it may be blunted by operators at lower levels of the bureaucracy who may prevent or indefinitely postpone the drafting of rules or secondary, implementing legislation. If implementing legislation is actually created, it may be starved to death by an inadequate budget allocation or emasculated by the assignment of incompetents to positions of responsibility. If the implementing machinery actually tries to be effective, it may be overwhelmed by larger and superior legal teams who will mount adjudications protracted even beyond the wildest dreams of the pettifoggers of Bleak House or conclude settlements that are translated into overhead costs and passed on to consumers. (p. 114)

Whistleblower laws have been on the books in Australia since the 1990s. Because it is exceedingly rare for one of the laws to be invoked against an employer who has taken reprisals against a whistleblower, this basically means the laws are not being enforced — one of the typical ways that crusade-inspired legislation is prevented from having any impact on the operational code. So, in Reis-

man's terms, the entire exercise of passing Australian whistleblower laws has been a giant façade. It reassures members of the public that the government is looking after whistleblowers, while ensuring that there is no substantial change in actual practices within workplaces.[17]

An obsession with whistleblower protection

Governments in Australia regularly consider, introduce and modify whistleblower laws, and this becomes newsworthy. Because I have a profile in the area, journalists regularly contact me asking about whistleblower protection. They nearly always assume that what is needed for protection is a law, or a better law. It takes a bit of explaining to convey the idea that the laws often don't provide protection and that it might be more useful to help employees develop their knowledge and skills to effectively challenge problems at work. It is difficult to explain these points because they are off the agenda, not part of the regular discourse.

Governments have set the framework for thinking about workplace problems, so nearly everyone thinks whistleblower protection is the way to go. Most journalists go along with this framing of the issues. What then of whistleblowers themselves? Many, perhaps most, of them also look to protection from laws or from government agencies. They believe in official channels.

This is not surprising. Vince Neary's story is typical. He reported problems to his boss, then to higher manage-

---

17 See also the work of Murray Edelman, noted earlier, especially *Politics as Symbolic Action: Mass Arousal and Quiescence* (Chicago: Markham, 1971).

ment, then to outside agencies and authorities. He was searching for someone — in particular, some person in authority — who would intervene to address his concerns. If there had been a whistleblower law in the state at the time, he would have sought protection under it.

For most whistleblowers, their own cases loom large. They have seen a problem and focus on having the problem addressed. When they suffer reprisals, they become preoccupied with the unfairness of being targeted for trying to do the right thing. Due to focusing on their own situation, few of them spend time learning about the experience of other whistleblowers or about the dynamics of bureaucratic systems. In reporting problems to authorities, they display their trust in the system, and when that trust is betrayed, they seek other authorities. It is natural to hope that better whistleblower laws are not just desirable but are the solution. The contrary idea that such laws give only an illusion of protection is hard to understand and accept, because it means revising understandings of how the system works. Often it is only through bitter experience that whistleblowers start to question their assumptions about the proper workings of organisations, laws and regulations.

Whistleblower laws thus are a prime example of the shortcomings of official channels. They give the appearance of protection but, all too often, this is only an illusion. More importantly, their existence — and failure — suggests to people that what is needed is better official protection. The assumption is that some white knight will come to the rescue and, if this doesn't happen, what is needed is more power to white knights.

Left off the agenda are other paths: skill development by workers and citizens, changing organisational cultures, and democratising workplaces. I will discuss these later in a bit of detail. Suffice it to say here that they all involve some change in the balance of power between employers and managers. Workers who are more skilled at challenging abuses on the job can use some of those skills to assert their interests in other ways. Changing organisational cultures to enable speaking out without reprisals — even to encourage reporting of problems — threatens those at the top who enjoy and benefit from exercising their power without constraints. Democratising workplaces, which involves giving more power to the rank and file, increases the accountability of managers and bosses.

Compared to these alternatives, whistleblower protection is a safe option, safe in the sense that it provides relatively little threat to those at the top. The threat is even less when the protection is an illusion, serving to convince everyone that the problem is being addressed when actually nothing much has changed.

Politicians like the approach of whistleblower protection because it keeps whistleblowers under control. Managers are responsible for dealing with disclosures, keeping the information inside the organisation. The risk of mobilising outside constituencies — the media, workers' movements, action groups — is limited. From the point of politicians, the message to whistleblowers is this: "*We* will make sure you're protected. Don't go running around with your information, just follow the rules we set up and you'll be okay. *We*'ve got everything under control."

For managers in organisations — government departments, militaries, corporations, churches, universities and others — the thinking is much the same. Grievance procedures, internal ombudsmen, hot lines and other such mechanisms ensure that disclosures are made to management and thereby kept in-house, away from other groups such as the media, shareholders, competitors and citizen groups. A disclosure contained inside the organisation is far less of a danger than one made to outside constituencies. The message to whistleblowers is exactly the same as the one provided by politicians: "*We* will make sure you're protected. Don't go running around with your information, just follow the rules we set up and you'll be okay. *We*'ve got everything under control."

The mass media can be very useful in publicising whistleblower cases. Indeed, they are often the most powerful allies a whistleblower can have. However, when it comes to what to do to help whistleblowers, the mass media largely follow the cues of government and managers and emphasise whistleblower protection.

What then about the general public? Few people have direct experience of whistleblowing; few know whistleblowers as family members or close friends. Therefore, members of the public are also likely to follow the cues of mass media reporting. Some may hear about whistleblower procedures at their workplace.

Belief in a just world

There is also something deeper at play. Many people believe the world is just.[18] They believe this even though there is plenty of evidence of both individual and systematic injustice. Examples include people sent to jail who are later exonerated, bullying at school and in workplaces, organised crime and genocide. So how can a person's belief in a just world survive exposure to such injustices? One way is to ignore uncomfortable information. Another is to blame the victim. If someone is impoverished or homeless, it must be their fault. If a woman is assaulted, it must be her fault.

Belief in a just world can be all-encompassing but for practical purposes is most salient in arenas close to a person's life, for example when seeing a beggar on the street or knowing the next-door neighbour has an out-of-control gambling habit. This belief is highly relevant to whistleblowers.

It is plausible that whistleblowers are especially prone to believe the world is just — or at least the part of the world they inhabit. When they decide to speak out, they often assume that managers will respond reasonably to their concerns, investigate them and then, if needed, address any problem. In other words, whistleblowers who report their concerns through the proper channels assume that these

---

18 See for example Melvin J. Lerner, *The Belief in a Just World: A Fundamental Delusion* (New York: Plenum, 1980); Leo Montada and Melvin J. Lerner, eds., *Responses to Victimizations and Belief in a Just World* (New York: Plenum, 1998); Michael Ross and Dale T. Miller, eds., *The Justice Motive in Everyday Life* (Cambridge: Cambridge University Press, 2002).

channels will do what they are supposed to do. Problems will be fixed. Justice will be done.

When this doesn't happen, it can be a terrible shock to the system. Instead of the problem being fixed, instead the whistleblower is seen as the problem, and reprisals begin. For those who believe the world is just, this is a fundamental challenge to their way of understanding the world. With their own eyes they saw corruption or unfairness at work but, instead of this being fixed, instead they are targeted with reprisals.

Some whistleblowers start believing what others say about them. When they are accused of being poor workers, of being vindictive or unreliable, they take this to heart. When they are accused of being crazy, they start believing it. This may have been especially common before whistleblowing received so much media attention. Jean Lennane, a psychiatrist, worked for the New South Wales Health Department. In the late 1980s, she spoke out about lack of funding for psychiatric services and, as a result, lost her job. Being a psychiatrist, she was able to set up a private practice. After Whistleblowers Australia was set up, she became president in 1993.

In those days, many bosses said whistleblowers were insane and sent them to psychiatrists, and some of them ended up in Jean's consulting office. After hearing their stories, she would tell them, "You're not insane. You're a whistleblower!"

For someone who believes the world is just, suffering reprisals for blowing the whistle is especially disturbing. There are two injustices that are hard to deny. One is the problem at work, about which nothing is done. The other is

the reprisals inflicted on yours truly, who only tried to do the right thing.

Fred Alford wrote a penetrating study of whistleblowers, giving a deep insight into their existential angst. Psychologically, their worlds were turned upside down. Not only was their understanding of the world shredded, but they themselves become the victim. For many, the psychological impact is just as shattering as the loss of income, a job or even a career.[19]

For these sorts of whistleblowers, it is attractive to believe in white knights. Somewhere there is a valiant defender of truth and justice who will provide vindication for the beleaguered whistleblower and slay the wrongdoers. As described earlier, many whistleblowers go from agency to agency, presenting their case in gory detail, hoping that someone who knows and cares will act on their behalf.

Another approach used by some individuals seeking justice is the broadcast message: a plea for help to ten, twenty or more recipients. Decades ago, before the Internet, these pleas arrived by post, sometimes large envelopes with many pages of enclosures. These days, the plea is usually sent via email, containing a long message, one or more attachments, and sometimes a lengthy email exchange. The recipients typically include watchdog agencies (such as ombudsmen), politicians, journalists — and sometimes office bearers in Whistleblowers Australia. The sender imagines that at least some of the recipients are just waiting to rectify an injustice and will spend however much time

---

19 C. Fred Alford, *Whistleblowers: Broken Lives and Organizational Power* (Ithaca, NY: Cornell University Press, 2001).

and effort are needed to get to the bottom of the story. In other words, the sender believes in the existence of justice warriors who will save the day.

For those on the receiving end, it is easy to delete the email. Watchdog agencies can accept only those complaints fitting their brief, and they have only a limited capacity to address all the matters that come their way. Politicians are overwhelmed by requests of all kinds, and their staff have no time to try to get to the bottom of a lengthy and complicated matter. Journalists also have no time to address every issue brought to their attention. They prioritise what can be turned into a story: long, complicated and obscure messages, sent to all and sundry, hardly ever qualify.

Then there are those of us in Whistleblowers Australia. We don't act on behalf of whistleblowers, but instead only provide information, advice and contacts. For those searching for a white knight who will deliver justice, we are not what they are after, because we turn around and say, "Here's what *you* need to do." Those who believe in a just world seldom welcome the suggestion that there's no one who will provide salvation.

In summary, there is a widespread assumption that the solution to the problems faced by whistleblowers is protection by laws, regulations and authorities. This assumption is manifest in governments passing laws and companies setting up procedures, and in journalists and academics focusing their attention on laws and procedures. It so happens that whistleblower protection is an approach that provides little threat to established hierarchies in all major organisations. This is because the protection provided to whistleblowers is supposed to be provided by authorities,

while little is done to empower the rank and file. Another reason for putting trust in whistleblower protection is a belief that the world is just. If there is wrongdoing at a workplace and an employee is penalised for speaking out about it, the solution is assumed to be to find or set up some process or agency that will provide justice. The possibility that many systems are unfair and that transgressors go unpunished is unpalatable.

Linked to the focus on whistleblower protection is a lack of effort and initiative on other approaches, including changing the culture of organisations, encouraging workers to develop knowledge and skills to deal with problems, and collective action. It is to these options that I now turn.

Changing organisational culture

From the point of view of whistleblowers, the ideal is working in an organisation in which there is no need for protection, because speaking out about issues is the norm. In a hospital, for example, it is common for problems to be covered up because those involved might be blamed and punished. A much different approach is for reporting of problems — including mistakes and mishaps — to become routine and not subject to reprisals. When this sort of approach is implemented, more errors are reported, because previously most were covered up, but outcomes are better. This is because recognising problems without blaming enables action to fix the causes of problems.[20]

---

20 For an accessible account, see Matthew Syed, *Black Box Thinking: Marginal Gains and the Secrets of High Performance* (London: John Murray, 2015).

Another approach to improving organisations is called appreciative inquiry. Instead of focusing on problems and trying to fix them, workers are encouraged to identify what things are being done well and what enables them to be done well, and to strengthen the enabling factors. A key part of appreciative inquiry is involvement of the entire workforce in the process of inquiry and change. There are many inspiring stories of this approach bringing about better workplaces and improved performance.[21]

These options sound wonderful and they make sense. So why don't all organisations set up no-blame monitoring systems or institute a process of appreciative inquiry? There are many reasons. One of them is the hierarchical structure of most large organisations. As noted earlier, power tends to corrupt. When top managers have lots of power, and when economic and political inequality in society is extreme, corruption is a constant risk.

When organisations are pitted against each other, top managers see success in competition as more important than ensuring a supportive culture internally. For companies in the marketplace, success can mean a larger market share and higher profits. For churches, success can mean

---

21 See for example David L. Cooperrider, Diana Whitney and Jacqueline M. Stavros, *Appreciative Inquiry Handbook* (Brunswick, OH: Crown Custom; San Francisco: Berrett-Koehler, 2005); Sue Annis Hammond, *The Thin Book of Appreciative Inquiry* (Plano, TX: Thin Book Publishing, n.d., c. 1998); Jane Magruder Watkins and Bernard J. Mohr, *Appreciative Inquiry: Change at the Speed of Imagination* (San Francisco: Jossey-Bass/Pfeiffer, 2001).

more members and more donations. For universities, success can mean more students and higher status.

However, you might think that eliminating corruption would make an organisation more successful. True, at least in the long term. But in the short term, acknowledging corruption has costs to reputation. Church leaders didn't want outsiders to know about paedophile clergy because this would damage the church's reputation. And as soon as organisation leaders tolerate corruption, they are implicated in it and are likely to resist taking action.

There is also an in-group dynamic. Members of the organisation are seen as family or as team members, to be supported without question. Breaking ranks and exposing internal shortcomings is to be disloyal.

Putting all these factors together, the result is that changing organisational cultures is very difficult. That should be obvious simply by looking at the history of major scandals, by looking at surveys showing the prevalence of bullying, and by looking at the persistence of toxic organisational cultures.

This is true despite evidence that greater worker participation improves productivity.[22] Imagine that salary differentials were quite small, or even that managers were paid less than subordinates. This could be justified on the grounds that the jobs of subordinates are less fulfilling, so they deserve more money to compensate for lower satisfaction. Or imagine that everyone automatically receives a

---

22 A classic treatment is Seymour Melman, *Decision-making and Productivity* (Oxford: Basil Blackwell, 1958).

wage, enough to live on, whether they work or not.[23] This would enable workers to leave without drastic sacrifices: they would be in a much stronger position to resist toxic organisational cultures. And they could speak out more easily.

Skill development

Imagine that all the workers in an organisation were given a booklet on how to be effective in challenging corruption, abusive behaviours and dangers to the public. Rather than saying "report the problem to your boss or to a designated authority," instead it would tell about the possibility of reprisals, how to figure out whether managers are implicated, the need to collect information to document the problems, how to communicate with journalists and how to contact others with experience in dealing with problems. This and other information is already available, but is little known to employees.

Imagine that an employer (government or private enterprise) commissions production of a leaflet on "How to be an effective leaker." It would describe the ways to collect and distribute documents and other information to journalists, action groups and other recipients without being tracked or identified. It would give examples of effective

---

23 A cogent articulation of this option is Rutger Bregman, *Utopia for Realists* (London: Bloomsbury, 2017).

leakers and of leaks gone wrong. It would give advice on when it is ethical to leak.[24]

In Australia, this is a fanciful idea, because employers don't want workers to leak. Instead, they want to control access to inside information, including information about shady practices. When there's a leak, employers often institute a search for the leaker, sending the signal to all workers that they will be penalised severely if caught. Employers would not need to worry about leaks if they always operated ethically and listened receptively to reports from workers about possible problems.

If the organisational culture is less than ideal, what can be done? Without relying on authorities to fix problems, workers can develop their skills to become more effective change agents. The aim is not necessarily to become a better whistleblower — that can help — but more to get better at figuring out how to make things better and go about doing this. There are actually quite a few skills involved, and it's useful to discuss them under several categories. Here, I outline six important skills. These are based on observations of what successful organisational activists have been able to do and on what unsuccessful ones seem to have lacked. Others might come up with a somewhat different list of skills. That's fine. The key point is that skills are important.

---

24 My own treatment: "Leaking: practicalities and politics," *The Whistle*, no. 81, January 2015, pp. 13–18, https://www.bmartin.cc/dissent/documents/rr/leaking.pdf.

Collecting information

If there is a problem in the organisation, it is essential to obtain lots of documentation about it. This is one of the first recommendations in many whistleblower advice manuals. Documentation is essential because managers and agencies will try to explain away, discredit or destroy threatening information.

Chris worked for a government department. She noticed that contracts were being given to a friend of a senior manager named Jones, even though other contractors provided better value for money. So she reported the issue to her immediate superior, Helen, who said "Don't you worry, because we always award contracts to the best offer." Then the reprisals began, subtle at first.

If you see a problem and report it, you might be lucky if everyone agrees it's a problem and starts addressing it. However, in a whistleblower scenario, reporting the problem is a trigger for cover-up and reprisals. Therefore, if there's a chance that your reporting of a problem will be unwelcome, it's vital to obtain as much high-quality information as possible. What this involves depends a lot on the problem, the organisation and the circumstances.

Imagine that you hear the boss say that surplus chemicals can just be put down the drain (a known health hazard). Twenty co-workers were there, so you think you can report this to the regulator. But the boss denies saying it, or says it was a joke, and all the co-workers say the same. You need a signed statement from several co-workers, or an audio recording, or a video of chemicals being put down the drain. Actually, you probably need much more than this, enough to convince even the most sceptical person, and

enough to stand up in the face of blatant lying, falsification of records and imaginative methods of explaining things away.

Collecting information thus is not a simple matter. It involves knowing what sorts of information are most revealing and credible, anticipating attempts to evade responsibility, and being prepared for efforts to destroy or falsify data.

There are several functions for the information you collect. One is to make sure there's actually a problem. It's not smart to make allegations when a bit more digging would reveal you've been mistaken. A second function is to provide solid documentation, sufficient to stand up against denials and destruction of evidence. A third function is to convince others that there is a problem that needs to be addressed, one serious enough to warrant attention.

Collecting information may sound obvious and straightforward, but actually it seldom is, because it is often undertaken in circumstances when others are trying to hide or obfuscate the information. Auditors are trained to study accounts, but seldom are they trained about collecting evidence of fraud when the fraud is being committed by those who employ them.

Chris still had her job. Luckily the reprisals were not serious. She kept a low profile and gathered lots more information about the contracting issue.

Preparing accounts

My phone rings. It's about whistleblowing. The caller, who says her name is Chris, wants to tell me her story. I say go ahead. It turns out to be a very long story — a blow-by-

blow account of events that started several years ago. That's fine if I have the time, but often I don't, and in any case when I'm listening I'm trying to figure out what it's all about. I'd like to know answers to some basic questions: what was the problem, what did you do that triggered reprisals, who's trying to shut you down, why, and who else have you approached about this? What I'd like most is a short summary so I can orient myself and be in a position to offer advice.

An email arrives. It's someone who'd like me to help. The attachment is a 100-page transcript from a court hearing. Yes, I can read the transcript and try to identify the key issues. It would be so much easier if the correspondent listed them in dot-point form.

At some watchdog agencies, parcels regularly arrive. Thick parcels, with hundreds of pages of documents. Or they might contain a CD or DVD with hundreds of files.

To be effective in getting advice and winning support, it's very useful to be able to tell your story or to explain the issues in a short understandable form. Writing is usually the best: a one-page or one-screen summary providing the context (who, what, where, when, why and how), what happened, why it's important and what needs to be done.

After months or years in a highly stressful situation, it's not easy to write a short summary. To do so requires skill in thinking and in expressing thoughts. Practice helps. So does getting feedback.

I advised Chris to write a short summary of the issues. She sent me a draft and I offered some comments. After a few more drafts, she was ready to show it to others. Which ones?

Understanding organisations

I ask Chris which of her co-workers she thinks are involved in the scam: Obviously the senior manager Jones. What about her immediate superior Helen: is she just covering for Jones, or is she getting some additional personal benefit? Chris isn't sure.

I ask her whether there are any co-workers she can trust. Are there any experienced and wise individuals who are honest and who can give her advice? She doesn't really know.

Chris needs a better understanding of the place where she works: who has power, how people are connected, who works hard and is honest, who has favours to offer, who has insight and experience. She needs to get an idea of what happened to others who spoke out about problems. She needs to know some of the history of the organisation, and how workers reacted to events. With this sort of understanding, she is in a much better position to decide on a course of action. She will know who is worth consulting, who to trust (maybe no one!) and how people will respond to actions she might take.

She would also benefit by understanding how other organisations operate, for example contractors, other government departments, and outside bodies that might take action.

Many workers just do their jobs, and many take pride in doing good work. They read policy announcements, meet other workers and hear some gossip. This is fine for doing what is required but may not be enough when there is a serious problem that needs addressing. It's valuable to learn how the organisation works: the distribution of power, the

relationships between key individuals, the incentives and disincentives in play. It's valuable to learn some of the history of the organisation, because the same patterns of individual and collective behaviour are likely to recur.

One of the best ways to learn about organisational dynamics is to talk with experienced and wise members of the organisation. They might still be working there, or they might be at another job or be retired. If you can track down a few such individuals, you can learn from their stories. If you decide you can trust them, you can ask for advice.

This is what Chris did. She found a senior figure, Alice, who was just about to retire. Alice enjoyed telling stories of what had happened in the department in previous years and decades. Chris asked whether anyone had ever tried to address favouritism in awarding contracts. Alice realised Chris needed guidance.

Building support

Alice told Chris about the only time there had been a major challenge to favouritism, one that made a difference. A core group of four workers started the process. They planned a campaign that involved talking to others to collect more information, raising awareness about the problems, using social media to circulate relevant articles and comments, and organising a petition and a delegation to management. It wasn't easy but it did have an effect. Chris realised she needed to convince some co-workers to join her, and for the group to develop a strategy and follow through on it.

To bring about change in an organisation, it is far more effective when many people are involved. This includes overcoming corruption, abuses, bad policies, toxic culture

and many other challenges. A single worker who speaks out is vulnerable and usually has a low prospect of fostering change. Half a dozen workers acting together are less vulnerable to reprisals and have better prospects of success. Half the workforce acting together has even better odds.

Thus, when a single worker wants to promote change, it is useful to acquire and practise skills in building support. This means winning over others by talking to them, writing accounts, organising meetings, identifying and fostering others' skills, and thinking strategically.

Few workers have such skills. Labour organisers often do — and they are not necessarily union officials. Community organisers have these sorts of skills.[25] To develop skills in building support, it's worthwhile to identify organisers, observe what they do and, if possible, adopt them as mentors.

Some people have organising skills through their non-work activities, for example in political parties, sporting clubs, religious groups and fund-raising efforts. These skills need to be adapted to the challenge of addressing problems, which is often difficult.

---

25 The classic reference is Saul D. Alinsky, *Rules for Radicals* (New York: Random House, 1971). See also Chris Crass, *Towards Collective Liberation: Anti-racist Organizing, Feminist Praxis, and Movement Building Strategy* (Oakland, CA: PM Press, 2013); Robert Fisher, *Let the People Decide: Neighborhood Organizing in America* (Boston: Twayne, 1984); Eric Mann, *Playbook for Progressives: 16 Qualities of the Successful Organizer* (Boston: Beacon Press, 2011).

Using media

Chris found a couple of others willing to work with her on a campaign. Their initial efforts helped raise consciousness, but their talks with other workers made them realise that bringing about change would probably require bringing some outside pressure to bear. Knowing that management was highly sensitive to the organisation's reputation for fairness, they thought about contacting a journalist. But who? And how could they trust a journalist to be helpful? If they found a suitable journalist, what should they say?

Being able to use various types of media effectively is a valuable skill for anyone trying to address a problem. Media here refers to virtually any method of communication. Let's say you've written an account of the problem, and you want to recruit some allies to help deal with it. You can talk to co-workers face-to-face, which is fine. You can also invite them to read your account and then discuss it. You can send the account to individuals via email or texts. You can post it on Facebook or some other platforms. You can set up a website and post it there, along with supporting documents. You can send it to journalists.

For using media effectively, it is important to understand how they operate. If you want journalists to take an interest, you need to know how media companies operate, what sorts of stories are run, what sorts of examples and information should be highlighted, when to make contact, and so forth. If you decide to leak information anonymously, you need to know about leaking platforms, how to maintain your anonymity, how to check what's happening, and how to lie convincingly about not being the leaker — if anyone asks.

For using the media effectively, it is useful to learn from experienced practitioners, whether this is Twitter or television. As much as possible, it's valuable to practise. If you are going to use Facebook, it's worth having experience with making posts, publicising them, dealing with complaints and perhaps dealing with threats to sue.

Mass media are not necessarily the solution. Some whistleblowers are frustrated because journalists are not interested or because their revealing website is ignored. Or there might be stories published but the problem is not fixed. Part of understanding media is knowing their limitations and knowing when some other approach is more promising.

Understanding yourself

Chris had to decide whether to be the one to talk to a journalist. This was a sensitive issue. She wanted to remain anonymous, but the journalist would probably want to include a personal profile — of Chris — because a story with a human interest is much more engaging.

Chris wasn't sure about this. How would she fare if she became the centre of attention? What about reprisals? Could she cope with losing her job? What was really most important for her?

To be effective in challenging problems, self-understanding is crucial. You need to know what drives you. Is it anger? Self-esteem? Altruistic concern for others?

You need to know your own skills, namely what you can do and what you can't do. You need to understand your capacity to win support through personal connections.

You need to understand how tenacious you are, and what you're willing and likely to do in a crisis. You need to understand how you'll cope with reprisals, including when co-workers shun you, when you are denounced in media stories, when you receive abusive messages, when you lose you job and when your relationships come under stress.

Part of self-understanding is knowing your own personality. Are you calm, conscientious, agreeable, curious and open to new ideas? These all sound good, but it depends on the circumstances. If you're excessively conscientious, you may be obsessive. If you're too agreeable, you may not be able to stand up against the crowd. The point is that self-understanding is vital.

I've outlined six important skills for anyone who wants to take action about problems in an organisation. Many of them are relevant for activism more widely. With these skills, workers can make better judgements about identifying problems and knowing how best to go about addressing them. What is striking about the discourse about whistleblowing is how seldom anyone talks about skill development as an approach to dealing with organisational dysfunctions. It's as if the people in charge — in organisations, in government — were saying, "You don't need to do anything except speak out. We'll protect you." One of the key skills needed by workers is to see that this implicit message is misleading and dangerous.

Collective action

In India, many public officials expect to receive a bribe in order to do their job, for example to process an application.

Campaigners in the anti-corruption group 5th Pillar decided to produce a consciousness-raising piece of currency, the zero-rupee note.[26] It looks like a regular piece of currency except that it says zero rupees and gives the source as 5th Pillar, which is well known. The group produced large numbers of these notes in five languages and encouraged people to hand over one of the notes in situations where a bribe is expected or demanded, for example at weddings and birthdays.

As the name indicates, the zero-rupee note has no legal standing or value but it does convey a powerful message: "I'm not going to pay a bribe." In nearly all cases reported to 5th Pillar, officials given one of the notes backed off from their demands for bribes. As the campaign developed, some services displayed zero-currency notes. This is a convenient way of saying that they do not expect or accept bribes. A reputation for honesty can be a powerful magnet.

The zero-rupee note is just one of 5th Pillar's initiatives. Others include training citizens in making right-to-information requests that help to hold public officials to account, running education workshops for young people, organising protest actions, holding information stalls, and cooperating with social service camps in rural areas. The aim is to broaden involvement in efforts against corruption.

---

26 5th Pillar, Zero Rupee Note, https://5thpillar.org/programs/zero-rupee-note/, described as "a non-violent weapon of non-cooperation against corruption."

This example is taken from Shaazka Beyerle's revealing book *Curtailing Corruption*.[27] She studied anti-corruption campaigns in 15 different countries. The message from these campaigns is that collective action by local communities can be a powerful force against corruption, including in places where it is dangerous to oppose authorities. When the authorities are deeply implicated in corrupt activities, it is obviously futile to appeal to them to fix the problem.

Collective action has several advantages. It harnesses the skills of many different individuals, draws on a variety of personal networks, reduces the danger of reprisals against individuals, and provides inspiration for others. When collective action becomes widespread and persistent, it is possible to talk of a social movement, in the tradition of anti-slavery, feminist, peace and environmental movements. If corruption is a serious problem, then the best antidote is an anti-corruption movement.

All of Beyerle's examples are from so-called developing countries, not the affluent industrial or post-industrial societies of Europe, North America, Japan and Australasia. This does not mean corruption has been eliminated from these societies.

Beyerle's treatment is especially important because there are remarkably few investigations into the power of collective action against corruption. Similarly, there is

---

27 Shaazka Beyerle, *Curtailing Corruption: People Power for Accountability and Justice* (Boulder, CO: Lynne Rienner, 2014).

relatively little research into workers' challenges to oppressive organisational structures.[28]

Whistleblowers, as isolated individuals, may be powerless to bring about change, but can do a lot more by providing assistance to action groups. Imagine a worker inside an energy company or a government immigration department who wants to challenge some of the paths being taken. Speaking out internally is one option, likely to be disastrous. More effective would be providing information and advice to an outside action group, doing this separately from the job. Depending on the circumstances, the dissident worker might remain anonymous, providing information and advice via encrypted emails or phone calls.

The combination of insiders and outsiders can be powerful. The insiders have information about what's happening and about responses to campaigning efforts. The outsiders have much more freedom to act because they are relatively safe from reprisals.

---

28 There is a body of writing about workers' control. See for example Immanuel Ness and Dario Azzellini, eds., *Ours to Master and to Own: Workers' Control from the Commune to the Present* (Chicago, IL: Haymarket Books, 2011). Sociologist Deena Weinstein likened bureaucracies to authoritarian states, lacking freedom of speech and the right to form opposition movements. See *Bureaucratic Opposition: Challenging Abuses at the Workplace* (New York: Pergamon, 1979). For a nonviolent-action perspective, see Brian Martin, Sharon Callaghan and Chris Fox, *Challenging Bureaucratic Elites* (Wollongong: Schweik Action Wollongong, 1997).

There are at least four approaches for dealing with social problems, in particular problems in organisations, the ones most commonly encountered by whistleblowers. The first is whistleblower protection, the second is changing the culture of organisations, the third is skill development and the fourth is collective action. Looking at these options, it is striking that there is so much emphasis on whistleblower protection when it has such a poor track record. This is no surprise, because whistleblower protection keeps workers in a more dependent position. Changing the culture means empowering subordinates, and so do skill development and collective action. The message is there should be less reliance on official channels and more emphasis and effort towards empowering workers and citizens.

Four options for challenging problems compared on a number of dimensions

	Official channels	**Culture change**	**Skill development**	**Collective action**
Justice provided by	Official bodies	Changed attitudes and behaviours	Individual efforts	Social action
Locus of action	Official bodies	Organisation	Employee	Social movements
Importance of evidence	Great	Low	Great	Moderate

Role of media	Nonexistent or incidental	Usually low	Potentially large	Supplementary
Links to others in the same situation	Not necessary or common	Inherent in bringing about change	Important	Inherent in bringing about change
Biggest costs	Lawyers; agency staff time	Involvement in change processes	Employee's time and effort	Organising
Timing	After blowing the whistle	When managers are open to change	Preferably before taking action	When opportunities arise
Learning spin-offs	Official bodies learn how to handle cases	Managers and employees learn new ways of relating	Employees learn how to take action	Citizens learn how to act together

Conclusion

A worker reports some problem, something that serves the public interest. Instead of the problem being addressed, the worker becomes the target of reprisals, ranging from the silent treatment through to dismissal and blacklisting. Then the worker goes to some watchdog agency or other official avenue for relief: a hotline service, an ombudsman, an auditor-general, an anti-corruption agency, a politician or a

court. Sometimes the official channel is helpful, but often not. Even the most supportive agencies and processes are slow and focus on technicalities. Furthermore, even when they provide some redress for the whistleblower, hardly ever do they bring about change in the organisation. The drawn-out processes of whistleblower protection thus serve to prevent or delay action against the problem while giving the appearance that justice is being served.

Meanwhile, many dedicated members of watchdog agencies do what they can to help badly treated workers. But the capacity of agencies to fix deep-seated problems is limited. They are constrained by limited budgets, narrow mandates, and bureaucratic rules for processing complaints.

Whistleblower protection is the mantra from managers and politicians, taken up by journalists and hence many members of the public. The experience of whistleblowers, if noticed at all, is seen as evidence that protection needs to be improved. Decades of legislative attempts to improve protection have not been enough to make a great deal of difference, but rather than this triggering a rethink, past shortcomings are seen as the rationale for continuing down the same path.

A few critics have pointed out that there are inherent flaws in the idea of whistleblower protection. Corruption and other serious problems in organisations often implicate higher management as either perpetrators or as knowing bystanders. So it seems idealistic to imagine that higher management should be the ones to provide protection to those exposing wrongdoing.

More deeply, it is implausible that any mechanism can allow a lowly worker, with only truth on their side, to

overcome powerful managers. If such a mechanism became available, it would overturn organisational hierarchies. The whole system, which involves power inequalities and the associated corruptions of power, would be in jeopardy. This suggests that whistleblower protection, while good when it occasionally works, is inherently flawed.

The persistence of the belief in whistleblower protection might make sense if it were the only option. But it isn't. Other options are changing organisational cultures, developing the skills of workers, and engaging in collective action. Each of these involves more power for workers. However, few managers want subordinates to be so empowered that they could challenge management. No wonder whistleblower protection is the desired option.

The lesson from the experience of whistleblowers is to be sceptical of official channels, and instead look to worker empowerment as a more promising path.

Appendix: Perpetual complainers

I have described how some whistleblowers seek justice through official channels. They might start by reporting a matter to their boss, then the boss's boss, then the board of management, then outside bodies such as ombudsmen, auditors-general, anti-corruption agencies, administrative appeals tribunals, politicians and courts. Whistleblowers who go to one agency after another, never being satisfied, see the shortcomings of official channels.

However, there's another sort of individual who does exactly the same thing, an individual who has a personal grievance that hardly anyone else thinks has merit. It might

be an imagined or mistaken issue. Some people are delusional.

Then there are those who start off with a real issue, but make it into something much too large. They are cheated out of a few hundred dollars and pursue the matter through successive courts.

How do you tell the difference between those who have raised a serious public-interest matter and those who are pursuing a mistaken or pointless quest? Aren't official channels the ones entrusted to figure this out?

There's no easy answer to this. One option is an independent assessment by someone with no stake in the matter. Even better would be multiple independent assessments. After the company Enron went bankrupt in 2001, the consensus by informed observers was that top management was corrupt, so Enron vice president Sharron Watkins, who had reported problems to the CEO, was seen as a whistle-blower. The judgement about whistleblowing is made through a collective process involving many observers. Sometimes this judgement is a long time coming. For example, in some cases involving paedophilia by members of the clergy, complaints were made at the time but nothing was done until decades later, after major exposés.

In contrast to these prominent examples are some other types. A homeowner is distressed when his neighbour builds a wall half a metre higher than allowed by regulations. The homeowner puts in a complaint about his view being affected, but it is dismissed. (The application of the regulation is a matter of interpretation.) He then goes to an appeal body, which also dismisses his complaint. He next takes the matter to a court, and then to a higher court.

Eventually, frustrated by his lack of success, he puts a giant sign in his front yard accusing his neighbour of fraud and accusing higher authorities of being corrupt. After further escalation, the homeowner is arrested and charged with various offences. Decades later, the standoff continues. (This example is modelled on an actual case.)

An undergraduate student is dissatisfied with a mark on an assignment, requests reconsideration, and is given a slight increase. Then he questions his mark for participation in class and is unhappy with the result. Next he appeals his overall mark in the class and, when unsuccessful, appeals the decision based on process. Having an occasional success isn't enough. He claims that he was misinformed about the requirements for a major and demands that an exemption be granted. Eventually, despite a poor record, he is allowed to graduate. Even that is not enough: he puts in an appeal to be recorded as having a double major. The academics involved with his case say that if he had put as much energy into his studies as into his complaints, he would have graduated sooner with higher marks. (This example is also modelled on an actual case.)

I've talked with quite a few individuals who are have tried every possible avenue of appeal. In a few cases, they had been unsuccessful in court and tried to appeal, but the upper court refused to hear their case. From the materials they sent me, I could understand why: their matters were fairly minor. The next step: they were going to appeal to the Privy Council in London, something possible in principle because the British monarch officially remains the monarch of Australia. I always advised against appealing to the Privy Council because it was a waste of time. What would the

Privy Council care about some trivial legal dispute in Australia?

I've talked with a few individuals who make sweeping allegations about corruption, naming individuals and expecting me, and others, to follow up. All I can do is refer them to my book *Whistleblowing* and perhaps make a few specific suggestions. Then I start receiving copies of emails sent to dozens of politicians, watchdog agencies and journalists — and the emails keep coming, for weeks or months. Sometimes, receiving numerous emails every day from the same individual, I set up a filter to send their emails to trash.

Imagine looking at these sorts of issues from the point of view of high-level authorities. A senior government bureaucrat is not going to want to bother about a neighbour dispute over an alleged variation in a building. A senior academic administrator will not want to be involved in a student complaint concerning a few marks on an assignment. Politicians, ombudsman's offices and journalists will not want to deal with repetitive emails making numerous allegations about corruption.

Perpetual complainers can take up much of the time of senior officials. These complainers are one reason why official channels are set up with complicated sets of rules. Unless there are ways to screen out or deal with these sorts of complainants, agencies would be overwhelmed by relatively few such individuals, leaving insufficient time and energy to deal with more important matters.

What is the most useful way to understand the relationship between official channels and perpetual complainers? The usual thinking is that these individuals

are responsible for a monumental waste of time and resources. They demand attention and divert efforts from more worthy issues.

Another perspective is that official channels are especially needed to deal with perpetual complainers, who are in a desperate but fruitless search for acknowledgement and support. Official channels provide a convenient way of justifying a judgement that the quest has little or no substance. If official channels were not available, these complainers would just bother others, and there would be no end to the process. Because official channels are slow and highly procedural, they are ideal for slowing down these complainers and trapping them in technicalities, dampening their ardour.

Yet another perspective is that official channels, by promising to provide justice, give false hope to perpetual complainers. If there were no appeal bodies, in other words no one to whom to make a formal complaint, these individuals would have to address the issue closer to its source, or perhaps simply to set it aside and get on with their lives. This is speculative, because no studies have been done comparing communities with and without particular agencies to see whether complainants are more or less active. A plausible hypothesis is that complaints will increase or expand to fill the capacity of grievance systems.

Could it be that perpetual complainers are intentionally gumming up the system so genuine complainants do not obtain a fair hearing? Although perpetual complainers may be deluded about their cases and their chances of success, there is little evidence that they are cynical manipulators of the system.

Undoubtedly, perpetual complainers need help. When their complaints are serious and legitimate — according to some impartial judgement — they should be listened to. When their complaints are imaginary, misguided or grossly inflated, they need help to find more productive ways to spend their time and energy. This might involve counselling, friends, a supportive community or other outlets for their efforts. It might involve different rules and systems so that their initial grievance does not arise. It's hard to propose a comprehensive solution because there are so many different sources of complaint. What is apparent is that the system is not working for them.

3
Sexual harassment

From 1976 to 1985, I worked in Canberra at the Australian National University and became interested in dysfunctions of academic life. One of them was academic exploitation: some academics take credit for the work of their students, subordinates and wives. I read about a few cases and heard various stories.

One day in 1982 I was talking about this with a friend, Robert, who said he knew someone I should talk to. I did, on 2 December, the one and only time I met her. I'll call her Kay and call the professor she worked for Hill. Here is an edited extract from my notes taken immediately afterwards.

> Kay did four years of an undergraduate degree, then worked as a research assistant with Professor Hill in 1981. He was over 60 years old. She had a 25-hour per week job funded by a research grant. Hill has had these grants for years, but has never completed the work intended, and some of Kay's work was on one of these old projects. Hill expected her to read up on subjects on which he knew little, and write up summaries so he could understand the subject (or she could just tell him what he needed to know). Apparently he hasn't published anything for years. In many cases Hill is far out of date, but doesn't want to read the material that is current, preferring Kay to do this for him. In other cases, he wants to present a particular perspective, and

asks Kay to find a quote to illustrate it. The same thing has happened to previous research assistants, but there is no indication that any of them will receive any scholarly credit.

All of this is tied up with sexual dynamics. The three-hour discussions are partly to enable Hill to enjoy female company, and he asks about her private life, in particular when she was breaking up with her husband, a masters student in the same department. Hill would tell Kay things her husband had said, and tell her husband things she had said, and actively encouraged their separation. Eventually he reached the stage of overt sexual proposition. At this, Kay decided to leave, but returned so she could receive all her salary and bonus in lieu of sick leave.

Hill had also used physical affection, for example hugging. This has been going on for years with students and research assistants. In one case a women became pregnant by Hill. He paid half the expenses for an abortion in Sydney (and naturally did not go along), and broke up the relationship afterward. Kay didn't really consider doing anything about this, since undergraduates have complained for years, and nothing has been done. Hill has been removed from the headship of the department, but continues his activities nevertheless. Women would have to speak out to expose him, and this might mean losing any opportunity for doing a PhD in the department. In other cases, although their careers are destroyed or diverted, they do not want to do anything to hurt Hill. It is clear that in this case academic exploitation is closely tied

up with sexual exploitation: the academic power hierarchy is congruent with male dominance.

Kay's story was about academic exploitation, but it included a sexual element. Was this sexual harassment?

Sexual harassment refers to actions such as leering, offensive jokes, unwanted touching, requests for sexual favours, rape and sexual assault. To determine whether behaviour should be called harassment, it is helpful to consider three criteria: sexual harassment is unwelcome, unsolicited and unreciprocated.

Sexual harassment has been occurring for a very long time, but for centuries it didn't have a name. Many women simply put up with it and tried to avoid it, but there was no organised campaign to oppose it. Then in the 1970s came the second wave of the feminist movement. Women were empowered and spoke out about harassment at work. In the US, laws were passed. Sexual harassment was treated as a form of discrimination.

Most cases involve men harassing women, but there are other combinations: women by women, men by men and men by women.

The effects of sexual harassment can be severe. It can cause stress and drive some targets out of jobs and careers. Harassment has been especially bad in male-dominated occupations such as truck driving and engineering.

At a university, there are several situations of concern: interactions between teachers and students, between staff and staff, and between students and students. Sexual harassment occurs in all these relationships, but with somewhat different patterns and dynamics. Power differences

are often involved. For example, a teacher might seek sexual favours from a student in exchange for giving a good mark ("an A for a lay"). In student residential colleges, harassment of female students can sometimes be a sort of game.

One common problem occurs when an individual is not told that their behaviour is unwelcome. If a man touches a woman, it is often a sincere gesture of support or affection. If a woman finds the touch unwelcome, she needs to communicate this to the man, but sometimes doesn't because it is awkward. A department head might lean over the secretary while she sits at the desk. She finds this uncomfortable but is reluctant to say anything because he is her boss. She might think that her body language — recoiling at his touch or presence — is enough, but some men do not notice.

The aims of campaigning about sexual harassment have included helping targets gain understanding and skills to resist and complain and helping potential perpetrators become more aware of the implications of their behaviours.

There is a lot more that can be said about sexual harassment. My focus here is on what I learned about official channels.

After becoming more aware of the issue, in 1983 I joined with another member of my trade union, the Health & Research Employees Association, to undertake a survey of sexual harassment among members. Peta and I obtained quite a bit of information and wrote a report. In retrospect, the survey was as much about raising awareness as obtaining information.

The next year, 1984, sexual harassment came onto the official university agenda. There were two main orientations to sexual harassment, exemplified by the two committees that were set up. One committee, mainly composed of academics and administrative staff, worked on developing procedures for handling formal complaints. Later, it set up the panel that would receive and handle complaints, and arranged for training of the panel members. This committee was oriented to formal procedures. Its task was not easy. It needed to provide redress for harassment but also to provide procedural fairness for those complained about. The committee procedures required all parties to maintain confidentiality. There had to be an appeal process for complainants and defendants alike.

The other committee, of which I was a member, focused on raising awareness. This small committee was mainly composed of undergraduate students, research students and me as a research associate. We produced and distributed a leaflet, produced posters, wrote articles and gave talks.

The two committees epitomised the contrast between official channels and what might be called publicity or education. The official-channel committee was heavy with procedures and protections. It was based on the assumption that, once the committee's existence was known, complaints would come to it, and addressing these complaints would operate to address the problem.

The publicity committee was based on the assumption that the most effective way to address sexual harassment was through heightened awareness and skills throughout the university community. We set out to explain what

sexual harassment is, how it affects targets, and the importance of opposing it. Our message was designed for everyone, including targets, perpetrators and bystanders. We wanted staff and students to be aware of the problem, for potential harassers to rethink their behaviours and for possible targets to be aware of ways to respond.

Ideally, these two committees would be complementary. The publicity committee would stimulate awareness with the result that complaints would be made to the official committee. The existence of the official committee would provide reassurance that something could be done about harassment.

It's not possible for me to provide any data about the effectiveness of these two committees. Members of each were each doing what we thought was important and no one was monitoring the impact of our efforts. So far as I know, the official committee received no formal complaints.

For many, perhaps most, targets of sexual harassment, making a formal complaint is highly stressful. Often, episodes of harassment are embarrassing. After all, they involve sexual matters, often humiliating. It is a further humiliation to describe these to others. Another obstacle is that many targets blame themselves, even though this might be illogical.

The reluctance of women to report sexual harassment is well known in the case of rape. Surveys show that a relatively small percentage of rape victims make reports to police, and fewer still end up testifying in court. When they do, and are vigorously cross-examined, they can find this as

distressing as the rape itself. The court experiences of rape survivors are sometimes called the "second assault."[1]

For same-sex harassment, there is an additional complication. Because of the stigma attached to homosexuality in some circles, making a formal report about harassment can reveal an aspect of one's behaviour that would otherwise remain private.

For men harassed by women, there is the risk that others will not take their concerns seriously. A common joke by men dismissive of sexual harassment is to say, "I wouldn't mind being harassed by her!"

Some instances of sexual harassment are quite serious, enough to justify going to the police and making charges of rape or assault. However, behaviours in the majority of cases, such as continued touching, requests for sex, stalking and sending of pornographic materials, are not recognised as criminal. In quite a few cases, to make a formal complaint escalates the issue, potentially breaking down relationships at work or in the classroom and sometimes making things worse for the complainant. This is another

---

1 Elizabeth A. Stanko, *Intimate Intrusions: Women's Experience of Male Violence* (London: Routledge & Kegan Paul, 1985). Angela K. Lawson and Louise F. Fitzgerald, "Sexual harassment litigation: a road to re-victimization or recovery?" *Psychological Injury and Law,* vol. 9, 2016, pp. 216–229, reported that "participation and persistence in litigation played a consistent role in psychological outcomes across time, over and above the impact of harassment itself. However, litigation did not appear to be the cause of psychological outcomes as posttraumatic stress disorder (PTSD) symptomatology, in particular, was the result of the original harassment experience."

reason why so many women and men report being sexually harassed but not making a formal complaint.

Another problem with formal procedures occurs when there is a malicious complaint. Quite a few men fear being charged with harassment even though they haven't done anything. This occasionally happens, though it is rare. More common is that a misjudged touch or proposition is taken badly, a complaint is made, leading to a process that for the alleged perpetrator is lengthy, arduous and damaging. The formal process turns what might have been sorted out fairly easily into an something excruciating for all involved.

A deeper problem is that nearly all sexual harassment laws and procedures are complaint-based. If a complaint is made, it is addressed. If there is no complaint, nothing is done. There is no mechanism to ensure or even to determine whether the complaints are about the most serious problems. Ironically, targets who are more confident, articulate and secure in their positions are in a stronger position to make formal complaints. Those who are the most vulnerable and powerless may be left without support.

The two approaches

To have two approaches to sexual harassment — procedures for handling formal complaints, and publicity and education — seems sensible. I was always comfortable with there being these two approaches, which complement each other. Publicity and education can help discourage harassment and empower possible targets, while formal procedures can deal with serious cases and apply penalties for serious or persistent harassment. In addition, the formal procedures offer an important symbolic statement about the

institution's stand against harassment. My own personal preference was with the publicity side, whereas others ensured the operation and credibility of the procedures.

What I have observed over the years, though, is a continual emphasis on formal procedures and a neglect of efforts for individual empowerment and cultural change. The implication, for me, is that more effort needs to be put into prevention compared to procedures for dealing with harassment complaints.

Because of my involvement with sexual harassment, I started reading whatever I could find about it. There are numerous books and articles about the extent of the problem, patterns within occupations and the driving forces behind harassment. When it came to what to do about it, I found numerous treatments of laws and procedures. In contrast, there was hardly anything written giving advice to women about the practicalities of dealing with harassment. The assumption in most writing is that they should make complaints so that someone else can address the problem. Here, I look at several books that, in contrast, focus on non-institutional responses.

Georgie Porgie

Sue Wise and Liz Stanley are feminist researchers. They wrote a book titled *Georgie Porgie: Sexual Harassment in Everyday Life,* published in 1987.[2] This was very early in

---

2 Sue Wise and Liz Stanley, *Georgie Porgie: Sexual Harassment in Everyday Life* (London: Pandora Press, 1987). Today's feminists might disagree with Wise and Stanley in some regards. My focus here is on insights their work provides about official channels.

the emergence of sexual harassment as a social issue. The title of the book refers to a nursery rhyme, reproduced on the front cover:

> Georgie Porgie, pudding and pie —
> kissed the girls and made them cry.
> When the boys came out to play
> Georgie Porgie ran away.

Wise and Stanley's basic theme is that sexual harassment has been defined in a narrow fashion that leaves out the harassment of women in everyday life: the Georgie Porgies of the world. They use an approach called the "archaeology of knowledge" to show how sexual harassment has been packaged in a framework that assumes it can be understood as occurring in workplaces, that it involves blatant acts, and that it can be addressed through formal mechanisms. They use anecdotes and arguments to focus attention on more commonplace forms of harassment and some practical ways of responding to them.

One of their examples is Peter Sutcliffe, known as the Yorkshire Ripper, a feared killer of 13 women in the period 1975–1980. The attention given to the Yorkshire Ripper made it seem like sexual violence was something done only by unusual men. Wise and Stanley think this is misleading, drawing attention away from violence by ordinary men. They assert that sexual harassment is part of everyday life and that many women are doing effective things to oppose it. Salvation does not come through male-designed formal procedures.

… we think that women's experiences show very clearly indeed that actual sexual harassments range from the most subtle and ambiguous male behaviours to the most obscenely and grossly grotesque; and that "sexual harassment" is simply what women's experience of life within sexist society consists of for much of the time.[3]

Wise and Stanley describe four strategies against sexual harassment. The first is active resistance. In 1974, in California, Inez Garcia was raped by a man while another held her down. Soon after, she went after the men, shooting and killing one while failing to find the other. (She was initially convicted of murder and went to prison, then released on appeal.) Wise and Stanley use this example to illustrate that sexual violence can sometimes cause anger and trigger a fierce response.

A second strategy is "joining in," which in practice means giving the harasser a dose of his own medicine. Here is one of Wise and Stanley's examples:

Some women employees at a jewellery factory had many problems with a "randy Romeo" businessman who dished out "smutty jokes and nudge-and-wink suggestions" all the time accompanied by much grabbing and grappling and pinching. They felt they had to put up with him because he commissioned a lot of business from the factory and was therefore important to their continued employment. But "revenge came at

---

3 Ibid., p. 62.

an office party" to which he brought his wife. What the women did was spend the whole evening giving him a taste of his own medicine; they made lewd suggestions which were accompanied by many "sexy nudges," and all very carefully arranged so as to be almost within earshot of his wife. Their plan to get their own back and teach him a lesson worked, and "now he is a changed fella" when he appears at the factory.[4]

A third strategy is to ignore the harassment. This can be for any of several reasons, including being too busy with other priorities to bother, being too tired to respond, and deciding it is a safer option. When women are routinely harassed, it requires effort to oppose inappropriate behaviours. Furthermore, after a while this becomes boring. When someone tells a sexist joke, sometimes it is easier just to let it pass without comment.

Wise and Stanley tell of a time when one of them — they didn't say which one — was on a train late at night. She was the only passenger in a carriage until a large man came in, sat near her and put his dirty feet on a seat. In other circumstances she might have challenged him but given his behaviour and demeanour she decided that ignoring his actions was the safer course of action.

Wise and Stanley's fourth option is avoiding situations when harassment is likely. This includes not going into pubs where most patrons are drunken men, avoiding certain streets at night, and not drawing attention to yourself with

---

4 Ibid., pp. 167–168.

provocative clothes. This option might seem like capitulation to male domination. After all, feminists often assert that they should be able to go where they want and wear what they want without having to put up with men's unwanted attention. Wise and Stanley, however, argue that often it is better for women to avoid risk. They tell about an Iranian friend who found voluntarily wearing the veil was liberating because it freed her of unwanted advances from men.

Wise and Stanley give an example from their own experience. They tell how they do not wear skirts, in part because trousers are more "practical and comfortable" and can make a statement in some circumstances, like a courtroom.

> But at least as important in this positive selection of clothing is the certain knowledge that a show of calf, no matter how fat and hairy, would lead to hassles from intruding male eyes and comments. Jeans and dungarees are therefore a deliberate avoidance strategy and constrainment, as well as being a positive choice.[5]

In summary, Wise and Stanley offer four strategies for dealing with sexual harassment in everyday life: actively resisting it; engaging in mimicking behaviour to neutralise it; ignoring it; and avoiding it. They see sexual harassment as a day-to-day occurrence for many women, and therefore routine methods are needed for dealing with it. Having

---

5 Ibid., p. 172.

formal procedures for reporting harassment seems nice but is ineffectual or too burdensome for the bulk of harassment. The preoccupation with official channels can make people think the problem has been addressed and divert attention from skills and strategies that are far more relevant to women's experiences.

Back Off!

In 1993, Martha Langelan's book *Back Off!* was published.[6] I had been reading many books about the problem of sexual harassment and about laws and procedures. In contrast, *Back Off!* was a systematic presentation of techniques by which women can oppose harassers. Langelan describes verbal techniques of dealing with sexist and demeaning comments and collective action by women to confront harassers. This approach seems to have a lot of promise: it gives women skills and confidence to directly deal with harassment.

A key insight of the book is that simply standing up and opposing harassment is remarkably effective. Group actions are immensely powerful. Collecting information and building support are important.

Langelan describes three types of harassment, and in all cases harassment is a learned behaviour. *Sexually predatory harassment* involves seeking sexual thrills via the act of harassing, as in the cases of flashing and making obscene phone calls. Harassment via social media could fit into this category. Some predatory harassment involves

---

6 Martha J. Langelan, *Back Off! How to Confront and Stop Sexual Harassment and Harassers* (New York: Simon & Schuster, 1993).

sexual extortion, rape-testing (seeing whether a woman is likely to resist) and rape.

Male-dominance harassment is an attempt to bolster the harasser's male ego. Men seek to "assert their status, and reassure themselves that their masculinity commands respect and female deference." Langelan says that, according to women's accounts, this is the most common sort of sexual harassment.

Strategic harassment serves to maintain male privilege in jobs, facilities and elsewhere. "At the crudest level, the goal of strategic harassment is to force women out, to protect a male monopoly on jobs, educational opportunities, community facilities, or other economic resources."[7] When a woman is successful in a male domain, for example as an electrician or a surgeon, she may be targeted with rumours or have her work sabotaged.

According to Langelan, most harassers don't try to justify their actions. They just say it's all in fun and doesn't do any harm. Only a few aim to humiliate their targets.

Langelan traces the roots of resistance to sexual harassment to nonviolent action by women, the US civil rights movement and feminist self-defence theory. She presents four criteria from feminist self-defence theory that can be used to judge action against sexual harassment.

1. Does it reflect the realities of women's lives?
2. Does it build on and expand women's abilities?
3. Does it widen women's mobility?
4. Does it aid independence?

7 Ibid., p. 45 and pp. 48–49.

These criteria can readily be applied to different responses to harassment. Avoidance and passivity don't satisfy the criteria, but confrontation does. Confrontation is an immediate response. It can surprise the attacker and creates maximum effects for minimum effort. Langelan: "a woman who confronts a harasser goes directly to the abusive behavior, labels it publicly as harassment, and holds the man accountable for it."[8] Langelan's guidelines for self-defence are to be alert, trust your instincts, be prepared, rely on your own resources, yell for support and help others under attack.

With this framework, Langelan proceeds to describe success stories of resistance to harassment, including resistance by children, in the workplace, in male-dominated jobs, against construction workers and other public harassers, ministers, academics, landlords, muggers and rapists. She gives examples of men who are allies against harassment. She also tells of cases in which groups of women confronted harassers, to powerful effect.

In one example, Martina arrived at a bus stop and witnessed the only man there making comments to each of the women waiting, directly in their faces, such as "Hey, mama, hey, bitch, you look good, I sure would like to lick you …" She asked the women whether he was harassing them. After they nodded yes, she confidently stood up to him, looking him in the face, and said "Stop harassing women! I don't like it, no woman likes it! You get out of here!" Countering his responses, she kept up, ever more

---

8 Ibid., p. 106.

strongly, until he moved away. The women at the stop cheered, and the group had a short intense discussion of self-defence against harassment.[9]

Langelan gives dozens of examples, showing how it is possible to have an immediate and effective response to harassment. To undertake this sort of response is not easy or automatic. It greatly helps to have been through self-defence training, just like Martina had.

Why managers neglect skill development
Why has Langelan's approach been neglected by organisation managers when they are developing and implementing policy? There are several explanations. One is a reluctance to put the onus on women to address harassment, because this seems like blaming the victim. It seems like blaming women who are raped for dressing provocatively, drinking alcohol and walking outside late at night. Feminists for many years have argued that, rather than blaming women, men must take responsibility for their behaviour.

This is a good point. However, Langelan's approach is not about blaming women but giving them confidence and skills. Yes, it encourages them to take responsibility. The implication of the admonition against blaming the victim is to provide training for men too, especially in how to intervene against harassment and support targets.

Another reason why organisation managers have not adopted Langelan's approach is that it takes power out of the hands of managers. By being expected to rely on laws

---

9 Ibid., pp. 230–231.

and procedures, women need to put their trust in the institution.

Laws and regulations provide protection for the organisation. If harassment occurs and a women goes to court demanding compensation, she can sue individual harassers or the organisation for having a hostile environment. Managers can defend charges against the organisation by saying that policies have been adopted, procedures are in place, notices have been sent to all staff and posters placed on walls. By setting up policies and procedures, the organisation reduces its legal liability. It doesn't matter all that much whether the policies and procedures are actually effective. What counts is that they are visible in case there is a complaint.

Grievance procedures are an easy option for administrators because they do not entail cultural change in the organisation. However, cultural change may be just what is needed. Carol Bacchi says that sexual harassment procedures tend to place the responsibility for using them on individuals, yet when they do use them, they are put in the position of being attackers, of being complainers. Meanwhile, there seems to be no need to address cultures that facilitate harassment. Bacchi argues that some ways to change the usual masculine university culture and the power imbalance that underpins sexual harassment include increasing women's representation throughout university structures, improving child care facilities, including more content on women in curricula, addressing the way peda-

gogic practices affect women, and reviewing staff-student relationships.[10]

Heterophobia

Daphne Patai, in her book *Heterophobia,* provides a very different perspective on sexual harassment.[11] As she describes in the preface, she is no stranger to harassment, having been pawed and propositioned on numerous occasions, in several countries. While not dismissing these experiences as trivial, she nevertheless didn't let them affect her too much.

Patai identifies as a feminist, but as a feminist who challenges what she calls the "sexual harassment industry." She decries the way that the institutionalisation of sexual harassment rules has turned many organisations into no-touch zones where men (and some women) are terrified that an incorrect gesture or word might bring down the wrath of some offended woman, leading to investigations and penalties. She also decries the impact of the alarm about sexual harassment on many woman, making them think of themselves as victims or "survivors," as if they had survived a major disaster.

---

10 Carol Bacchi, "Changing the sexual harassment agenda," in Moira Gatens and Alison Mackinnon, eds., *Gender and Institutions: Welfare, Work and Citizenship* (Cambridge: Cambridge University Press, 1998), pp. 75–89. See also Carol Lee Bacchi, *Women, Policy and Politics: The Construction of Policy Problems* (London: Sage, 1999), chapter 10.

11 Daphne Patai, *Heterophobia: Sexual Harassment and the Future of Feminism* (Lanham, MD: Rowman & Littlefield, 1998).

Patai is aware that rape and sexual assault are major problems. Her concern is with forms of harassment not deemed criminal and the way that procedures for dealing with harassment have become tools in power struggles. Her argument is that the sexual harassment industry has been turned into an operation that is anti-male and anti-heterosexual, hence the title of her book, *Heterophobia.*

Her main focus is on university campuses, where she sees these dynamics in starkest form. Most of her examples are from the US and may not be relevant elsewhere. Some of the examples are revealing. A non-criminal matter between two individuals becomes, after complaint procedures are invoked, a major issue, sometimes leading to drastic consequences for the alleged harasser, most commonly a man. Patai raises the issue of false allegations of sexual harassment, something she says is seldom addressed in feminist writings on the topic.

Patai's perspective is open to question, of course. Here, I don't propose to try to sort through the arguments pro and con, but only to comment on the implications of Patai's views for understanding the role of official channels.

What Patai calls the sexual harassment industry is essentially the institutionalisation of the official-channel response to a social problem. Patai points to an important issue that is seldom mentioned in other accounts: that formal processes can have damaging impacts. One impact is that relationships between people in organisations, and beyond, are continually on edge because of the risk of being accused of harassment. Another is escalation of minor incidents into major issues. Then there is the encourage-

ment for women to think of themselves as victims or survivors rather than as powerful. Yet another impact is that feminism is discredited because of the excesses of the sexual harassment industry.

Even without agreeing with all of Patai's arguments, it's possible to recognise that official channels can have damaging impacts. These need to be taken into account. More importantly, it's worth looking into alternatives.

The Revolution Starts at Home

Consider this story. In a small town in Oklahoma, a highly conservative US state, there is a factory. Most of the workers are immigrant women without good English, and many of them are undocumented.

Their problem is sexual harassment, assault and rape by local men. The women fear going to the police because they may be deported. Furthermore, many members of the local community are racist, so the prospects for sympathy are limited. This is a situation in which the official channels won't work, and their likely failure is apparent to all.

This situation comes to the notice of a social justice group, MataHari. A young trainee in the group documents the problem and takes the issue to a meeting of representatives of several national advocacy organisations. After explaining the issues, the trainee and her ally are horrified that the discussion turns to how to organise the workers for better pay. The national organisations are so oriented to pushing for equal pay that they cannot focus on the more pressing issue of sexual assault.

In this case, there was the failure of a different sort of official channel: higher-level advocacy organisations. In

some cases, such organisations have their own agendas and are not responsive to issues with which they have limited experience.

This story is one of many in the book *The Revolution Starts at Home: Confronting Intimate Violence within Activist Communities*. It is an edited collection of accounts of US activists dealing with abuse, exploitation and violence within their own ranks, and of groups developing their own ways of handling problems.[12]

Another case described in the book involved a couple. The man was a prominent figure in an ethnic community in the US. In the midst of a dispute between the couple, their son called the police. The wife, with poor English, was unable to clearly explain her position. The husband, a suave and articulate operator, blamed events on his wife, who was taken away in handcuffs. She would have been almost totally helpless except for a support network mobilised to provide legal and personal assistance, through court cases about assault (the charges against her were dismissed) and custody of the children (she lost).

When a group of women organise a feminist collective, it is typically designed to provide support for members, for example to address discrimination, exploitation and harassment. But what should members do when these same problems occur inside the group, for example when one member is abusive, manipulative and violent with

---

12 Ching-In Chen, Jai Dulani and Leah Lakshmi Piepzna-Samarasinha, eds., *The Revolution Starts at Home: Confronting Intimate Violence within Activist Communities,* 2nd edition (Chico, CA: AK Press, 2016).

partners? They all know that reporting problems to the police or other agencies is unlikely to be effective. Furthermore, being committed to feminism, they are worried that speaking out about internal problems may hurt the cause. This situation has led some groups to seek other ways of responding.

Within activist communities, marginalised and stigmatised groups — including women, queers, transsexuals, immigrants, ethnic minorities, sex workers, people with disabilities, and Native Americans — are especially vulnerable to abuse, yet cannot reliably turn to authorities for help, because the authorities (especially police) are unsympathetic and may take action against the complainant. Furthermore, when the abusers are part of the same community, reporting them to the police may lead to arrest or deportation of the abusers — yet they too have suffered in their circumstances. In this situation, targets of violence (called here survivors) have to develop their own methods of coping. An important method is collective support and action, helping survivors and occasionally dealing with perpetrators.

However, this isn't easy, not least because intimate violence committed by activist comrades is covered up: "… domestic and sexual violence is a prevalent cancer, weakening, limiting, and threatening to destroy our social justice movements. We know anecdotally that when it becomes known that intimate violence has been perpetrated by our activist comrades and committed within our activist

communities, silence, denial, and organizational and community self-protection often rise to the forefront."[13]

The movement against violence within US activist communities has been influenced by anti-prison activists. There is an enormous prison population in the US, the highest in the world per capita, and there is a prison-abolition movement that challenges what is called the prison-industrial complex. This abolition movement encourages a view that activist and marginalised communities are under threat from authorities, and therefore should not be relying on official systems to address their internal problems.

The keys to activist communities doing this are awareness of problems and collective support for survivors. The challenge is enormous. Although official channels — including police, courts and large NGOs — are often ineffective or part of the problem, they have established procedures and people experienced in using them. Some activist networks set up their own processes for dealing with intimate violence, using principles of restorative justice. Yet, as described in some of the accounts in *The Revolution Starts at Home,* activist alternatives are not necessarily effective or reliable. Just because you're not using a flawed official system doesn't mean everything is rosy.

The inspirational aspect is that there is hope in collective action, and some important successes. That is more than occurred before, when intimate violence within activ-

---

13 Meiver De la Cruz and Carol Gomez, "Ending oppression: building solidarity. Creating community solutions", in Chen et al., pp. 24–55, at p. 27.

ist communities was covered up or, when reported to authorities, the cause of damage.

One of the implications of the accounts in the book is that neither official channels nor alternative processes are a full solution. The deeper problems are the inequalities, exploitation and systemic oppression in the wider society. Looking specifically at sexual abuse, there is no fundamental solution while social institutions based on systems of domination remain dominant.

Harassment online

With the advent of the Internet and social media, harassment moved online — in a big way. Targets receive abusive messages, that they are ugly, useless and should be raped and murdered. Some attacks come from a single individual. Others involve a mob.

Some people say, "Words can't hurt you. Just delete the messages and get over it. Don't turn on social media." That sounds plausible on a superficial level, but is totally unrealistic in practice.

One of the attack techniques is called doxxing. It involves posting personal details — name, address, phone numbers, employer, details about family members — and encouraging others to join in harassment. Another attack technique is posting "non-consensual intimate images" (NCII), sometimes called reverse porn: the attacker uploads photos or videos of nudity or sexual activity. The target might or might not have agreed to having the images taken, but definitely did not agree to posting them online. Yet another technique is to hack into someone's accounts and

send messages and make posts that seem to come from them.

Imagine this. Your ex-partner initiates a vendetta against you. He posts a rant accusing you of vile behaviour and convinces a whole group to join in an attack. Some of the attackers hack into your email account and send nude photos of you to your family members and your colleagues at work. Half of the calls you receive on your phone are abusive threats to rape and murder. Manufactured claims about you are sent to your employer. Your family members also receive abusive messages. Anyone who stands up for you on social media is subjected to the same treatment. Their family members are targeted.

You are scheduled to speak at a conference. The attackers say they are going to kill you at the conference. You think this is unlikely, but you can't be sure that one of the unhinged members in the mob might actually attempt murder.

In the US, there's an attack technique called SWATting. An attacker calls the police and says that there is a hostage situation, or a big drug operation, at your house. The police sent a heavily armed SWAT team to your home. There's no knocking on the door. People in the house are assumed to be involved in dangerous criminal activity and treated accordingly. It is a terrifying experience.

Meanwhile, the attackers think you deserve it. They are just having fun. Fooling the police to send a SWAT team is a success for them.

Who are the targets? Anyone, potentially, but some sorts of people are especially likely to be harassed. Any woman who becomes prominent, especially in a domain

that men consider theirs, is a prime target. So is any prominent person who is openly lesbian, gay, transgender, ethnic minority, disabled … Then there are individuals who are not prominent who are targeted by an antagonist who is envious, offended or otherwise aggrieved.

Some attacks are limited and brief. Others develop a momentum, with new participants in the mob, so that attacks continue for years.

Harassment online is not always sexual harassment, just like harassment offline is not always sexual harassment. On the other hand, most sexual harassment in the Internet age involves some online component.

There is much more that could be said about online harassment. Here I focus on the role of official channels. There are various official channels to which a target might appeal for remedies, including the police, social media companies, and politicians. A number of writers who have studied the problem in depth, with a focus on harassment of women by men, have examined the role of official channels.

Danielle Keats Citron is a US lawyer who has written extensively about online abuse. Her 2014 book *Hate Speech in Cyberspace* is a superb treatment of online harassment. She describes the problem and looks especially at legal options. Among other things, she says targets of cyber mobbing seldom go to the police because they expect not to receive support, and they're right. Police may not have

sufficient training to give appropriate advice, or lack skills to track down perpetrators, or find it's all too difficult.[14]

Bailey Poland, who was an online target, wrote the book *Haters*. It is a comprehensive treatment of cyberharassment, covering the problem, major cases, rationales for harassment (and counters to them), impacts on targets, Poland's own personal experience, shortcomings of official channels, and insights from cyberfeminists on responding. She writes that reporting abuse online is a thankless task because either the process is so automated as to be useless or there's excessive work required to make a complaint.[15] About going to the police, Poland writes, "Local law enforcement agencies simply are not trained in how to respond to threats sent online — a threat sent via the mail or even made over the telephone is, at least, a known quantity. To many police officers, however, the Internet is a total mystery, threats are ephemeral, and they are unable or unwilling to do anything about it."[16]

Emma Jane tells about misogyny online via her own experiences and via research findings, including her own. As an Australian journalist, she received hostile correspondence for many years. In 1998, having included her email address with her articles, she started receiving grossly offensive messages, with rape and death threats/fantasies. At first she didn't know what to make of this but started

---

14 Danielle Keats Citron, *Hate Crimes in Cyberspace* (Cambridge, MA: Harvard University Press, 2014), p. 20.

15 Bailey Poland, *Haters: Harassment, Abuse, and Violence Online* (Lincoln, NE: Potomac Press, 2016), p. 175.

16 Ibid., p. 195.

saving the messages and gradually accumulated a huge file. There were great similarities in the messages: they threaten rape while calling the target a slut and ugly and even unrapeable. Many messages are internally contradictory.

Jane later became a researcher and wrote a number of insightful scholarly articles. Her book *Misogyny Online* provides the most graphic treatment of the sort of abuse women receive via the Internet. In a chapter titled "Epic institutional fails," she describes how institutions have failed to deal adequately with online abuse. This includes police, policy-makers, corporations (especially those running social media) and academics.[17]

Zoë Quinn is a US video game developer. An ex-partner of hers began a campaign against her that developed into the world's most famous, or infamous, online abuse saga, called Gamergate. Quinn wrote a book, *Crash Override,* in which she tells her personal story and tells about her efforts to obtain relief and justice for herself and other online targets.[18]

Like other knowledgeable writers about online abuse, Quinn was frustrated with the failure of official channels. She had more experience than most. She went to the police, but that required enormous efforts for little result. She went to court to seek an order against harassment by her ex, but this turned out to be counterproductive because he used the

---

17 Emma A. Jane, *Misogyny Online: A Short (and Brutish) History* (London: Sage, 2017), pp. 89–111.

18 Zoë Quinn, *Crash Override: How Gamergate (Nearly) Destroyed My Life, and How We Can Win the Fight against Online Hate* (New York: PublicAffairs, 2017).

court process to interact with her more. She was trying to get him out of her life and the court interactions did the opposite.

By being the face of Gamergate, Quinn became prominent and so had access to tech companies. She found that they seemed sympathetic but their actions accomplished little. She even testified at the United Nations. Many authorities appeared to be concerned. But they weren't taking the strong steps Quinn had hoped for. Maybe the authorities were content with appearing concerned, but not prepared to change their normal operations.

Quinn, in the space of a few years, had an intense personal experience of the failure of official channels. She writes:

> I appealed for help through official channels, early and often. I spent countless hours documenting everything that was happening in reports to tech platforms, only to be shrugged off. I talked to lawyers and took out restraining orders, only to find myself beating my head against the brick wall of a legal system ill-equipped to handle the idea that anything real happens on the internet. In courtrooms and judges' chambers, I was told that my life online doesn't really matter and that if I want to live without this treatment [harassment], I should abandon the career I worked so hard for and get offline.

About companies such as Facebook and Google, she writes:

> When I started out as a newly hatched activist, I thought tech companies simply didn't know how to

combat abuse on their platforms. I know now that they do know, or have the ability to learn, but the people in power who need to act just don't care. The problem is not unique to tech; this apathy continues to be an unfortunate recurring theme in our interactions with other institutions.

In summary, concerning police, legislators and corporations, she says:

The longer I spent trying to change these systems from within, the more I found that they were constructed from the ground up to resist effective change. You can hear the same nonexcuses from people in power only so many times before realizing that they know how broken things are, and that they're not going to change.[19]

Because she became so well known, Quinn also heard from numerous others who were targeted online. Their experiences were similar: massive abuse, highly damaging effects, and little support from authorities.

While never giving up on the possibility of change in the system, Quinn then decided on another option. She set up Crash Override, a network to support targets of online abuse. Much of the work, at least initially, was by Quinn and her ally Alex.

One of the most important supports provided by Crash Override was to help targets protect themselves online. Quinn would guide them through the steps needed to

---

19 Ibid., pp. 19–20, 145 and 6.

change and improve their password protection, shut down accounts, make applications for demeaning images to be removed, and (if desired) prepare documentation for the police. This service was especially valuable in the initial stages of a mobbing attack, when targets often were so distraught that they found it difficult to think how best to respond.

Quinn knew all about the psychological impacts of persistent online harassment. As she recounts in her book, she was never particularly strong mentally, which is why the subtitle to *Crash Override* begins *How Gamergate (Nearly) Destroyed My Life.* One of the great benefits of the Crash Override support network was the reassurance that someone understood and cared about what was happening.

Crash Override, born out of abuse, is an alternative or supplement to official channels. It provides practical advice, helping clients to protect themselves and helping them acquire skills. It also provides the immensely important psychological support possible from others who have a detailed knowledge of the dynamics of online hate. Such support is rare within police, courts and tech companies — they are unlikely to have come under serious attack.

Some of the advice provided by Crash Override is about how to deal with official channels. For example, Quinn says that if you're under attack and there is a risk of being SWATted, then it can be worthwhile contacting the police beforehand. But, she says, don't mention the Internet, which can make them switch off. Instead, just ask them to be wary if they receive a call about nefarious dealings at a particular address: it might be a prank.

Quinn is quite aware that Crash Override and similar support networks are not the full solution. They do not change the social and technical systems that give rise to online abuse. Ultimately, she hopes for cultural change. Her efforts to raise awareness, to talk to authorities and to support targets of abuse are just part of the wider change she sees as necessary.

Conclusion

Sexual harassment is a longstanding problem. Women, and some men, are harassed as an exercise involving power and sex. With the rise of the second-wave feminist movement, sexual harassment was named and stigmatised, yet in many places it continued.

In universities and many other workplaces, the primary means of addressing sexual harassment has been policies. However, complaint procedures are cumbersome and slow, and using them can make interactions more toxic. Also, as in the case of courts and rape, the procedures can be traumatising. So, despite formal procedures being available, few women make complaints. This suggests the procedures simply do not work very well. They are a symbol of the institution's concern, but the symbol may not be an accurate representation of on-the-ground reality.

It is widely said that what needs to change is culture: organisational culture and the wider culture of interpersonal relationships. Undoubtedly there has been considerable change. Publicity about abuses plays a powerful role.

As well as gradual cultural change, there is a role for empowerment of individuals and groups. Individuals —

possible targets and bystanders[20] — can learn skills in recognising harassing behaviours, warding them off, documenting ongoing problems and working with others in a collective response.

Postscript: #MeToo

How does #MeToo relate to official channels?

In 2017, Hollywood actresses spoke out about sexual harassment and exploitation by movie mogul Harvey Weinstein. The initial claims triggered an outpouring of allegations. It was as if permission had been granted to speak out about something that had long been known to insiders but never openly challenged. This unleashing of willingness to name harassers spilled out across the country and the world and became identified by the Twitter handle #MeToo.

Although there had been laws against sexual harassment for decades, it seemed that nothing had changed. #MeToo did change one thing: awareness that women were more willing to do something about it.

#MeToo showed the failure of official channels. If they had been working, more specifically if they had been

---

20 On the value of bystander training, see for example Victoria L. Banyard, Elizabethe G. Plante and Mary M. Moynihan, "Bystander education: bringing a broader community perspective to sexual violence prevention," *Journal of Community Psychology,* vol. 32, no. 1, 2004, pp. 61–79; Ann L. Coker et al., "Evaluation of the Green Dot bystander intervention to reduce interpersonal violence among college students across three campuses," *Violence Against Women,* vol. 21, no. 12, December 2015, pp. 1507–1527.

effective in changing cultures of entitlement and harassment, #MeToo would have been unnecessary.

#MeToo showed the power of collective action. Initially just a few women spoke out; this empowered others to do the same. There was power in numbers. One allegation might be dismissed, but a dozen were too many to ignore. In addition, many of those speaking out were prominent actresses. Their fame gave credibility and visibility to their claims.

The focus of #MeToo was on taking down perpetrators. There was relatively little attention given to sharing the skills of those who had successfully resisted.

A damaging side effect of #MeToo was trial by allegation and by media. Some men may have deserved to be discredited, but the media's feeding frenzy for stories about prominent harassers opened the door to a highly erratic set of claims and formal charges. Because the problems had not been addressed for so long, there was no consistency when the bubble of impunity finally burst. Critics of #MeToo could legitimately argue that media discrediting, without formal procedures, was unfair.

One positive effect of #MeToo — though this remains to be evaluated fully — is a change in culture. When women (and men) feel empowered to speak out and resist abuse, potential perpetrators were deterred.

Whether this applies outside high-profile arenas is unknown. Some targets of harassment, in organisations and venues out of the public eye, might feel they will have support if they make a complaint. Will they?

4
Plagiarism

Official procedures for dealing with plagiarism have toxic effects when applied to students but are feeble when applied to powerful individuals.

Lord Acton famously wrote, "Power tends to corrupt and absolute power corrupts absolutely." Imagine a young student Chris, in high school, assigned to write an essay on power. Chris, not knowing any better, simply copies Acton's sentence, including it in the essay without any quotation marks or any indication that it was originally written by Acton. As a result, it would seem to a reader — one unfamiliar with the quote — that it was Chris's original idea. A reader familiar with the quote will realise that Chris copied the sentence and failed to give a suitable acknowledgement.

In scholarly writing, it is considered important to give acknowledgement to authors whose writings and ideas are used. Chris didn't give a suitable acknowledgement and is technically guilty of plagiarism, a failure to give such an acknowledgement.

Using Acton's sentence is an example of word-for-word plagiarism, the type that is easiest to identify. Suppose Chris wrote (without quotes), "Power corrupts and absolute power corrupts absolutely." This draws on Acton, but is not an accurate quote. (Actually, it is a very common

misquote.) It also counts as plagiarism, because it is too close to the original.

Suppose Chris writes (without quotes), "A little bit of power corrupts, more power corrupts more, and overwhelming power corrupts the most." This is a quite different wording than Acton's original, so it avoids word-for-word plagiarism. However, it draws on Acton's ideas, so it counts as plagiarism if Acton is not mentioned. It is plagiarism of ideas: taking the ideas of another writer and using them as if they were your own original ideas. A correct way to make this statement would be "Developing Lord Acton's aphorism, it might be said that a little bit of power corrupts, more power corrupts more, and overwhelming power corrupts the most."

When Chris grows up and becomes an academic, it would be possible, in an academic treatment of power, to reproduce Acton's statement without mentioning Acton, because it can be assumed that readers know it's by Acton, so explicit acknowledgement is not needed. Still, academics will usually put the sentence in quotes or otherwise make it clear they realise it is not their own original formulation.

These examples show that giving appropriate acknowledgement is not easy or automatic. It is a practice based on scholarly conventions, often involving considerable subtlety. It is a practice that needs to be learned, analogously to the way that table manners are learned. The correct way to acknowledge texts and ideas depends on the circumstances, such as the venue and likely readers. Even experienced writers can make mistakes in giving acknowledgements.

In writing, there are many conventions and expectations, varying somewhat according to the genre and context. In scholarly writing, there are quite a few different referencing styles, ways of constructing sentences and approaches to structuring an article. For example, in some fields it is conventional to include, at the beginning of an article, an abstract, which is a summary of what's in the article, and then to have a number of sections with headings. In essay style, there is no abstract and sometimes no sections. How to write in the appropriate style in a field needs to be learned.

Acknowledging sources is just one of the things to be learned, and would not be a very important issue except for one thing: it carries a heavy moral component. In the minds of many academics and others, not giving appropriate acknowledgement for the use of others' words and ideas is seen as a serious transgression, as a mortal sin. It has a special name: plagiarism. It is often treated as equivalent to cheating.

In universities, students are warned against plagiarism. Serious penalties can be imposed, including given no credit for an assignment, failing a course or even being expelled. This is a heavy burden for some students who never learned conventions for referencing and quotation.

Two approaches

There are two contrasting approaches to plagiarism by students.[1] One is the learning approach, in which copying

---

1 There is a huge amount of research and commentary about student plagiarism, as well as a smaller amount about plagiarism in

of text without proper acknowledgement is seen as a problem to be rectified by learning the correct way to do things. In Australia, this is especially seen as an issue for international students from countries where it is believed there is more emphasis on repeating the ideas of the teacher and less on having original ideas, so that copying the words

---

other arenas. Furthermore, plagiarism is just one aspect of a wider domain called "academic integrity," which includes studies of honour codes, motivations for cheating, the impacts of commercialisation of education, and policy development and implementation. For research in the area, see Tracey Bretag, ed., *Handbook of Academic Integrity* (Singapore: Springer, 2016). See also, for example, Judy Anderson, *Plagiarism, Copyright Violation and Other Thefts of Intellectual Property: An Annotated Bibliography with a Lengthy Introduction* (Jefferson, NC: McFarland, 1998); David Callahan, *The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead* (New York: Harcourt, 2004); Robert A. Harris, *The Plagiarism Handbook: Strategies for Preventing, Detecting, and Dealing with Plagiarism* (Los Angeles: Pyrczak Publishing, 2001); Rebecca Moore Howard, *Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators* (Stamford, CT: Ablex, 1999); Marcel C. LaFollette, *Stealing into Print: Fraud, Plagiarism, and Misconduct in Scientific Publishing* (Berkeley, CA: University of California Press, 1992); Thomas Mallon, *Stolen Words: Forays into the Origins and Ravages of Plagiarism* (New York: Ticknor and Fields, 1989); Wendy Sutherland-Smith, *Plagiarism, the Internet and Student Learning: Improving Academic Integrity* (New York: Routledge, 2008). In the context of the vast amount of research and writing in this area, my treatment here is intended is illustrate a perspective on the role of official channels, namely formal processes for dealing with plagiarism.

of esteemed writers is seen as obeisance rather than stealing. A cultural shift is required.

In the learning approach, acknowledgement practice is taught as a craft or convention, and shortcomings are dealt with as matters to be addressed until the correct methods are followed. If a student hands in an assignment that contains paragraphs copied from a text without attribution, the student is shown how to paraphrase the text and give a citation, and this process is repeated until the assignment is satisfactory.

The second approach to plagiarism is punitive. Harsh penalties are applied to assignments containing significant passages not correctly acknowledged. For example, the assignment might be given a mark of zero. In serious cases, a formal process is initiated that potentially can lead to disciplinary action.

Detecting plagiarism

To implement the punishments, it is necessary to detect and document instances of plagiarism. In years gone by, before the Internet, teachers would act on their suspicions. If much of an essay was poorly written but some paragraphs were eloquent and sophisticated by comparison, copying was suspected and a search would begin for the source of the well-written paragraphs. If such a source could be found, it would provide proof of plagiarism.

These days, it is more common to search for sources online. One method is to paste a passage into Google and see if there is a source of the exact sequence of words. More systematically, there are now available several services, most prominently Turnitin, that enable searches of vast

databases looking for identical passages. These are sometimes called plagiarism checkers but they are better described as text-matching software. If there is a match between a paragraph in a student essay and a paragraph from Turnitin's database, this might not be a problem. It might be that the student has explicitly quoted the paragraph and given a citation for the source.

In some classes, all assignments are put through Turnitin as a means of detecting plagiarism. One of the problems with using text-matching software is that it treats students as potential cheaters. A student, positioned as a cheater rather than as a learner, may decide to try to beat the system. It is certainly possible.

One of my colleagues, who does some tutoring of individuals, described the method some students use to write essays. They take a series of paragraphs from published works — hopefully relevant to the essay topic — and modify them so they aren't exact quotes, for example by using the online thesaurus function to replace some words with synonyms. Another method is to run the paragraphs through Google translate into some other language and then back again (or perhaps into a third language first). This messes up the text, putting it into different words. Then it has to be edited to make it sound sensible.

This is an unfortunate perversion of the purpose of writing an essay, which is to develop a student's capacity to understand the topic and to write text in their own words, without relying on published texts. When writing original material, I recommend doing it largely from memory, not having any published texts open at the time. This ensures

that none of what is written is copied from someone else's writing. However, this is just a side benefit. The primary advantage of writing one's own original words is that it develops thinking skills. Writing is a form of thinking. Using someone else's text eliminates much of the valuable thinking that occurs during writing.

I'm not sure why some students originally start writing essays by taking published text and modifying it, but text-matching systems to check for plagiarism can perpetuate it. The point of using a thesaurus to change some words or of translating text and then back again is to disguise the use of someone else's writing: it is a way of fooling Turnitin. A better way of avoiding copying is to write original text, but somewhere along the way this is not learned. I have even met a few university graduates who use this method of starting with published text and modifying it so it is not quite the same as the original.

There is another way to fool Turnitin: purchase an essay written by someone else. Students can go online and order essays written to order, on specified topics and even at a requested grade level, because if an essay is too good, it might be suspicious. An advantage of purchasing an essay, from a student's point of view, is that it will not show up as copied.[2]

Ironically, honest students who simply don't understand acknowledgement conventions are more likely to be accused of and penalised for plagiarism than students who cheat by purchasing essays.

---

2 Buyer beware: some contract cheating companies attempt to blackmail students who buy their essays.

Some teachers are kind and considerate and will try to help students to learn. When they discover that a student is copying text, they will offer opportunities to revise the assignment so that it is satisfactory in terms of originality and acknowledgements, without making students feel ashamed. However, other teachers take a more punitive approach, seeing plagiarism as evidence of cheating, especially when students are more advanced in their studies.

Formal processes

Being subject to formal processes for addressing plagiarism can be intimidating. A student may receive a written notice to attend a meeting at which they are confronted with concerns about their work. I have called a few such meetings and soon learned that they can be traumatising for students. Being accused of being a cheat is distressing and can make students break down in shame or become defensive. Whatever the response, it is unlikely to be conducive to learning. Depending on the student's response, there can be further stages in the process, perhaps involving a disciplinary committee. Some of my colleagues complain that the process is too soft: students may be let off lightly, claiming they didn't understand requirements or giving some other excuse. However, the outcome of the formal processes is less important than the impact on both students and teachers. Not following the expected conventions for writing, in particular in quotation and citation, are seen as disciplinary issues. Even for students who are not cheating, this can cause fear and inhibit learning. Teachers are put in the role of being cheat-detectors.

Quite a few teachers dislike the formal procedures. Teachers who are not full-time permanent employees are seldom paid for the extra time and effort involved. The result is that many teachers will not bother filing formal complaints about plagiarism. The procedures can end up being symbols of institutional concern about cheating without doing much to address the problem.

Meanwhile, the existence of procedures to address plagiarism, because they seem to address the problem, do little to encourage creative approaches that help students learn. My own approach has been to try to design assignments that are both interesting and that make copying difficult. For example, I sometimes request that assignments be written in the form of a dialogue between two individuals, in the style of a play. This requires students to express their ideas in a format different from what is available in the usual writings on the topic. However, this does not prevent students submitting assignments written by friends or paid essay-writers. To deal with cases of suspected plagiarism, my course outlines state that I retain the option of requesting an additional oral examination on any assignment. However, I never felt the need to exercise this option.

Formal procedures for dealing with student plagiarism focus largely or exclusively on copying of words without proper acknowledgement. The related problem of presenting someone else's ideas as one's own, namely plagiarism of ideas, is seldom addressed. It might be argued that students aren't often expected to have original ideas, but this is unfair. In some cases, students have thoughts original to them, even if they have been expressed by others previously. In any case, when a student draws on ideas from

published authors but doesn't give proper acknowledgement, this hardly ever leads to sanctions. The reason is that it is difficult to prove plagiarism of ideas, whereas proving word-for-word plagiarism is straightforward and relatively easy to document. This results in a curious inversion: plagiarism of text, which is often a fairly superficial type of copying, is prioritised over the more serious plagiarism of ideas.

One of the problems with mass education is classes so large that it is difficult for teachers to get to know all their students personally. Without personal knowledge, it is tempting to resort to text-matching and other schemes to detect cheating. Students who are treated as potential cheats then may feel it is fair to try to game the system. The goal of learning is displaced by the goal of getting passing grades, so the symbols of learning become more important than actual learning.

To pick just one study out of many that make the same point, consider a paper about the use of Turnitin at universities in South Africa.[3] The authors examined policies at several universities and found wide variations between them. They also interviewed academics on plagiarism committees. What they found is that Turnitin was often used in a crude way, with text similarity scores used as surrogates for plagiarism, while education of students into proper acknowledgement practice was usually secondary.

---

3 Amanda Mphahlele and Sioux McKenna, "The use of Turnitin in the higher education sector: decoding the myth," *Assessment & Evaluation in Higher Education,* vol. 44, no. 7, 2019, pp. 1079–1089.

Most policies gave far more attention to penalties for plagiarism than to ways to help students learn. The plagiarism policies sent the wrong message to students, suggesting that their aim should be to reduce Turnitin similarity scores, which sometimes can be done by substituting synonyms for words used — and there is computer software that can do this. In short, policies ended up putting learning second to compliance with text-matching scores.

In this context, formal procedures may provide only an illusion of achieving educational goals. When applied, they can traumatise students who are not trying to cheat but who simply do not understand how to reference properly. In other cases, students know their assignments are improper but are nonetheless offended when they are caught and singled out for penalties when they know many classmates are doing the same thing. Meanwhile, anti-plagiarism policing can promote defensive styles of writing in which escaping alerts in text-matching checks becomes more important than developing a confident approach to writing.

Institutionalised plagiarism

So far, I've been describing problems with formal procedures for dealing with student plagiarism. There is a related problem when it comes plagiarism by professionals such as academics, lawyers, politicians, doctors and judges.[4] Procedures often don't work at all.

---

4 Brian Martin, "Plagiarism, misrepresentation, and exploitation by established professionals: power and tactics," in Tracey Bretag, ed., *Handbook of Academic Integrity* (Singapore: Springer, 2016), pp. 913–927.

Consider the case of a university president who gives a talk or writes an article. Some presidents do their own work, but many rely on support staff to undertake research, prepare slides, and write speeches and articles. When a university president or other official gives a speech or is listed as the author of an article, and someone else prepared part or all of the text, this is plagiarism: the taking of the ideas of another and using them as one's own. There are no penalties for this form of plagiarism. Instead, it is standard practice, sometimes seen as a double standard given that the same behaviours by students are treated as serious transgressions.

Plagiarism by university presidents is one example of what has been called institutionalised or bureaucratic plagiarism.[5] It is a feature of organisational hierarchies. In government departments, it is commonplace for top officials to sign their names to work done by subordinates. At a trivial level, a letter signed by a department head may actually have been written, in part or whole, by lower-level employees. The same thing happens in companies, in churches and many other organisations. Because it is standard practice, there are no procedures for dealing with institutionalised plagiarism.

Then there is "competitive plagiarism," which can occur in domains in which credit for ideas is normally

---

5 Brian Martin, "Plagiarism: a misplaced emphasis," *Journal of Information Ethics*, vol. 3, no. 2, Fall 1994, pp. 36–47; Gavin Moodie, "Bureaucratic plagiarism," *Plagiary: Cross-Disciplinary Studies in Plagiarism, Fabrication, and Falsification,* 2006, pp. 66–69.

expected, such as scientific research and creative writing. Consider this scenario: you are a research student and have been giving drafts of your thesis chapters to your supervisor, Chris. The two of you attend a conference and you listen to Chris give a keynote address. Lo and behold, Chris uses your ideas and findings but never mentions your name. Or you are looking through a journal and discover an article authored by Chris, drawing on your research but only mentioning you in the acknowledgements. Or you discover that a grant application draws on your work, but you aren't mentioned in it. What do you do?[6]

You could raise your concerns with Chris, but that could be risky, because completing your degree depends on your supervisor's support. If, after you've sought advice, you conclude that for years Chris has been exploiting research students and then not even helping them complete their degrees, you may decide to make a formal complaint. But to whom? There are no standard procedures to follow. You might write to the organisers of the conference where Chris gave the talk you heard, to the editor of the journal where Chris's article appeared, or to the grant body where the application drawing on your work was submitted. However, these are unlikely to address your concerns. They are not set up with investigatory powers and seldom have protocols for tackling plagiarism allegations. Furthermore, they may be unwilling to support a student against an established researcher, especially one prominent in the field.

---

6 Brian Martin, "Countering supervisor exploitation," *Journal of Scholarly Publishing,* vol. 45, no. 1, October 2013, pp. 74–86.

You might approach senior administrators in your university. Good luck. They are unlikely to take action. Chris can claim to be responsible for the ideas and findings, even though you know they are the result of your own efforts. After all, a supervisor is supposed to be providing guidance, which means being involved with the ideas. So it sounds plausible when your supervisor lays claim to all the original ideas and says you were just incorporating them in your drafts.

Having talked to a number of research students whose work has been expropriated by their supervisors, my impression is that hardly any of them make formal complaints and that even when they do, the response from university officials, journal editors and research grant administrators is seldom helpful.

Consider a different scenario. You are a published author and you discover that another author has used your ideas, but not your exact words, in their own stories. This wouldn't bother you so much except that the other author is getting a lot of recognition for originality. What can you do about it? The answer is "very little." If challenged, the other author can say that they developed the ideas independently. This is plausible because creators often have similar ideas. Because you know your work intimately, you are able to see the similarities, but they will not be so obvious to others.

Now imagine you are a scientist who has published a respectable number of papers. You submit a manuscript to a leading journal. The review process takes unusually long and then you are surprised to receive a rejection notice with picky comments from the reviewer. Meanwhile, an article appears in a rapid-publication journal presenting the key

ideas in your submission. Your research findings are no longer original and are more difficult to publish, and anyway the prior article will get nearly all the credit for the idea. You ask around and discover that the author of the published article, a prominent figure in the field, is suspected of being a repeat offender, taking ideas from submissions he reviews and publishing them quickly. What can you do? In one case I know about, the main response by scientists was to avoid this person: never send him articles in draft, never reveal new ideas at seminars he attended, and warn others about him.

To deal with the problem of "guest authorship" — when a scientist is made co-author of a paper despite having done little or nothing towards the research — some journals now require that authors sign a statement specifying what each co-author has contributed to a paper. Unfortunately, this process often gives only the appearance of overcoming the problem, because co-authors simply lie about the contributions of guest authors, thereby compounding the deception. Junior co-authors may do this to keep in good graces with senior figures with power over appointments and promotions. Few journals requiring co-author contribution statements have any reliable way of verifying their truth. The statements thus provide an illusion of protection, reducing the urgency of addressing the underlying power imbalances behind the problem.

Often the only way to effectively challenge plagiarism by professionals is through publicity. In a famous case, the Vice-Chancellor of Monash University, a major Australian university, was accused of plagiarism in writings going back decades. Reporting to the university's governing body

did not produce any results. It was only after the allegations were taken to the mass media that the VC was pushed to resign.[7] The implication is that official channels are unlikely to work unless prodded by publicity or the threat of publicity.

Conclusion

When writing, it is a courtesy to acknowledge the contributions of others who have come before. When using the ideas and words of others, there are conventions for the way to express acknowledgements. In the scholarly domain, these conventions can require time and effort to master. Failure to fully acknowledge prior work is commonplace. In many cases this simply represents lack of understanding. In some cases it is due to sloppiness or laziness. In a few cases it results from a conscious attempt to claim credit where it is not due.

Failure to follow acknowledgement conventions is given the label "plagiarism," and has acquired severely negative connotations. For some, plagiarism is a grievous sin, in the same league as scientific fraud. The formal procedures for addressing plagiarism are a curious mixture of intimidation and omission.

Students who are just learning acknowledgement conventions are most likely to be guilty of plagiarism. A few of them are subject to accusations and penalties. Unfortunately, the punitive approach to plagiarism has

---

7 Brian Martin, "Plagiarism struggles," *Plagiary: Cross-Disciplinary Studies in Plagiarism, Fabrication and Falsification,* vol. 3, 2008, https://www.bmartin.cc/pubs/08plagiary.html.

several damaging consequences. It humiliates students who are accused and encourages a mentality of not getting caught. Text-matching software can pick up superficial copying but often misses the most serious method of cheating: buying essays. The worst consequence of the punitive approach is to trap students in poor ways of writing that limit its educational value.

Meanwhile, outside the student context, there are no formal penalties for plagiarism. When one author uses ideas from another, without acknowledgement, there is seldom any way to obtain redress. Only when text is copied can action be taken, but even then it can be difficult to get publishers to do anything. The most potent method of addressing this sort of plagiarism is publicity. The most common sort of plagiarism occurs in hierarchical organisations, when superiors take formal credit for the work of subordinates. This is treated as standard practice and is seldom stigmatised. It is not normally called plagiarism.

Consider three roads to improving appropriate acknowledgement practice. The first road is skill development, which means helping people learn the conventions for giving acknowledgement for the work of others. The second road is changing cultures so good acknowledgement practice is valued and expected, and hence everyone feels it natural to aspire to best practice. The third road is relying on procedures for detecting and penalising plagiarism.

The downsides of the third road are many. Focusing on plagiarism detection positions students as cheaters, encouraging a mentality of beating the system. Worse than this, focusing on plagiarism undermines the alternatives of skill development and fostering a culture of respectful

acknowledgement. Finally, procedures against student plagiarism leave completely unaddressed the serious problem of institutional plagiarism: the most powerful plagiarisers escape censure, and indeed their actions are not even called plagiarism.

Imagine an alternative world in which students are trained both in how to give appropriate acknowledgements and in how to expose and confront institutionalised plagiarism. That would be a double whammy of skill development, but one that would be threatening to many of those in positions of power.

What can be done about institutionalised plagiarism? A system-level approach is to promote egalitarian institutions, with fewer power differences, but this has to be a long-term project. In the short term, it can be worthwhile to give credit to speechwriters and ghostwriters whenever possible, and to expose exploitation of the work of subordinates. To do this, collective action is the safest option and usually the most effective.

5
Wikipedia

Wikipedia, the online encyclopaedia, is a remarkable achievement. It is produced entirely by unpaid volunteers who add text and references, revise or delete previously posted text, and negotiate their disagreements. Within a few years of its creation, Wikipedia was larger than traditional encyclopaedias written by experts, and far more dynamic. In some current affairs, Wikipedia editing occurs more rapidly than mass media coverage. Wikipedia has versions in dozens of languages. It has become one of the most frequently visited sites on the web.[1]

   Behind the scenes, however, there are problems. The idea behind Wikipedia is that the contributions of different editors will lead to information that is accurate and reliable, without serious biases. In many areas, where facts put out by authorities are hard to contest — like populations of cities or the atomic weights of elements — Wikipedia is usually quite reliable. Problems can arise, though, in areas

---

1 On Wikipedia generally, see for example Dariusz Jemielniak, *Common Knowledge? An Ethnography of Wikipedia* (Stanford, CA: Stanford University Press, 2014); Andrew Lih, *The Wikipedia Revolution: How a Bunch of Nobodies Created the World's Greatest Encyclopedia* (London: Aurum, 2009); Joseph M. Reagle, Jr., *Good Faith Collaboration: The Culture of Wikipedia* (Cambridge, MA: MIT Press, 2010); Nathaniel Tkacz, *Wikipedia and the Politics of Openness* (Chicago: University of Chicago Press, 2015).

where there are disagreements about the importance of topics and the perspective from which they are approached.

Most people who read Wikipedia don't bother with several of the tabs on each page. There is a "view history" tab through which you can look at every edit ever made on a page. There is a talk tab that allows you to look at discussions among editors about a topic. Exploring these sides to Wikipedia reveals a landscape quite different from the calm, authoritative exterior. Wikipedia is not as easy to understand as it might seem at first.

Anyone can edit Wikipedia. All you have to do is click on the edit tab and make changes. You can set up an account if you wish, so there is continuity to your profile and edits. However, very few users of Wikipedia ever try to edit even a single entry. Those who do quickly learn that making lasting changes is not as easy as it might seem.

Most Wikipedia editors, including those with well-established profiles, are anonymous, in the sense that they are not linked with a clear offline identity. Despite anonymity, many editors put in large amounts of time and are proud of their contributions. Quite a few of them, in addition, have strong views about the topics they edit. This is a source of problems.

Think of a topic about which there is serious disagreement, such as abortion, euthanasia, feminism, inequality, population control, socialism or vaccination. How can Wikipedia produce an entry that is accurate and impartial? It might be said that it is not possible to be impartial, so the most that could be done is to present different perspectives on a topic, each given appropriate space and fair treatment.

But obtaining agreement on appropriate space and fair treatment is not easy.

One consequence of disagreements on Wikipedia is editing wars. One editor adds a sentence to a page. Another one deletes it. The first editor adds it again. The second one deletes it again. Then other editors become involved. It can seem like a free-for-all. But it isn't, because some editors have more power and authority than others. Experienced editors can be promoted to be administrators, and these admins can overrule lower-level editors.

Peake's story

Bryce Peake was alarmed about incidents of sexual assault at the University of Oregon. He decided to help raise awareness of the problem by setting up a Wikipedia page listing all US universities under investigation for sexual violence policy violations. After a great deal of effort investigating the issue and making changes to Wikipedia, within a few hours all his edits were reversed.[2]

Peake pursued the issue through Wikipedia talk pages. What he encountered was a sustained and sometimes vehement hostility to any content supportive of women or feminism. Peake was a white male, but this didn't help his cause. He described what was happening on Wikipedia as the domination of anti-women viewpoints or, in his delightful terminology, as "misogynist infopolitics."

---

2 Bryce Peake, "WP: THREATENING2MEN: misogynist infopolitics and the hegemony of the asshole consensus on English Wikipedia," *Ada: A Journal of Gender, New Media, and Society,* Issue no. 7, 2015, https://adanewmedia.org/2015/04/issue7-peake/.

Perhaps this was not surprising given that a large majority of Wikipedia editors, perhaps 80% or 90%, are male. But editors do not necessarily edit according to their demographics. Peake noted that information about alleged racism was quickly added to Wikipedia pages, without challenge, although most Wikipedia editors are white. However, information about alleged sexism was met with resistance.

The way in which content supportive of women or feminism was excluded was via the invocation of rules. Wikipedia has a great number of rules that editors are supposed to follow. A prominent one is to maintain a neutral point of view (labelled WP:NPOV). Others are not to give too much emphasis to recent events (WP:RECENCY) and to use reliable sources (WP:RELIABLE). Each of these rules seems sensible, in the abstract. Trouble arises when rules are applied selectively in order to achieve a preferred outcome.

Peake encountered editors who referred to this rule or that rule, all to justify opposing his additions. But there was a double standard. These same rules weren't applied to entries on other topics. The rules were tools of censorship, applied to edits disliked by the misogynist editors but not applied to other edits, even including their own.

Peake was dismayed to find that Wikipedia editors were not very concerned about reality, namely whether sexual assaults actually occurred. The editors instead focused on whether there were sources they could cite to support statements made in the text. For Wikipedia editors, what counts is not whether something actually happened

but whether there is a credible source they can cite to say that it happened.

Sexual assault has been occurring on university campuses for decades. However, for a long time it was largely undocumented. Only with the rise of the feminist movement did sexual harassment and assault become a public issue, and even then there were various processes that dimmed awareness. In response to Peake posting information about sexual assault investigations on the Wikipedia pages of universities, editors justified removing the additions by citing policies, including that the information was not "defining" of the university (WP:UNDUE), came from an unreliable source (WP:RELIABLE) or was written in a seemingly biased way (WP:POV).

The editors ignored research indicating that sexual assault was a longstanding problem, instead demanding citations of actual assaults in an institution over its history. The fact that the problem had not been publicly visible was treated as irrelevant. That Wikipedia didn't report the problem was seen as definitive.

From Peake's point of view, Wikipedia was dominated by editors hostile to any questioning of male privilege. The editors wrote entries on the histories of universities that did not mention sexual assault. Then these Wikipedia histories were invoked to say that evidence suggesting sexual assault on campus today is unrepresentative of the universities and so shouldn't be included. In this way, misogyny on Wikipedia became a self-referential system, because Wikipedia itself was treated as a reality to justify continued misogynist representations of reality.

Why are Wikipedia editors so fixated on following rules? Peake and others note that most editors are not experts on the topics they deal with. In an argument with an actual expert on sexual assault, they would have no special credibility. However, experienced editors become experts in using Wikipedia policies to defend their edits. They can increase their status and exercise power by turning editing into a contest over the application of rules rather than a discussion about the reality supposed to be represented on the encyclopaedia. Here is how Peake summarises this. He says that the "lawyeristic manoeuvres" by editors — namely the ways they use the rules to get their way —

> are the most effective weapons for individuals who do not know very much about facts, as they allow Wikipedia editors to replace expertise about subject matter with expertise about Wikipedia's rules. The image of Wikipedia I describe here, through empirical grounding in my work writing campus sexual violence into Wikipedia, is a space where the primary focus is on the mastery of policy as a tool for domination — and not on the production of, or debates about, verifiable facts and actually existing knowledge.

WP: NOR

One of the important rules on Wikipedia is that there should be no original research. Albert Einstein made numerous pioneering contributions to physics, but the Wikipedia entry on Einstein, according to the rules, should not cite Einstein's publications to make this statement but instead is supposed to cite someone else saying Einstein's work is

important. Einstein is an easy case because numerous others have written about him, but for others, especially in more contentious areas, finding what someone else says may not be straightforward.

The no-original research rule is a powerful deterrent to people who might like to edit Wikipedia in their own areas of expertise. They are not supposed to cite their own works, because that would be a conflict of interest, so they have to find someone else who has commented on their works. Taking the conflict-of-interest rule to a greater extreme, no expert should edit Wikipedia on what they know best, because knowing a lot about a subject means you are biased. This is one way that editors who are not subject-matter experts can hold sway over those who are.

Suppose there is some disagreement, in published comment, about what someone believes. By selecting some comments rather than others, it's easy to create a bias in a Wikipedia entry.

A personal experience

My own interest in Wikipedia politics and bias was stimulated when the Wikipedia entry about me was massively rewritten and turned into an attack piece. This was in January 2016, as part of a massive attack on the PhD thesis of my PhD student Judy Wilyman. Here I won't try to give the whole story but just mention one small element that shines a light on the dynamics of Wikipedia editing.

Here is one of the statements added to my Wikipedia entry:

and Agence Science Presse reports Martin "also defends the idea of a vaccine-autism link."

Actually, I have never defended this link, and *Agence Science-Presse* provides no evidence to back up its statement. A Wikipedia editor can add this claim because it's made by a third party, namely not by me and not by the editor. So how can this sort of false claim be challenged?

It's unrealistic for me to have to publicly deny every false statement that someone might make about me, and even more unrealistic to expect to find some other source that reports my denial.

I decided to write an article analysing persistent bias on Wikipedia using my own entry as a case study.[3] Publication of the article led to renewed interest in the entry. Some editors wanted to delete the passage about the *Agence Science-Presse* report, but others tried to keep it, saying it's a credible source. Then some editors argued that a citation should be given to my denial of the *Agence Science-Presse* claim, with others opposing this.

The battle over this one passage consumed time and effort by various editors, all waged in terms of Wikipedia's rules. The rules prevent original research, such as analysing my writings to assess my views about vaccines and autism. Other rules were cited to argue for or against including the passage.

---

3 Brian Martin, "Persistent bias on Wikipedia: methods and responses," *Social Science Computer Review,* vol. 36, no. 3, June 2018, pp. 379–388, http://www.bmartin.cc/pubs/18sscr.html

It would also be possible to refer to a Wikipedia policy to say that this particular issue — whether or not I defend a link between vaccines and autism — is not central to a balanced treatment of my life and work. But this angle did not succeed because too many editors, including a powerful administrator, were intent on denigrating me via my Wikipedia entry.

Conclusion

Disagreements on Wikipedia are waged via interpretations of rules, and there are so many rules that can be interpreted in different ways that editors who are persistent can often get their way even though they do not know all that much about the topic.

As Peake and others have argued, Wikipedia's rule-based system has been used by those who are experts at using the rules to dominate over those who are content experts. The result, in some cases, is information that diverges from Wikipedia's own goal of being neutral and balanced.

There are two ways of looking at Wikipedia in relation to official channels. The first is to say that there aren't any: there is no appeal body with the authority to adjudicate disputes or to handle complaints. It is possible to write to the Wikipedia Foundation, but this is unlikely to have any effect on disputes over particular entries.

The second way of looking at Wikipedia in relation to official channels is to say that Wikipedia rules operate as de facto official channels. In editing an entry, you can cite a rule to justify your action. In this sense, Wikipedia editing is about negotiating your way using or getting around the

rules. This has the two consequences that reflect the short-comings of official channels in other domains. First, the development of people's skills becomes secondary: specifically, knowledge of the topic becomes secondary to operational use of Wikipedia rules to promote one's preferred treatment of the topic. Second, the task of cultural change on Wikipedia is marginalised. The focus on following the rules, and the investment of experienced Wikipedia editors in learning and deploying the rules, means that putting more emphasis on cooperative enhancement of learning and recognition of expertise is off the agenda.

In the case of Wikipedia, as in many other areas, there is nothing inherently wrong with official channels. Problems arise when they become seen as the only avenue for fixing problems.

6
Backfire

In 2001, I had one of the best insights in my research career. In part, it drew on my understanding of official channels and then it led to new angles on their roles.

Two colleagues and I had written a paper about repression and resistance in Indonesia. We looked at three case studies: the 1998 popular resistance to Suharto's repressive government that led to the downfall of Suharto and the introduction of elections; the struggle in East Timor; and the 1965–1966 genocide. The point of the case studies was to point out that studies of nonviolent action normally focused on situations where there was significant resistance to repression but that it was also important to study situations where there was little or none.

We sent the paper to the journal *Pacifica Review.* In our original submission, we had written that during the genocide there was no resistance. However, the reviewers didn't like this, saying that there is always some form of resistance. To address this, we changed our phrasing to refer to "lower-profile resistance." In the revised version of our paper, I added a discussion of "political jiu-jitsu."[1]

---

1 Brian Martin, Wendy Varney and Adrian Vickers, "Political jiu-jitsu against Indonesian repression: studying lower-profile nonviolent resistance," *Pacifica Review,* vol. 13, no. 2, June 2001, pp. 143–156.

Political jiu-jitsu

Political jiu-jitsu refers to when violent attacks on peaceful protesters lead to greater support for the protesters. The term was introduced by nonviolent-action researcher Gene Sharp in his epic book *The Politics of Nonviolent Action.* In part three of the book, Sharp laid out a set of stages or facets of nonviolent campaigns that he called "the dynamics of nonviolent action." The first three stages are laying the groundwork, challenge brings repression and maintaining nonviolent discipline.[2]

Sharp had observed that in campaign after campaign, the first requirement was to build support, networks and capacity, before taking action. This is the stage of laying the groundwork. Then, when ready, activists would challenge the opponent, for example with a rally, strike or boycott. This was the stage of "challenge brings repression," because authoritarian governments usually attempted to squash any expression of resistance. If campaigners used violence in response, they were usually crushed, quite easily, because governments have an overwhelming advantage in armed struggle. Therefore, to be effective, campaigners needed to remain nonviolent, namely not to use violence when attacked.

This set the stage for political jiu-jitsu. When police or troops attack peaceful protesters, this can be seen as grossly unfair. The attack can lead to greater support for the protesters from what Sharp calls the "grievance group" (people who share the same concerns as the protesters),

---

2 Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent, 1973).

from people not involved, and even from some on the side of the government.

East Timor
In 1975, East Timor, formerly a Portuguese colony, was invaded and occupied by the Indonesian military. The East Timorese mounted an armed resistance and in the following decade perhaps one third of the population died from famine or Indonesian military attacks. In the late 1980s, the East Timorese resistance movement changed strategy, downplaying armed resistance in the countryside and emphasising peaceful protests in urban areas. From the point of view of a nonviolent campaign, this was laying the groundwork.

In 1991, following clashes in which a young East Timorese man was killed, there was a funeral procession in Dili, the capital. The mourners used the occasion to express their political views. Indonesian troops surrounded the procession, which remained peaceful. As the procession entered Santa Cruz cemetery, the troops opened fire, killing large numbers of East Timorese. The funeral protest and the killings fit into Sharp's stage "challenge brings repression." Throughout the protest, the East Timorese refrained from violence. In Sharp's terms, they maintained nonviolent discipline. This set the stage for political jiu-jitsu.

Western journalists were present at the protest. They witnessed the killings and took photos. Filmmaker Max Stahl recorded the massacre on video. Their testimony and visual documentation enabled a powerful communication to outside audiences. This gave an enormous boost to international campaigners for East Timorese independence.

The massacre, intended to repress the independence move-
ment, inadvertently increased its support dramatically. This
counterproductive result is the essence of political jiu-jitsu.

So far so good: political jiu-jitsu is an important part
of many nonviolent campaigns. However, having written a
paper about repression by the Indonesian government that
did not lead to a jiu-jitsu effect — especially the genocide
of 1965–1966, when perhaps half a million people were
killed — I asked myself what was different between these
two sorts of cases. Why did some massacres lead to political
jiu-jitsu and some not?

My insight was to think of reasons in terms of what the
perpetrators did. I identified several methods that perpetra-
tors could use to reduce public outrage and thereby make
political jiu-jitsu less likely. These methods included
covering up the action, devaluing the targets, reinterpreting
what happened, and using intimidation and rewards. There
was one other important method, probably inspired by my
experiences with whistleblowers: using official channels to
give an appearance of justice but without the substance.

Pursuing this insight, which was initially inchoate and
incomplete, I started looking at case studies. One of them
was East Timor.[3] Reading various accounts of the history
of the Indonesian invasion and occupation, I learned that
there had been other major massacres of East Timorese
civilians. However, these were little known outside East
Timor. The only surviving witnesses were East Timorese,
and only later did some of them leave the country. For

3 Brian Martin, *Justice Ignited: The Dynamics of Backfire*
(Lanham, MD: Rowman & Littlefield, 2007), pp. 23–33.

Western audiences, their stories lacked the credibility of journalists: in a war, the accounts of those on one side or the other may be suspected of being self-serving. Most importantly, the East Timorese witnesses had no photographic evidence. For these little-known massacres, cover-up was the primary tool used by the Indonesian government.

If cover-up is enough to prevent political jiu-jitsu, then other techniques need not be deployed. So I thought, let's look at the Dili massacre to see what techniques the Indonesian government used to dampen public outrage. Although the massacre turned out to be counterproductive for the Indonesian government, that doesn't mean it didn't try to prevent outrage. Ironically, by studying cases of dramatic political jiu-jitsu, I found the most evidence of efforts to prevent this outcome.

After the Dili massacre, Indonesian authorities tried to prevent information about it getting out of the country. Australian officials assisted: they searched Max Stahl's baggage looking for the videos he had taken. Cleverly, he had hidden them in the cemetery, later returning to retrieve them and give them to a supporter to smuggle out of Indonesia. The Indonesian government tried to cover up the massacre, and creative means were needed to expose it.

The next technique was devaluation. Indonesian government and military leaders disparaged the protesters. However, this had little impact in other countries.

The technique of reinterpretation involves explaining away events by lying, minimising, blaming and framing. Indonesian officials initially claimed only 17 East Timorese lost their lives, later increasing the figure to 50. A subsequent independent investigation said the total was

271. Indonesian officials claimed that East Timorese protesters had weapons and had initiated violence. This was denied by surviving protesters and Western journalists.

The technique of intimidation was also used. After the massacre, Indonesian troops rounded up independence supporters and assaulted them. Within East Timor, repression became even worse. However, this had no impact on Western audiences except to increase their concern.

This brings me to the technique of official channels. What formal procedure or official body could address a complaint about mass murder? The East Timorese had no access to appeal bodies. But there was no need for them to act, because the Indonesian government and military each set up inquiries into the massacre. This can be understood as a response to international concern about the killings. After previous massacres that were unpublicised, the Indonesian government had never set up an inquiry. The purpose of the inquiries established following the Dili massacre thus seemed to be to address international concern.

The two inquiries actually found a few officers guilty and sentenced them to a few years in prison. This symbolically showed that the government and military were following procedures designed to provide justice. The officers served just part of their sentences before release: it was very lenient treatment for mass murder. They were scapegoats for higher authorities.

There is a revealing contrast between the ways perpetrators were treated. Higher authorities were responsible for years of bloody repression in East Timor, causing a scale of death that some have called genocide. However, no action was ever taken against these higher authorities. Only after

the international outcry following the Dili massacre was any official investigation undertaken into any of the killings in East Timor. The implication is that the official investigation and the token penalties meted out to a few individuals were seen as helpful in reducing outrage.

In summary, the Dili massacre is a prime example of political jiu-jitsu: it stimulated greater resistance from the East Timorese and their international supporters. The response to the massacre also shows the importance of protesters remaining nonviolent. The images of unarmed, defenceless protesters being shot in cold blood were crucial in triggering outrage. Previously, thousands of East Timorese had been killed during the guerrilla war against the Indonesian invasion, but this did not cause the same outrage because deaths are expected in wartime, even when the war is between highly unequal sides.

The Dili massacre triggered political jiu-jitsu, but there was more to it than just a counterproductive outcome for the Indonesian government. The government had used five techniques that can reduce outrage over injustice: cover-up, devaluation, reinterpretation, intimidation and official channels. However, in this case, these methods were not enough to prevent a huge increase in international support for East Timor's independence.

If the Indonesian government could use five methods to reduce public outrage from the massacre, then it makes sense that others — East Timorese, their supporters, journalists — could try to counter each of these methods. In other words, corresponding to the five types of methods for reducing outrage are five types of methods for increasing it. These are exposing the action, validating the target,

interpreting the events as an injustice, avoiding or discrediting official channels, and resisting intimidation and rewards.

All of these methods were used following the Dili massacre. The massacre was exposed to wider audiences via eye-witness testimony, photos and video. For audiences outside Indonesia, the East Timorese were just as deserving of human rights as anyone else: the Indonesian government's attempts at devaluation had little international resonance. The massacre was presented to outside audiences as a gross injustice, and the claims by the Indonesian government about protesters being violent and only a few dying were countered. The East Timorese continued to resist: they were not thwarted by intimidation.

Consider especially the role of official channels. The Indonesian government and military had set up inquiries into the massacre, giving the appearance that justice was being done. However, for outside observers these were quite inadequate, because they were carried out by the groups responsible for the killings. It would have been more credible for the Indonesian government to invite a respected international organisation, for example Amnesty International or the United Nations, to hold an inquiry. However, this would not have served the purposes of the Indonesian government, because the findings would most likely have been damning. The in-house inquiries were not going to be so damning, but they also had little external credibility in the face of the eyewitness and photographic evidence.

The setting up of inquiries in the aftermath of the Dili massacre is an example of the use of official channels in response to a sudden injustice. Rather than rely on existing

procedures, special-purpose ones are created. This suggests that when there is some urgency in countering perceptions of injustice, official channels are brought into being.

So far, I've told just about the Dili massacre. Equipped with a framework for making sense of outrage management, I started looking at all sorts of injustices. Remarkably, I found the same sorts of tactics being used in all sorts of areas, from sexual harassment to genocide. Because this framework, with the five types of methods to reduce outrage and five types to increase it, was more elaborate than Sharp's political-jitsu, and applied to injustices well outside the violence-versus-nonviolence template studied by Sharp, I gave it a new name: the backfire model. In retrospect, it might be more accurately called the outrage management model.

The Sharpeville massacre

Sharp described several cases of political jiu-jitsu. To see whether the backfire framework applied, I looked in more detail at the 1960 Sharpeville massacre in South Africa, during the era of apartheid when the white minority ruled over the majority black population. In 1960, there were nationwide protests against the pass laws, a type of internal passport system used to control the black population. This was during a period when the opposition was committed to nonviolence. Due to a combination of circumstances, police opened fire on a peaceful protest in the town of Sharpeville, killing perhaps a hundred blacks, many of them shot in the back while running away. White journalists were present, and the story became front-page news internationally, puncturing the illusion that the South African government

was a respectable parliamentary democracy committed to the rule of law.

On reading more about the massacre, especially Philip Frankel's authoritative book,[4] I discovered evidence of all five methods for reducing outrage: cover-up, devaluation, reinterpretation, official channels and intimidation.[5] Of special interest here is the role of official channels. After the massacre and the massive adverse publicity, the South African government set up a commission of inquiry. This gave the appearance of providing an independent assessment that would deliver justice. According to Frankel, though, the inquiry was selective in the way it collected evidence, assessed it and came up with findings. The commission gave the appearance of being neutral while delivering a report that largely exonerated the police and the government.

The beating of Rodney King

I also started examining case studies that were well outside of Sharp's domain of violence versus nonviolence. One of them was the 1991 beating of Rodney King by Los Angeles police.[6] King was driving, probably drunk, and speeding,

---

4 Philip Frankel, *An Ordinary Atrocity: Sharpeville and its Massacre* (New Haven, CT: Yale University Press, 2001).

5 Brian Martin, *Justice Ignited: The Dynamics of Backfire* (Lanham, MD: Rowman & Littlefield, 2007), pp. 9–21.

6 Brian Martin, "The beating of Rodney King: the dynamics of backfire," *Critical Criminology,* vol. 13, no. 3, 2005, pp. 307–326. For an expanded version of this article, see Martin, *Justice Ignited,* pp. 43–64.

and was followed by police in a long chase late at night. When King's car was finally stopped, King was arrested, but only after being tasered and then brutally beaten. This would not have been anything special except that the commotion — including a police helicopter hovering above and shining a light on the proceedings — awoke many people living nearby, including George Holliday, who had just bought a video camera. He recorded four police hitting King dozens of times, and kicking him. Eventually Holliday took the videotape to a television station. The broadcast stunned viewers. The pressure on the government and the police was immense.

Along the way, the police used the predictable ways to reduce outrage, seeking to cover up the beating (that was before the video was broadcast), to discredit Rodney King (at the time and for years afterwards), to explain the beating as legitimate and to intimidate witnesses. My focus here is on official channels.

Immediately after the broadcast of the video — it was screened repeatedly — the Los Angeles Police Department set up an inquiry, and the city government set up its own inquiry. Soon they were merged into what became known as the Christopher Commission.

It's useful to pause here and ask why inquiries were set up. As known to anyone familiar with police matters in Los Angeles, there had been numerous previous police beatings, some of them far worse than King's. There had even been some citizens killed by the police in circumstances that warranted criminal investigation. However, the police and the city government did not set up inquiries concerning any of these cases in which police allegedly

used excessive force. The usual official channels could be used: police complaint procedures and the courts. Only after the King beating were special inquiries set up.

The obvious explanation is the television broadcast of the videotape of the beating. For previous beatings and shootings, the police version of events was dominant. The police and government officials had the advantage of being authority figures, usually given more credibility than those who were labelled or positioned as lawbreakers. Furthermore, the mass media normally reported the police version of events, which meant that police beatings were seldom reported at all, or just as arrests.[7]

After the beating of King, but before the video was broadcast, King's brother went to a local police station to report it. Making a report or complaint to the police is a typical official channel. However, the officer at the station, instead of filing a report, started asking questions of King's brother, implying he had been in trouble. In the end, no report was filed. So far as the police incident file was concerned, the beating of King would never have been included except for the video.

The broadcast of the videotape changed everything. Members of the public, instead of having to rely on media reporting to make a judgement, could view the video themselves — and many were shocked. It was the shockwave that led the leaders of the police and the city govern-

---

7 Regina G. Lawrence, *The Politics of Force: Media and the Construction of Police Brutality* (Berkeley: University of California Press, 2000).

ment to set up inquiries. It was a way, intuitively grasped, of letting people know that justice would be done.

As well, there were other official channels deployed: the courts. Without the videotape, King would have had no prospect of suing the police. With the videotape, lawyers took on his case. In addition, and more importantly, there was a criminal case launched against the four officers directly involved in the beating.

Because the King beating received saturation media coverage, it led to a great expectation for justice to be done. The court case against the four officers involved dragged on for a year, with machinations that are a story in themselves. Everyone, even the defence lawyers, expected a jury verdict of guilty. When the actual verdict of not guilty was announced, this triggered rage in the black population, which can be interpreted as due to justice denied. People had seen the video and made up their own minds, so the not-guilty verdict was incomprehensible. In South-Central Los Angeles, a massive three-day riot ensued, resulting in over 50 deaths, hundreds of buildings burnt and nearly a billion dollars of damage.

Government officials felt the need to act to deal with the perception of injustice. Their response: set up another official channel. As the riot proceeded, President George H. W. Bush announced a federal trial of the same four officers. This time the government did what it could to ensure a different outcome. Two of the officers were found guilty and went to prison. There were no riots after this verdict was announced.

The beating of Rodney King shows the importance and limits of official channels. The clamour for justice was

extraordinary because people saw for themselves what they believed was a gross injustice, the beating of a defenceless black man by white police officers. (Blacks and whites, on average, responded differently to the beating.) The police used methods of cover-up, devaluation, reinterpretation and intimidation to reduce outrage, but these were not enough. The Christopher Commission was set up, but the greatest expectations were put on the court case against the police officers. When it came up with an unacceptable outcome, rage boiled over. This suggests that official channels, to effectively reduce outrage, need to provide sufficient symbolic redress for the perceived injustice.

For many viewers, the beating of King exemplified the longstanding racism of the Los Angeles police. The Christopher Commission, by making recommendations to counter this racism, arguably addressed the underlying feelings of the black population, but whether the commission's findings would result in actual change was not easy to determine. In contrast, justice for King himself was more tangible, hence the expectations for the trial.

The story of the King beating suggests that the role of official channels in reducing outrage from injustice is most significant when other methods for reducing outrage — cover-up, devaluation, reinterpretation and intimidation — are inadequate.

Conclusion

Backfire analysis involves studying injustices in which the perpetrators are powerful, and looking at the methods used by the perpetrators to reduce public outrage. The most commonly observed methods are cover-up, devaluation,

reinterpretation, official channels and intimidation/rewards. Of these five types of methods, the one most counter-intuitive for most people is official channels. After all, official channels are supposed to provide justice, and many people turn to them to address obvious injustices. Yet in case after case, powerful perpetrators use or create official channels that serve to reduce outrage.

The key to this apparent discrepancy is that although most people expect official channels to provide justice, in practice they often do not, especially when perpetrators are powerful.

In the case of the Dili massacre, the Indonesian government used all five types of methods to reduce outrage, including instituting inquiries, which led to limited sanctions against a few scapegoat soldiers. What is reveal-ing is that no inquiries had been set up after previous massacres. That was because other methods, especially cover-up, were sufficient to reduce outrage.

In the case of the beating of Rodney King, the Los Angeles police and city government used all five types of methods to reduce outrage. Several official channels were pursued subsequently: a commission of inquiry was set up and there were multiple trials. There was a widespread expectation that the first trial of the four police officers would lead to a guilty verdict. When this expectation was dashed, a major riot ensued, which can be attributed to collective outrage over injustice. This is a powerful emotion, pointing to the importance of methods used to reduce anger.

There are numerous other examples, in all sorts of domains, of powerful perpetrators and their allies using

methods to reduce outrage from their actions.[8] My focus here has been on the use of official channels. They dampen outrage by promising justice but then, due to slowness, technicalities and dependence on experts, doing little to deliver it. The slowness of most official channels gives time for outrage to die down. The technicalities and dependence on experts mean that most people do not take the effort to try to understand the proceedings, instead often just accepting or rejecting the outcome.

In terms of understanding the role of official channels, the study of backfire dynamics offers several insights. The first and most obvious is that when perpetrators are more powerful, official channels are more likely to be useful to them, especially by reducing outrage over injustice. A second insight is that official channels may only be brought into play when other methods of reducing outrage — cover-up, devaluation, reinterpretation and intimidation/rewards — are inadequate. When these methods are falling short, authorities may sometimes set up special official channels just for the occasion. In the case of the beating of Rodney King, the establishment of the Christopher Commission was an instance. Police racism and police assaults had persisted for years, with no need for a special commission. What triggered a need to invoke formal processes was the broadcast of the video of the beating.

---

8 See "Backfire materials," https://www.bmartin.cc/pubs/backfire.html. Topics include censorship, climate change, corruption, defamation, lying, protest, refugees, sexual harassment, torture, war, whistleblowing and workplaces.

The implication is that understanding the role of official channels requires understanding the wider patterns of power and how power is exercised, and wider patterns of belief and how belief can be transformed.

The backfire model can be thought of as a way of looking at outrage management. It is most obvious when there are sudden instances of apparent injustice that come to public notice, such as the King beating and the Dili massacre. However, the same processes occur in less dramatic circumstances. Official channels can dampen outrage over minor injustices, ones that seldom generate widespread publicity, in much the same way.

Increasing outrage

Given that powerful perpetrators of injustice regularly use five types of methods that reduce outrage, it makes sense for people concerned about injustice to take counter-measures. The aim is to increase outrage, to a level that is enough to trigger action for justice. How to do this? In terms of tactics, it is worth looking for ways to counter each of the methods used by perpetrators. For most of the methods, this is straightforward.

- To counter cover-up, expose the actions.
- To counter devaluation, validate the targets.
- To counter reinterpretation, interpret the actions as unjust.
- To counter intimidation and rewards, resist.

In each of these cases, the way to increase outrage is to directly counter the outrage-reducing tactics. However, for official channels, the counter is not so obvious.

- To counter the use of official channels to reduce outrage, what should you do?

One option is to try to discredit the official channels. Another is simply to ignore them. However, neither of these options directly fosters outrage. My preferred option is to mobilise support.

Official channels serve to put the issue in the hands of official or expert bodies, giving the impression that they will handle the problem. In contrast, mobilising support — encouraging people to become concerned and take action themselves — does not rely on official channels. It means people take matters into their own hands. To do this, they need to have information and skills, for example in communicating, networking, protesting and building alternatives.

The backfire model thus provides a basis for formulating tactics against injustice. But does it imply that official channels should never be used? No — there are often practical or strategic reasons to appeal to or apply pressure on official channels. What the backfire models says is that to increase outrage about injustice, it is usually better to mobilise support.

7
Elections

It's election time. There's lots of news coverage of the upcoming election, and advertisements for candidates and parties. You talk to some of your friends about the prospects. The social media are filled with views. If you're conscientious, you read the statements made available by candidates and parties in order to understand the options and make a reasoned choice. Perhaps you're even more active, campaigning for your preferred candidates.

On election day, you attend the polling booth and cast your vote, along with many others. Afterwards, you might watch media coverage of the election results. On the other hand, you might be one of those who don't really care, and don't bother to vote, because the parties are all the same and you can't trust politicians. However, even if you're indifferent or cynical, at election time it's hard to avoid the pervasive attention to voting and politicians.

Even if there's no election imminent, there's usually plenty of media coverage of politics. Indeed, it is one of the staples of news, along with crime and sports. Politicians make pronouncements that are reported. Maybe there is speculation about power struggles within parties, or about new policies.

When there is some sort of crisis — a financial meltdown, involvement in a war, or a natural disaster — all eyes turn to the response of the government. Even in normal

times, the government is often the focus of attention. People are supposed to pay taxes, but many try to limit their payments. On the other hand, people expect the government to provide services, including schools, hospitals and roads, and get upset when these are not as good as they could be.

It is reasonable to say that there are two official channels involved here. One is the government itself, including legislative and executive branches, plus all sorts of government departments and agencies. The other official channel is elections, which provide a process for changing the government. Indeed, elections are touted as the essence of democracy. They are said to give a mandate to governments to implement policies, and to give voice to "the will of the people."

Elections as liberating

In Britain, elections were introduced in the 1600s as a restraint on the power of the monarchy. In the beginning, only a few people were allowed to vote: men who were property owners. This was a very restricted franchise. However, after elections were introduced, the idea of voting became associated with opposition to arbitrary rule. The result was that as other groups mobilised and demanded fair treatment, one of their expectations or demands was to be able to vote.

The result has been a gradual expansion of the franchise. The feminist movement exerted pressure to allow women to vote. Associated with this expansion of the vote was pressure to allow any man or woman to run for office.

Elections are threatening to powerful groups that want to maintain their power, so various means have been used

to control outcomes. One method is the gerrymander: electoral boundaries are drawn to advantage one party over another. The counter to the gerrymander is an independent electoral commission that draws boundaries in a fair, non-partisan manner. Gerrymandering continues to be important in some countries, notably the US.

Another way to rig outcomes is to prevent or discourage some people from voting. This includes legal restrictions (for example to deny prisoners the right to vote), difficult or confusing processes for registering to vote, and the use of guile or force to prevent some people from voting.

The presence of fair elections is often taken as an indication of how free a society is. However, there is a curious blinkering of views of the relevance of elections. Many people work in large organisations with hundreds or thousands of employees. This includes corporations, government departments, hospitals, universities, churches, militaries and international bodies. These organisations are as large as the electorates of many towns, yet these large organisations do not have elections. The contrast is stark: if you are a citizen, you are entitled to vote for rulers, but if you are an employee, you have no such right. Furthermore, in many large organisations there are no political parties nor rights of free speech.[1]

---

1 Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton, NJ: Princeton University Press, 2017); Bruce Barry, *Speechless: The Erosion of Free Expression in the American Workplace* (San Francisco: Berrett-Koehler, 2007); David W. Ewing, *Freedom Inside the Organization: Bringing Civil Liberties to the Workplace*

Nearly all large organisations are bureaucracies: they are structured as hierarchies with a division of labour, in which workers are interchangeable cogs. "Bureaucracy" here refers to a system of organising work, and is not restricted to government. Corporations are just as bureaucratic as government departments. Sociologist Deena Weinstein argued that bureaucracies are like authoritarian states: they restrict free speech and assembly, do not have elections for senior positions and do not allow groups to campaign against the leadership. The main difference is that bureaucracies operate without the use of physical violence: there are no organisational police or troops used to quell criminals or rebels.[2]

If having elections is a liberating process, the absence of elections in large organisations shows liberation has a long way to go.

Challenging unfair elections

Compared to dictatorship, representative government is a great leap forward towards citizen participation and government accountability. Although some dictatorships are benevolent, in many cases they lead to exploitation, economic stagnation and denial of human rights, in line

---

(New York: Dutton, 1977); Alan F. Westin and Stephan Salisbury (eds.), *Individual Rights in the Corporation: A Reader on Employee Rights* (New York: Pantheon, 1980).

2 Deena Weinstein, *Bureaucratic Opposition: Challenging Abuses at the Workplace* (New York: Pergamon, 1979).

with Lord Acton's saying, "Power tends to corrupt and absolute power corrupts absolutely."[3]

Even short of dictatorship, governments can be authoritarian and repressive. In some cases they are sham democracies, holding elections that are rigged in various ways, in order to give legitimacy to their rule. Sham elections are a classic example of official channels as facades.

Around the world, citizen campaigners seek to challenge authoritarian governments, and some of the most striking successes have been challenges to fraudulent elections. In 1986, Philippines president Ferdinand Marcos called an election, intending to legitimise his authoritarian rule. Supporters of his opponent, Cory Aquino, refused to accept the official result, apparently obtained by falsifying voting returns. In the capital Manila, hundreds of thousands of citizens joined a massive rally demanding that Marcos resign — and eventually he did, when it became apparent that police and troops were defecting to the opposition.[4]

In the late 1990s, Serbian president Slobodan Milošević ruled with an iron hand, suppressing opposition through a combination of techniques. Opponents of

---

3 For research that supports Acton's aphorism, see David Kipnis, *The Powerholders* (Chicago: University of Chicago Press, 1976); David Kipnis, *Technology and Power* (New York: Springer-Verlag, 1990); Ian Robertson, *The Winner Effect: How Power Affects Your Brain* (London: Bloomsbury, 2012).

4 See for example Stephen Zunes, "The origins of people power in the Philippines," in Stephen Zunes, Lester R. Kurtz, and Sarah Beth Asher, eds., *Nonviolent Social Movements: A Geographical Perspective* (Oxford: Blackwell, 1999), pp. 129–157.

Milošević, led by the group Otpor, stimulated resistance through broadcasts and protests, including humorous stunts, and building grassroots opposition throughout the country. In 2000, Milošević called a snap election to legitimise his presidency in the face of opposition. He then claimed victory, apparently through falsifying the results: independent observers recorded a different outcome. Following strikes and rallies, opponents from across the country mobilised in a massive march to the capital Belgrade. Troops were no longer willing to support Milošević, and he was ousted.[5]

The pattern in the Philippines and Serbia was repeated elsewhere, including in the Ukraine and Georgia. In each case, struggles over elections played a crucial role. Governments used, and often manipulated, elections to give themselves legitimacy. Challengers monitored the voting, questioned the election results and used claims about electoral fraud to mobilise popular resistance.

In these cases, honest elections served as an opportunity for social change. Elections are an official channel for political decision-making, and active citizens see them as crucially important. That is why they put so much effort into all sorts of activities connected with elected politicians: lobbying, fundraising, meetings of political party branches, media commentary, candidate selection, opinion polling, advertising and encouraging supporters to vote. Aside from

---

5 See for example Janjira Sombatpoonsiri, *Humor and Nonviolent Struggle in Serbia* (Syracuse, NY: Syracuse University Press, 2015).

major sporting events, elections are one of the biggest shows in town and expectations are high.

Elections offer legitimacy to rulers

Because elections give citizens a chance to participate in decision making, the results of elections appear to reflect the will of the people. This gives enormous legitimacy to those who are elected. They are not there because of having connections, money or ruthlessness, but because voters chose them. Being seen to be elected is a source of strength to rulers.

This is the reason why some dictators organise sham elections. In the former Soviet Union, elections would be held, and the Communist Party candidates would win overwhelming victories, sometimes with 99% of the vote. On the face of it, this had no credibility. Most Soviet citizens knew the results were fraudulent, and so did foreign observers. Despite widespread awareness that Soviet elections were shams, with pre-determined outcomes, the process nevertheless offered some additional symbolic advantages to Soviet rulers. The public rhetoric of communist states was filled with references to democracy.

Some governments make voting compulsory, including Australia's. Although critics oppose compulsion on the grounds of individual liberty, compulsory voting can serve to increase the legitimacy of the government. In Australia, it is compulsory to attend a polling station and cast ballots — the penalty for non-compliance is a small fine — but it is quite legal to spoil the ballot, for example to leave it blank. Technically speaking, the compulsion is to attend the polling station, not to cast a valid ballot. However, few

voters choose this option. Once they are at the polling station, they go ahead and vote. By participating in the voting process, they give greater legitimacy to it: they didn't have to express a preference, but they did. Collectively, the high percentage of valid votes gives legitimacy to the electoral process.

Compulsory voting in Australia can be compared to voluntary voting in the United States, where in many parts of the country some groups face barriers to voting. The combination of barriers and apathy leads to low voter turnout, sometimes less than 50%, reducing the legitimacy of the outcome. If only half of citizens vote, those elected have a harder time claiming a mandate from the electorate.

Compulsory voting raises an intriguing clash between rights and legitimacy. Supporters of individual rights often say voting should be voluntary. However, when the turnout is low, this reduces the credibility of the electoral system. Compulsory voting makes it easy to obtain a high turnout, giving greater legitimacy to the system. Furthermore, citizens who vote, even when compelled, can feel a greater psychological commitment to the outcome.

Conclusion

Elections can be thought of as an official channel, namely as a formal way of dealing with an issue or problem. The issue is choosing rulers — political decision-makers — and the related problem is authoritarian rule. When elected rulers do the wrong thing, citizens can toss them out of office, at least if the system is sufficiently fair to allow this.

Because elections are seen to provide a proper way of choosing decision-makers, this can lead to pressures to

make them fair, including the expansion of the franchise, removal of discriminatory barriers to voting, and popular challenges to rigging of elections. One result of these efforts is to turn elections into an end-stage goal. Rather than elections being seen as one technique for citizen participation in the decision-making process, they become the only goal thought to be important.

This brings up the other side to elections as official channels: they restrain moves for greater participation. One aspect of this is that elections are normally seen as appropriate for only one domain, called politics. Elections are seldom used to choose leaders within large organisations — government departments, corporations, churches, universities, militaries — which are supposed to be meritocracies but have many elements of autocracy. What is called politics represents just one arena.

There are various possible ways in which citizens can play a role in public decision-making, including referendums, forums and random selection of decision-makers. More fundamentally, the system of rule, with a few at the top having far more decision-making power than ordinary citizens, can be questioned. There are various alternatives that devolve this power to neighbourhoods and workplaces, but these are usually off the agenda.[6]

---

6 For example, Lyn Carson and Brian Martin, *Random Selection in Politics* (Westport, CT: Praeger, 1999); David Van Reybrouck, *Against Elections: The Case for Democracy* (London: Bodley Head, 2016); Colin Ward, *Anarchy in Action* (London: George Allen and Unwin, 1973).

In this context, elections provide legitimacy to the system of rule. They restrain moves to give more power to people at the grassroots.[7]

Elections, as official channels, thus have a dual role, both enabling citizen input into political decision-making while limiting the scope and immediacy of this input. Elections, in their liberating role, can capture the imagination of those seeking greater freedom from tyranny. Elections, in their restraining role, limit the prospects for introducing more participatory alternatives.

7 The best treatment of this is Benjamin Ginsberg, *The Consequences of Consent: Elections, Citizen Control and Popular Acquiescence* (Reading, MA: Addison-Wesley, 1982).

8
A miscellany of
official channels

When you start looking, official channels are everywhere, and so are people's beliefs that they are the solution to social problems. Here I've collected a few cases to illustrate different angles and arenas.

Australian banking regulators

In Australia, for decades serious abuses occurred in financial services, such as fraudulently signing customers up for risky loans, denying insurance claims based on outdated medical definitions, and charging fees for no service. Journalist Adele Ferguson played a major role in exposing misconduct. Whenever her newspaper stories about problems in banking were published, she received lots more information from whistleblowers and customers. In her 2019 book *Banking Bad,* she tells about the consequences of the industry's ruthless search for profits at the expense of customers.[1] Part of her story is about the failures of the regulators, especially the Australian Securities and Investments Commission (ASIC). From her book, it's possible to extract a checklist of methods for a regulator to be ineffec-

---

1 Adele Ferguson, *Banking Bad* (Sydney: ABC Books, 2019).

tual in its nominal job, and for a government to help in achieving this goal.[2]

• Seek appointment of tame regulator heads.
Alan Fels, while chair of the Prices Surveillance Authority, had been effective in using the media to expose companies. Companies tried to prevent his appointment to head the Trade Practices Commission (page 41).

• Denounce effective regulators.
The Trade Practices Commission, under Fels, ran an inquiry, reporting in December 1992. Opponents attacked its recommendations, saying it was "anti-business and anti-competition" (45).

• Investigate the journalist.
ASIC was slow to slow to respond to problems in the banks, but after one of Ferguson's articles appeared, within a day ASIC considered making an investigation into Ferguson herself (84–86).

• Take no action.
ASIC investigated the Commonwealth Bank of Australia. It found problems but took no action (89).

• Delay.
Despite being alerted to serious problems, ASIC took 16 months to launch an investigation (93).

---

2 For modes of regulatory failure in other countries' financial institutions, see Kate Kenny, *Whistleblowing: Toward a New Theory* (Cambridge, MA: Harvard University Press, 2019).

• Make false promises.
Whistleblower Jeff Morris met with ASIC staff in February 2011 and was assured that someone would investigate, but four years later nothing had been done (150).

• Do not release criticism of regulators.
A "capability review" of ASIC contained serious criticisms, especially in an "aide memoire." The government did not release the aide memoire (183).

• Go easy.
ASIC reported on banks' charging fees for no service — a form of robbery — by suggesting the cause was poor systems and that all efforts were being made to repay customers (221). In ten years, it initiated no civil proceedings against financial advisers, made no prosecutions for not reporting breaches in time, investigated less than half of "significant" breach reports, and took nearly two years on average to make decisions concerning customer complaints about poor financial advice (232).

• Collaborate with the institutions being regulated.
The Australian Prudential Regulatory Agency collaborated with financial institutions and did not address their misconduct (262–264). ASIC asked the Commonwealth Bank whether the penalty to be imposed was acceptable (274). ASIC, when dealing with civil or criminal breaches, often did deals before finishing its investigations (320).

• Impose inadequate penalties.
Penalties imposed by ASIC did not have a deterrent effect (288).

• Use a revolving door.

Many of ASIC's staff had previously worked at the financial institutions it regulated and afterwards obtained jobs at those institutions (321).

• When an inquiry seems inevitable, try to limit its impact.
For years, the banks and the Australian government resisted calls for a royal commission. When, in part due to Ferguson's exposés, some politicians initiated moves to instigate a royal commission, the banks urged the government to set up a commission itself, so it could set limited terms of reference and choose the commissioner. The commissioner, Kenneth Hayne, didn't recommend any changes in the financial system. Hayne, to address the failures of regulators, gave them more powers and more work, and hoped they would do better (366–369).

The First Amendment

The First Amendment to the US Constitution is supposed to protect free speech. It is taken for granted as being vital for free speech, indeed almost a form of holy writ. Yet it is possible to question the role of the First Amendment on two grounds: it doesn't work, and it's not necessary.

Does it work? There are many examples in which the freedom of speech, including the freedom of the press, has been defended in court using the First Amendment. Less often noticed are the many cases in which free speech is restricted, yet the First Amendment provides little or no protection.

Some US real estate developers have been challenged by citizen protesters, who write letters and sign petitions

against developments. To counter the opposition to their plans, some of these developers sue the protesters for defamation. This is one common scenario. Legal action for defamation has been used by police, government officials and numerous corporations to deter and attack critics.

Imagine you are an ordinary citizen who signed a petition against a proposal to build a casino. Then you receive a writ. You are expected to go to court to defend a legal action for defamation of the developer. This can be frightening. You might lose lots of money. The result: you become much more wary about speaking out about the casino.

Researchers George W. Pring and Penelope Canan dubbed these sorts of legal actions SLAPPs, standing for Strategic Lawsuits Against Public Participation. SLAPPs were first named in the US, where they had become a common phenomenon. Pring and Canan reported dozens of examples involving defamation and other torts.[3]

The First Amendment protects press freedom. Less well known is that it protects the right to petition the government. When people sign a petition or make a complaint about police abuse, they are constitutionally protected. This means that SLAPPs violate the Constitution.

This means that when you're sued for speaking out, you can cite the First Amendment in your court defence. That's fine, except that the process may require quite a bit of time and money. Pring and Canan found that most SLAPPs were never intended to be successful in court.

---

3 George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia, PA: Temple University Press, 1996).

They worked by intimidating their targets, even when they nearly always failed legally.

What should be done about SLAPPs? One solution has been for US states to pass anti-SLAPP laws. Yes, there are laws against initiating legal actions that violate the constitutional rights of defendants. When there are anti-SLAPP laws, these are sometimes effective. Still, it seems that defending the right to speak in the US can be an onerous business, requiring time, money and angst. Free speech is protected on paper, in the Constitution, but this is not much consolation if it costs too much.

SLAPPs are just one example of the limitations of the First Amendment. There are lots of other examples. In his book titled *Freedom Spent,* Richard Harris detailed several cases in which constitutionally protected freedoms were denied, yet it proved almost impossible to challenge this through the courts. Harris concluded that the freedoms enshrined in the Bill of Rights are seldom upheld and that those who make personal sacrifices to push for their rights guarantee them for everyone else.[4]

Several US state governments passed laws making it illegal to defame foods, such as hamburgers. Absurd? Commentators suggested that such laws would probably be found unconstitutional, but to do this would require someone appealing to the Supreme Court. The process would be onerous and hasn't been pursued. The laws remain on the books. They serve as a deterrent.

Speaking out in public is one thing. When you go to work, or rather as soon as you walk through the factory or

---

4 Richard Harris, *Freedom Spent* (Boston: Little, Brown, 1976).

office door, your ability to speak freely without penalty is greatly diminished. As discussed in chapter 7, there's no free speech at work,[5] and workplaces, in this way, are similar to authoritarian states.[6]

Speaking freely *outside* of work can be risky too, if you value your current job or your future job prospects. When you make a comment on social media, or post a photo, it may be visible indefinitely. Criticising your employer can be way to become jobless. Making political or religious comments that offend employers is also risky. What is safe to say depends a lot on the person, the employer and the circumstances. The main point is that the First Amendment doesn't offer much protection to the ordinary citizen in such circumstances.

So far, the point is that the First Amendment doesn't work nearly as effectively as might be imagined. Meanwhile, it provides opportunities for hordes of legal scholars, lawyers and judges to try to interpret the voluminous legal commentary on the Amendment. At least this is a pretty safe way to exercise free speech: talk about constitutional protection for free speech.

---

5 Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton, NJ: Princeton University Press, 2017); Bruce Barry, *Speechless: The Erosion of Free Expression in the American Workplace* (San Francisco: Berrett-Koehler, 2007); David W. Ewing, *Freedom Inside the Organization: Bringing Civil Liberties to the Workplace* (New York: Dutton, 1977).

6 Deena Weinstein, *Bureaucratic Opposition: Challenging Abuses at the Workplace* (New York: Pergamon Press, 1979).

Adam Benforado, in his excellent treatment of biases in the US legal system, highlights the limitations of relying on regulations related to Constitutional protections guaranteed in the Bill of Rights. He concludes:

> The complexity of our procedural rules — and the work we have put into developing them — creates the illusion of fairness. And that makes it all the more difficult to address the problems that plague our system. Ironically, it may be harder to eliminate false confessions when there is an ineffective set of procedural rules aimed at preventing them than it would be if there were no protections at all. With elaborate structures in place, it appears that we've addressed the issue, and anything that is not barred at the gates is given little or no scrutiny — it's assumed to be legitimate.[7]

The second point is that constitutional protection is not necessary for free speech in practice. Australia's constitution does not mention free speech, and there is no bill of rights or other legislation that guarantees the rights of the press or citizens. Yet speech in Australia does not suffer greatly, at least not because of lack of constitutional protection.

In some ways, Australia is not a good example, because there are all sorts of restraints on speech. Defamation laws are draconian: they strongly favour plaintiffs, and defendants have to fork out tens of thousands of dollars to defend in court. There are oppressive laws concerning

7 Adam Benforado, *Unfair: The New Science of Criminal Injustice* (New York: Crown, 2015), pp. 247–248.

national security that criminalise whistleblowing and reporting on corruption. There are hate speech laws (which, however, are rarely invoked and don't do much to limit hate speech).

Despite the lack of constitutional or other legal protection, it can be argued that the ability to speak openly in Australia is not systematically different than in the US. No one has made a careful comparison. There is a lot of top-notch investigative journalism in Australia, lots of public protest, and vigorous public debates on a range of issues. In free speech terms, things are not wonderful by any means, but they're not terrible.

Would an Australian bill of rights make a difference? Undoubtedly, but perhaps the effect would not be nearly as dramatic as envisioned by advocates.

If there's no constitutional protection, then how is free speech, such as it is, maintained? The answer is through expectations and campaigns. When an academic is dismissed from a tenured position because of their public comments, there are two responses that can be effective. One is legal action for breaching the terms of employment. Australian universities, like other workplaces, have enterprise agreements between management and the union, and breaching these agreements is a basis for court action. The other effective response is publicity. In prominent academic freedom cases, there may be considerable media coverage. The very prospect of adverse media stories is sufficient, most of the time, to deter university administrations from taking retaliatory actions.

In 2019, Gerd Schröder-Turk, a mathematician at Murdoch University in Western Australia, commented on

television about inadequate standards for admitting international students. The university administration sued him for loss of international student income due to his comments, and demanded access to information about his contacts with journalists. This retaliatory action generated an enormous show of support for Schröder and free speech, with over 25,000 people, including many prominent academics, supporting a statement condemning the administration's action. The resulting bad publicity for the university, which would probably hurt student recruitment, provided a warning to any other administration about the likely response to attempted gags.

There are SLAPPs in Australia. They can't be countered by appealing to the constitution, so instead campaigners use publicity to mobilise support, in conjunction with legal defences.[8]

The fixation on constitutional protection of free speech often overshadows other methods for enabling free speech and public deliberation. A lot of the commentary about the First Amendment assumes that laws and courts are all important. They can be important, to be sure, but it is also important to understand the dynamics of free speech struggles and for more people to engage in these struggles.

---

8 Greg Ogle, *Gagged: The Gunns 20 and Other Law Suits* (Sydney: Envirobook, 2009); Brian Walters, *Slapping on the Writs: Defamation, Developers and Community Activism* (Sydney: University of New South Wales Press, 2003).

Human rights agreements

The United Nations International Covenant on Civil and Political Rights covers a wide range of human rights, for example the right of peaceful assembly, freedom from torture, the right to marry and equality before the law. Most of the world's governments have pledged to uphold these rights. Does this make a difference? According to an empirical study, a government becoming a party to this human rights agreement seems to have had little observable impact on its actions.[9] One reason is that there are no enforcement provisions. The result is that signing up to this UN agreement may, in many cases, give only an illusion of increased protection of human rights.

Research ethics review

Some researchers investigate chemicals. Others investigate archaeological specimens. Some undertake research on animals. And some investigate living, breathing humans. For example, medical researchers study surgical techniques, psychologists study mental illness, education researchers study teaching techniques and sociologists study family dynamics. A lot can be learned about crime, health,

---

9 Linda Camp Keith, "The United Nations International Covenant on Civil and Political Rights: does it make a difference in human rights behavior?" *Journal of Peace Research,* vol. 36, no. 1, 1999, pp. 95–118. For a more comprehensive analysis, which reveals many complexities, see Linda Camp Keith, *Political Repression: Courts and the Law* (Philadelphia: University of Pennsylvania Press, 2012).

education, leadership, compassion and a host of other topics.

Social scientists who study humans can use a variety of techniques, including observation, interviews and surveys. There are also some less familiar techniques. In participatory action research, researchers join with members of the community to undertake projects with a dual purpose, to promote beneficial change and to learn about social dynamics. For example, a researcher might work with former prisoners to see how reintegration into the community can be fostered.

Some research raises ethical concerns: subjects might be harmed. In the 1970s and 1980s, a movement developed to require university research involving humans to be approved in advance by a research-ethics committee.

In the late 1980s, I interviewed leading Australian proponents and opponents of fluoridation. I identified individuals I wanted to interview, contacted them and talked to them in person or over the phone. It was straightforward. The challenges involved deciding on the purpose of the research, figuring out who to interview, deciding what to ask and then using the information gained in research publications. Initially I planned to write a history of fluoridation in Australia. After the first two interviews, I changed my plans. My interviewees couldn't remember dates and actions, but I learned a lot about the way they thought about fluoridation issues.

By the 2000s, there would be an extra challenge: obtaining approval from a human research ethics committee to undertake the interviews. This would involve filling out an application over 20 pages long (only some questions are

relevant) and preparing an information sheet for interviewees plus a consent form for them to sign, as well as listing typical questions that I would ask. Very likely, I would be asked to make revisions in the application, for example putting the university logo on the information sheet, and asked for additional information about what would be done with interview notes and what to do if interviewees became distressed. Aside from the time to prepare the application, the approval process could take a month, or several months. For one of my PhD students, it took over a year to obtain approval from two different committees to talk with groups of youth about community engagement.

Research-ethics review has become standard in nearly every research field, and seems to be especially important in English-speaking countries. In the US, the committees are called Institutional Review Boards (IRBs).

Criticisms of research-ethics review are commonplace. Researchers complain about excessive delays, about petty bureaucratic requirements, and about the difficulty of undertaking research on sensitive topics.

Will van den Hoonaard had experience on research-ethics committees in Canada, and then had second thoughts on their value. He undertook an ethnographic study of research-ethics review in Canada, focusing on the social sciences.[10] He noted that the model for research ethics was taken from biomedicine and imposed on the social

---

10 Will C. van den Hoonaard, *The Seduction of Ethics: Transforming the Social Sciences* (Toronto: University of Toronto Press, 2011).

sciences.[11] Some productive research methods in the social sciences, for example community-building participatory research, do not mesh with the biomedical model, and have gone into decline. Van den Hoonaard says research-ethics review is "impoverishing the social sciences."

He found that committees gave certain topics more scrutiny, or rejected applications entirely: "research on vulnerable people, students studying children, pedophilia, Aboriginal research and child or wife abuse, minors, the use of medicinal (herbal) plants, sexuality, drug users, illegitimate activities, or infidelity among professors."[12]

Disturbingly, he observed that the review process did not make researchers more ethical: "Among all the interviews I conducted with researchers, there was not one who said that complying with the review process led him/her to more thoughtful, ethical research, and many saw the process as torturous."[13]

Carl Schneider undertook a comprehensive analysis of the effect of IRBs in the US.[14] His assessment is damning. He provides numerous revealing examples and offers cogent arguments showing that the system:

---

11 For a history, see Zachary M. Schrag, *Ethical Imperialism: Institutional Review Boards and the Social Sciences, 1965–2009* (Baltimore, MD: Johns Hopkins University Press, 2010).

12 van den Hoonaard, p. 262.

13 Ibid., p. 223.

14 Carl E. Schneider, *The Censor's Hand: The Misregulation of Human-Subject Research* (Cambridge, MA: MIT Press, 2015).

- causes harm (including deaths)
- does not prevent unethical research
- hinders research
- is unaccountable (there are no appeal procedures)
- inhibits free speech
- is ever expanding (from government research to university research, from academic to postgraduate to undergraduate projects, from work by scholars to work by non-scholars)
- provides no evidence to support its mandate
- is highly bureaucratic and procedural
- is erratic (different IRBs come up with different requirements), and
- undermines ethical behaviour and effective professional controls over unethical behaviour.

IRBs prioritise protecting subjects over all other considerations, even when research benefits subjects, when subjects are quite willing to participate, and when informed-consent procedures distress subjects more than they protect them.

The IRB system is based on not trusting researchers, which in turn undermines researchers' commitment to ethical behaviour. A fundamental problem is the reliance on event licensing, in which a separate application is needed for each research project, by people who are less expert than the researchers.

Research-ethics committees are an official channel, one set up to deal with harms to research subjects. According to critics such as van den Hoonaard and Schneider, committees often exaggerate these harms, meanwhile

preventing or distorting research agendas with subsequent harm to the very groups that may benefit from the research.

Like many other official channels, research-ethics committees are slow, procedural and deal with technicalities rather than substantive issues. The irony is that the rise of this bureaucratic empire has undercut traditions of professional ethics that had been well developed in many disciplines.

Corporations versus activists

Some corporations become targets for activists. Think for example of campaigners against smoking, protests against arms manufacturers and climate-activist blockades against coal exports. In response, corporations have used various techniques, from public relations to getting police to deal with protesters. One of the techniques sometimes used by corporations is infiltration. Company employees or paid agents join activist groups and build relationships with members, thereby gaining information about activist plans and strategies. The most insightful source about corporate infiltration is Eveline Lubbers' book *Secret Manoeuvres in the Dark.*[15]

Lubbers examined the long-running campaign against infant formula products, such as powdered milk, promoted and sold in poor countries. Breast milk is nearly always better for babies: it is designed by evolution to provide the right sort of nutrition, and also provides protection against

---

15 Eveline Lubbers, *Secret Manoeuvres in the Dark: Corporate and Police Spying on Activists* (London: Pluto Press, 2012).

disease. However, some mothers cannot breastfeed, so there is a legitimate role for purchased milk.

Some companies, however, promote infant formula as superior even in circumstances when breastmilk is better. In many poor communities, furthermore, the water used to reconstitute powdered milk is contaminated, making children ill. For decades, activists have campaigned against sales of powdered milk to poor people in developing countries.

The campaigners' primary target has been the company Nestlé. Opponents, a coalition of activists, churches and health professionals, organised a boycott of the company's products. To deal with the opposition, Nestlé hired various public relations companies. In 1981, Nestlé hired Rafael Pagan, who set up an operations centre. Pagan implemented a four-stage campaign. One of his aims was to create divisions among the opponent groups by building links with moderate groups. To help achieve this goal, he set up the Nestlé Infant Formula Audit Commission (NIFAC), a formal body for receiving public enquiries and monitoring Nestlé's commitment to World Health Organisation codes. Lubbers writes,

> The creation of NIFAC served as an effective deflection shield for Nestlé. Rather than having to deal with complaints directly, the company could plausibly claim that NIFAC was studying the situation.[16]

---

16 Ibid., p. 54.

Some of the groups involved in the boycott, especially churches, wanted to give the formal process a chance. Others wanted to continue the boycott. Pagan's tactic succeeded in splitting the boycott campaign, at least for a while.

Lubbers notes an additional benefit to Nestlé of talking with opponent campaigners: it gave insight into their thinking. "The Pagan case study illustrates that dialogue between a company and its critics is a vital element of the corporate counterstrategy and needs to be understood as a tactical information-gathering exercise too."[17]

The Pagan story illustrates how an official channel can be set up for the express purpose of disrupting effective campaigning.

Tax havens

Few people are eager to pay taxes, but most appreciate the services supported by taxation such as roads, schools and hospitals. Even when people don't like paying taxes, often they dislike even more tax avoidance by wealthy individuals and companies.

One of the methods of avoiding or minimising tax is to put money in a "tax haven," which is a country or jurisdiction with very low tax rates and high secrecy.[18] For example, a multinational corporation can establish its

---

17 Ibid., p. 80.

18 Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World* (London: Bodley Head, 2011); Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (Chicago: University of Chicago Press, 2015).

central office in Switzerland, Hong Kong or the Cayman Islands and use transfer pricing to reduce its apparent income in higher-tax places like France and Sweden. A company that makes a lot of money in France will sell some of its output to the headquarters in Switzerland at a very low price. On paper, the French branch ends up losing money, so tax in France is minimised, while the Switzerland head-quarters makes a lot of money, but this is okay because the tax rate is low.

The existence of tax havens serves wealthy individuals and companies, preserving and increasing their wealth, which means taxpayers and governments elsewhere lose out. What should be done about tax havens?

The problem has been around a long time. You might imagine that governments around the world would get together and figure out a way to eliminate them. But they don't, because that would mean challenging wealthy companies and individuals. However, because tax havens are such an obvious source of unfairness, governments need to be seen to try to do something about them. So they set up a process of negotiation. It's a classic official channel.

Gabriel Zucman, who calculated that the amount of the world's "hidden wealth" was over $2 trillion, wrote a book, *The Hidden Wealth of Nations*. He has a chapter on dealing with havens. It could be a primer on the failure of official channels: regulations set up in the European Union almost seem designed to fail (and perhaps they were). Zucman writes,

> Fifteen years of negotiations in Europe — the first discussions began at the beginning of the 1990s — to

end with this: a directive filled with holes that shows absolutely no serious will to fight against financial dissimulation.[19]

Yet Zucman remains optimistic that something will be done. He shows the logic of using direct action (trade sanctions and tariffs) against tax havens like Switzerland to force action against the banks. He assumes that the logic of the argument will win the day, though he admits that "Although solutions exist, governments have not been stellar up to now in their boldness or determination." Based on past lack of action, it seems more likely that delaying actions will postpone the reckoning indefinitely.

Citizen action is a better hope. As Zucman says, "To turn the page on large-scale fraud, the battle that must be fought is not just a battle between governments. It is above all a battle of citizens against the false inevitability of tax evasion and the impotence of nations."[20]

Israel-Palestine

For centuries, Jews in Europe were persecuted by Christian rulers. This culminated in the Nazi genocide, called the Holocaust, in which millions of Jews were murdered.

Even before the Holocaust, some Jewish figures were searching for a homeland where they could be free of persecution. They were called Zionists, and they mostly focused on Palestine, the spiritual home of the Jews. After

---

19 Zucman, p. 72.

20 Ibid., p. 116.

the Holocaust, the Zionist cause had much greater legitimacy.

After World War I, the League of Nations gave the British government a mandate to administer Palestine. Most of the people living there were Palestinian Arabs. Jewish immigration caused resentment and resistance among the Palestinians. Tensions increased after the end of World War II. To address the conflict, in 1947 the newly formed United Nations recommended partitioning the territory. A war ensued between Jews and Palestinians, who were supported by forces from neighbouring Arab states. By 1949, the newly formed state of Israel covered most of the former British mandate of Palestine, and three-quarters of a million Palestinians became refugees living in neighbouring countries. Some of them wanted to return. This was the basis for a seemingly intractable conflict.

In 1967 and 1973, Israel fought wars against its Arab neighbours, in the process occupying more land. The Palestinians remained exiled.

The Palestinian Liberation Organisation (PLO), formed in 1964, became the most visible source of resistance. In line with the concurrent Third World struggles against imperialism, the PLO endorsed armed struggle and the transformative power of revolutionary violence. However, this approach did little to advance the cause of the Palestinians.

As the years went by, Palestinians in the occupied territories of the Gaza Strip and West Bank increasingly questioned their prospects of being liberated by an outside organisation, the PLO, and in 1987 there emerged a popular unarmed Palestinian resistance from within the occupied

territories, called the intifada. This resistance involved boycotts, symbolic protests, self-run schooling and throwing of stones. The intifada could be called unarmed. It was far more effective than armed struggle in uniting Palestinians and generating international support.[21]

Eventually, the Israeli government agreed to negotiations with Palestinian leaders in what was called a peace process, which led to the Oslo agreement in 1993. The peace process promised to address Palestinian grievances, and so the intifada ended. However, the Oslo accord did not actually resolve the longstanding problems.

The conflict continued. There was a second intifada. There were clashes between the Israeli military and Palestinian groups, with thousands killed, most of them Palestinians. There have been many peaceful protests by Palestinians and Israelis, though international news normally reports only violence.

---

21 See for example Souad R. Dajani, *Eyes Without Country: Searching for a Palestinian Strategy of Liberation* (Philadelphia: Temple University Press, 1994); Marwan Darweish and Andrew Rigby, *Popular Protest in Palestine: The Uncertain Future of Unarmed Resistance* (London: Pluto Press, 2015); Maxine Kaufman-Lacusta, *Refusing to Be Enemies: Palestinian and Israeli Nonviolent Resistance to the Israeli Occupation* (Reading, UK: Ithaca Press, 2010); Mary Elizabeth King, *A Quiet Revolution: The First Palestinian Intifada and Nonviolent Resistance* (New York: Nation Books, 2007); Andrew Rigby, *Palestinian Resistance and Nonviolence* (East Jerusalem: PASSIA, 2010); Andrew Rigby, *The First Palestinian Intifada Revisited* (Sparsnäs, Sweden: Irene Publishing, 2015).

There is much more that could be said about the Israeli-Palestinian conflict. The conflict evokes strong emotions, with views highly polarised. Here, my focus is on the role of official channels.

Some official channels helped, in particular direct negotiations between governments of Israel and neighbouring countries. However, for solving the Israel-Palestine conflict, official channels have been ineffectual. Numerous resolutions by the United Nations General Assembly have been ignored by the Israeli government. Most disappointingly, the so-called peace process, including the Oslo accords, gave only an illusion of providing a resolution.

Rwanda and the UN

Rwanda is a country in central Africa. Small by African standards, it has a population of about seven million, most of them Christians: it is the most Christian country in Africa. Rwanda was previously a Belgian colony. The Belgians had assigned most of the people to one of two groups, the Hutu and the Tutsi. There is not all that much physical difference between them, and many lived near each other and intermarried. The Belgian administrators, by relying on Tutsis for administration, laid the groundwork for ethnic antagonism. On independence in 1962 the Hutus, the much larger group, took control of the government.

Hundreds of thousands of Tutsis were forced out of the country. Some of them joined an army called the Rwanda Patriotic Front (RPF), which launched attacks over the border from Uganda in the north. In the early 1990s, the United Nations became involved. It helped negotiate a truce, and a UN peacekeeping force — soldiers from

several countries — was assigned to Rwanda. Relations between the Rwandan government and the RPF remained tense. The government encouraged racial hatred against Tutsis.

On 6 April 1994, a plane carrying the president of Rwanda was shot down by a missile near the airport in Kigali, the capital. Hutus in the Rwandan government blamed this on the RPF and immediately launched a campaign to kill Tutsis throughout the country. Most Western governments evacuated their citizens. The UN peacekeeping force remained. However, according to its mandate, it could not use force except for self-defence.

The commander of the peacekeeping force was a Canadian, Roland Dallaire. He was appalled at the scale of the killing. He pleaded desperately for reinforcements, and for official permission to intervene against the killings.

By chance, at the time the Rwandan government was a member of the UN Security Council, and Rwanda's representative said there was no problem. Instead of reinforcing the peacekeeping force, the Security Council ordered that most of the troops be removed.

Despite increasing reports about mass killings, members of the Security Council were reluctant to label the events as genocide. The same scenario played out in several member countries. In the US, the government avoided the word genocide, thereby avoiding the necessity to intervene.

More than half a million people were killed, both Tutsis and so-called moderate Hutus. The genocide was only stopped by the RPF which, after the killings began,

relaunched its military attacks, eventually overthrowing the government.[22]

Disarmament

Massive military establishments, arms races, war: many people see these as major sources of human misery and death. What should be done about them? Governments, heeding popular pressure, have entered into negotiations to regulate arms, reduce armaments and ban certain types of weapons. Regulating arms is called arms control, and reducing armaments is called disarmament.

There has been some progress. There have been treaties about nuclear weapons, and bans of land mines, biological weapons and chemical weapons. It sounds positive. The trouble is, this gives only the impression of serious efforts to eliminate the means for war.

---

22 African Rights, *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995, rev. ed.); Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002); Roméo Dallaire with Brent Beardsley, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carroll & Graf, 2004); Alison Des Forges, *"Leave None to Tell the Story": Genocide in Rwanda,* 2nd ed. (New York: Human Rights Watch, 1999); Jean Hatzfeld, *Machete Season: The Killers in Rwanda Speak* (New York: Farrar, Straus and Giroux, 2005); Linda Melvern, *Conspiracy to Murder: The Rwandan Genocide* (London: Verso, 2004); Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Basic Books, 2002); Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca, NY: Cornell University Press, 2006).

For decades, some informed observers — those who pay close attention to disarmament negotiations — have been critical of the whole process. Decades ago, Alva Myrdal wrote a book titled *The Game of Disarmament* in which she exposed disarmament negotiations as a sham.[23] They gave only the appearance of addressing the problem.

Look for example at nuclear weapons, which have the potential to kill hundreds of millions of people and devastate the environment. The states with the most nuclear weapons, the United States and Russia, have reduced the number of weapons in their arsenals. That sounds promising. However, they have continued to "modernise" their weapons and delivery systems, making them more effective for war-fighting. None of the governments that acquired hundreds of nuclear weapons beginning in the 1960s — Britain, China, France — have renounced them, and several other governments have joined the nuclear "club": Israel, India, Pakistan and North Korea. The only country to develop nuclear weapons and then shut down its programme was South Africa, and that was after the peaceful political revolution that ended apartheid.

In the 1970s, most of the world's governments signed the Non-Proliferation Treaty. It was intended to do two things: to discourage governments that did not have nuclear weapons from acquiring them, and to prompt nuclear weapons states to disarm. Basically, the treaty was a

---

23 Alva Myrdal, *The Game of Disarmament: How the United States and Russia Run the Arms Race* (New York: Pantheon, 1976). See also Johan Galtung, "Why do disarmament negotiations fail?" *Gandhi Marg*, nos. 38-39, May-June 1982, pp. 298–307.

bargain between the nuclear weapons states and the others: "Look, if you promise not to get any nuclear weapons, we'll do our part by gradually getting rid of ours." The trouble is that the second part of the agreement was quickly forgotten. Nuclear weapons states have sat on their arsenals without any intention of disarming.[24] Meanwhile, leaders of these states try to create alarm about other governments getting nuclear weapons. Think of the uproar about North Korea's small arsenal and about the possibility that the Iraqi or Iranian governments might obtain nuclear weapons.

The Non-Proliferation Treaty turned out to be a sham. It might have been effective in discouraging some governments, like Australia's, from seeking nuclear weapons, but it has been completely ineffective in promoting disarmament by the major nuclear states.

The implication is not to put any trust in disarmament negotiations. Governments are the ones that have built up military systems. In most countries, militaries are more likely to be used for aggression or repression than for defence. Why should anyone expect that governments, the cause of the problem, would also be the solution? Disarmament negotiations are more about regulating military races than about serious steps towards disarmament.

In contrast, popular movements have made a difference. Lawrence Wittner made a massive historical study of the movements against nuclear weapons. He found that when movements were weak, arms races proceeded apace, whereas when movements were strong, this limited arms

---

24 Paul Rogers, *Losing Control: Global Security in the Twenty-first Century* (London: Pluto, 2000).

races. He found evidence that governments were influenced by protest movements, but they never admitted this in public.[25]

Here's what has happened over and over. There is popular agitation for peace. Leaders in some governments feel the pressure, so they enter into arms negotiations. This gives the impression they are addressing the problem. Unfortunately, the impression is often misleading. This would be amusing except that so many lives are at stake.

---

25 Lawrence S. Wittner, *The Struggle against the Bomb,* 3 volumes (Stanford, CA: Stanford University Press, 1993–2003).

9
Conclusion

When was the last time you saw someone urinating in public — someone who wasn't drunk? In Australia at least, there are laws against it, but laws aren't the main reason it has become uncommon. The reason is that public attitudes have changed. Public urination is considered disgusting. Laws might be helpful to deal with a few cases, but the main deterrent is public pressure.

Another example is chewing tobacco. There used to be spittoons in public venues. No more.

Centuries ago in Europe, there were no flush toilets. Instead, guests at a castle would find a convenient corner or use curtains.[1] These days, it would be the height of bad manners for a guest to pee on their host's carpet. No law is needed. Social pressure is enough.

Here's a different example. You receive a call from a stranger. The voice on the line says there's a problem with your Internet connection. Or they have detected some malware on Windows. Or perhaps the caller talks about car insurance, roof repairs or some other topic. After you've received a few of these calls, you probably know they are scams, attempting to get you to provide your credit card number and password.

---

1 Norbert Elias, *The Civilizing Process: The History of Manners,* volume 1 (New York: Urizen Books, 1978; originally published in 1939).

Do you hang up immediately? Shout abuse? Listen politely and say your Internet connection is fine — or that you don't have Internet? Ask the caller for a number to ring back? Have a conversation with the caller and ask whether it's a hard job when so many people they call are nasty?

There are laws against scammers, and a few of them are prosecuted. However, the most important method of resistance is an informed public. As people become skilled at recognising scams, scammers have to become more sophisticated. Fake emails, asking for your password, become ever more convincing, but gradually most users become better at recognising scams or taking precautions like checking with someone knowledgeable.

The point of these examples is that laws, like other official channels, are not the only way to deal with undesirable behaviours. Cultural change, skill development and collective action are also important.

What to do about official channels?
Four possibilities are to use them, reform them, oppose them and ignore them. These are not mutually exclusive: you might want to use an official channel to show its weaknesses, and use this evidence to push for reform.

Let's look first at using official channels. Based on the experiences of whistleblowers and others, here are three lessons.

1. When perpetrators are powerful, official channels are more likely to serve to reduce outrage over injustice. For example, when there's a brutal attack on peaceful protesters, and it's publicised, the government might set up an

inquiry. Many people think the inquiry will provide justice, so everything will be okay. The inquiry takes the issue out of the public arena. It relies on experts, such as lawyers and doctors, and slows things down. Only rarely does such an inquiry bring down high-level officials: usually functionaries are blamed. It is even rarer for such an inquiry to foster systemic change.

2. In deciding whether to use an official channel, look at its track record. How many complaints about sexual harassment are vindicated? How often do whistleblowers succeed when they take legal action against their employers?

In many cases, it's hard to find evidence of an agency's track record. You can't rely on media stories, because they typically report exceptional cases, like the whistleblower who is awarded $10 million in compensation. It's not news when a hundred whistleblowers, in separate cases, receive nothing or a pittance. You can try to talk to others who have used the same official channel. That may not give you an accurate estimate of your chances of success, but it is better than nothing and can give some indication of the time, effort and money that will be required.

You know your case is very strong, so even though others haven't succeeded, you think you will. The trouble is, all the others thought their cases were strong too. Even when you believe the evidence is overwhelmingly in your favour, it's still quite possible you will fail.

3. In deciding whether to use an official channel, compare it to alternatives, in particular mobilising support and

developing skills. Think about using an official channel in conjunction with these alternatives.

One of the biggest traps is to go immediately to an official channel — whether the police, ombudsman, experts, politicians or senior management, among others — without considering alternatives. This is a trap because of points #1 and #2: the official channel may end up reducing outrage about an injustice or it may have a bad track record in dealing with cases such as yours.

How do you make a comparison with alternatives? It's not easy, because often there's insufficient information. It's valuable to talk to people who've been through it themselves. For official channels, talk to people who've used them. For mobilising support, talk with people in activist groups or who have run campaigns. For skill development, again talk with people who have made this a priority.

One of the common illusions about official channels is that they will provide a prompt solution. This only happens rarely. Even if there is a major government investigation into a social problem, it may not lead to much change. Social change takes time. So, when comparing official channels with alternatives, think long term. Nothing is likely to provide a quick fix. The fair comparison will consider the long-term effects of using official channels, mobilising support and developing skills.

Rather than just using official channels, another option is to reform them. This might be improving whistleblower laws, sexual harassment procedures or United Nations processes.

If laws and processes can be improved, that will help a lot of people in the long run.

Again, it's important to compare efforts to promote reform with alternatives. Furthermore, sometimes the alternatives are roads to reform. When employees become skilled at anonymous leaking in the public interest, employers and governments may feel impelled to introduce better whistleblower protection schemes — better on paper, at least. Massive protests against war provide pressure on governments to seriously discuss disarmament.

A third option is to oppose official channels. This is worth considering when they serve as a dangerous façade. For example, quite a few authoritarian governments run fake elections, in which opposition movements have no chance due to corruption in vote counting, hindering of non-government parties, preventing opposition figures from being on the ballot, or arresting them. In some such circumstances, it may be better to denounce the elections as a sham. Opposing an official channel can help to highlight its deficiencies, and sometimes to lead to improvements. The point here is that opposing an official channel is worth considering as an option.

Finally, sometimes it is better just to ignore official channels, especially when they don't work very well. Rather than spending energy in trying to use them or to reform them, it can be more effective to look for other ways to achieve the same goals. Alternatives include finding or developing ways to address problems directly. This often involves helping people acquire skills and act together without relying on someone else to take action on their behalf.

Final thoughts

Many people look to authorities for protection. They want to believe that government agencies, experts, politicians, courts and upper management, among others, will address problems. Sometimes they will. My argument here is that often they don't or won't. My central message is not to rely on official channels. Be sceptical. Investigate performance. Check out alternatives.

Most of the people working in official channels are doing their best. To question reliance on official channels is not a reflection on individuals in the system.

At one level, this advice is obvious. Of course official channels don't always work. Nevertheless, belief in salvation from on high is widespread. If one agency won't help, then find another. If the government is corrupt, elect a new government. To counter this automatic tendency to turn to official channels, it is important to keep in mind other options: developing skills, changing cultures, acting collectively and developing alternatives.

Epilogue
A different perspective

The golden rule: he who has the gold makes the rules

Official channels often give only an illusion of addressing problems. Rather than relying on official channels and expecting them to deliver fair outcomes, it is important to consider alternative options, including developing skills and changing cultures. That is the argument in this book. But before concluding, it is worth examining quite a different angle on official channels. Perhaps they serve to maintain the system — not by failing but by succeeding.

In the study of US regulatory systems — especially systems to regulate commerce, for example railways, electricity and manufacturing — the dominant voice has been criticism of government interventions on the grounds that they discourage innovation and entrepreneurialism. This is the "big government is bad" theme in US political culture, exemplified by President Ronald Reagan's comment that "Government is not a solution to our problem, government is the problem."

However, there is another perspective on the regulatory impulse in US politics and economics. According to some scholars, regulation enables the system to survive, and gives advantages to big business.[1] Without regulation,

---

1 Classic treatments of the US progressive era include Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of*

small businesses could undercut big businesses through nimble innovation and lower prices. The result would be ruthless competition, driving down profits. Big business needs government intervention to thwart competition, in other words to protect monopolistic and oligopolistic operations.[2]

An example is the patent system. Patents are a restraint on trade, preventing competitors from producing similar goods for the duration of the patent protection. In a truly free market, there would be no patents and prices would decline, sometimes precipitously. The cost of pharmaceutical drugs, for example, would quickly drop to just above the price of production, just as with generics now.

Regulations, like patents, benefit larger companies, because complying with regulations takes up a smaller proportion of their overall expenses. Big companies may complain about regulations but actually need them to ensure larger profits. That is why the push for greater protection of intellectual property comes primarily from the

---

American history, 1900–1916 (New York: Free Press, 1963) and James Weinstein, *The Corporate Ideal in the Liberal State: 1900–1918* (Boston: Beacon Press, 1968). For a more general critique of institutions, including regulatory bodies, see Butler D. Shaffer, *Calculated Chaos: Institutional Threats to Peace and Human Survival* (San Francisco: Alchemy Books, 1985).

2 Economist John Kenneth Galbraith distinguished between two components of the economic system: the market system and the planning system. In the planning system, big businesses control the conditions for surviving and thriving. See for example *Economics and the Public Purpose* (Boston: Houghton Mifflin, 1973).

largest companies in software, publishing, biotechnology and pharmaceuticals.

From this perspective, ensuring that regulations are in place and have an effect enables the economic system to continue to give the greatest rewards to those with the most power and money.

Another way to look at this is to observe that the rules governing activities are not neutral but instead are usually biased in favour of those with the most power to shape the rules. Progressive income taxes, for example, seem to penalise those who make more money, but this is in the wider context of income inequality. If the head of a company makes ten or a hundred times as much as a shop-level employee, it doesn't really matter that the head has to pay a higher percentage of income tax. (Various forms of tax avoidance for the rich are an added advantage.) The rules, in this case, are the various processes that create inequalities in income. The income distribution is often treated as natural, as unbiased, rather than the result of pressures and power plays that advantage some groups and disadvantage others. It is not part of nature that a doctor earns more than a cleaner or that a school principal earns more than a childcare worker.

In this context, regulations help maintain a system built around inequality, exploitation and unfairness. In short, the system is rigged even when everyone follows the rules. Those who benefit most from the rigged system need regulators to keep upstarts in line.

Consider how this perspective applies to the case studies in this book. Much whistleblowing, namely speaking out in the public interest, concerns various forms of

cheating: people or organisations getting an unfair advantage by stealing, bending the rules and causing harm without penalty. If there were no such cheating, nevertheless the rules could be biased. Someone who challenges economic inequality, or who challenges environmental degradation, is not usually called a whistleblower, but might be called a reformer or activist. The implication is that whistleblowing is vital for challenging some forms of corruption but seldom enough to challenge institutionalised unfairness and harm.

Imagine that sexual harassment procedures worked ideally, so in workplaces there was no overt harassment. However, this would not be enough to challenge power inequalities associated with organisational hierarchies. Nor would it get rid of sexual harassment, which regularly occurs outside of workplaces, for example on the street. Inequalities in power are vitally important, and enable harassment.

Getting rid of student plagiarism sounds fine, but this does not address more fundamental features of schooling that can undermine learning, including the system of grades with its associated assumption that learning is a competitive endeavour and that status hierarchies are legitimate.

Rules governing the editing of Wikipedia are intended to ensure a good quality product, namely accurate and useful information. The trouble is that these rules can be used by editors to promote their own preferences and push out or discourage others. Following the rules is insufficient to address this problem.

There are many problems with the system of electoral politics. In some countries, such as the US, certain catego-

ries of people are excluded or discouraged from voting. Many voters may be ill-informed, swayed more by slogans and attention to personality than by careful consideration of policies. Campaigners regularly make promises that, when elected, they do not fulfil. Politicians are influenced by campaign donations and lobbying. Imagine that all these shortcomings could be overcome: all citizens are enabled and encouraged to vote, candidates cannot campaign but can only provide standardised information about themselves, and the boundaries for electorates are assigned by an independent body. Even in such an ideal system there would still be the inherent limitations of representation, including that a small number of individuals make decisions on behalf of an entire community.

In these and other examples, ensuring that rules are followed is worthwhile but not the end of the story. Official channels can only do so much when the rules underpin a system that is less than ideal. The implication is that part of the struggle for a better world is questioning the rules and, when needed, trying to change them.

Appendix 1
Roles of official channels

Official channels can be understood from various perspectives. Here, I discuss several roles they can play.

- As organisations or processes
- Doing the right thing
- Under attack
- Serving as tools
- Attacking
- As misleading symbols
- As theatre

Many people assume official channels do just what they say they do: the right thing. That's good when it occurs. However, it's useful to imagine that other things are going on, and this is where the different perspectives can be helpful. In practice, many official channels operate differently at different times, or have several different processes going at the same time. It's risky to accept or dismiss an agency on the basis of a single perspective. It can pay to investigate with an open mind.

As organisations or processes
Official channels can also be understood as organisations, with internal power dynamics, including dissent, suppression, factions and so forth. In this they are no different than other organisations. However, people tend to think of

organisations — some of them, anyway — as unitary entities, for example when referring to "the government" or "Canberra" or "they" as if government is a monolithic whole. It can be useful to remember that not everyone inside an organisation agrees with the views expounded by those at the top, and indeed some may be actively trying to change directions.

Some official channels are more processes than organisations, for example elections. Even so, processes require people to work together towards an outcome, so there are some human dynamics, often inside organisations or more widely through networks.

Doing the right thing

Imagine an organisation that does everything the right way: it does its job the way it's supposed to, and the way it says it does. This is the ideal.

An ombudsman's office, for example, might deal with all submissions promptly, efficiently and fairly, according to publicly available processes and criteria. No special favours are done, and no one is brushed off without proper treatment.

When organisations do the right thing, often this means they are professional and even harmonious internally. Each member does their job well, without interference from ambition or idiosyncrasies or personal vendettas. There might well be disagreements, even fierce ones, but these are dealt with in an open and honest manner, using conflict resolution techniques if necessary. Conflicts are in the service of performance and improvement, not to their detriment.

Ideally, a high-performing watchdog agency has ample resources to deal with all relevant matters, even with some spare capacity to handle emergencies or major cases. However, having ample resources is unlikely, especially because a high-performing agency is likely to develop a reputation and attract more "business."

Even an organisation that is woefully underfunded can still do the right thing, with the qualification that this is "to the best of its ability." Performance needs to be judged in relation to capacity.

It is natural to imagine that this hypothetical organisation — ethical, efficient and high-performing — will have a sterling reputation. However, this may not be the case. A good watchdog agency is bound to offend powerful individuals and groups, who may attempt to discredit, hinder or defund the agency. Those who are powerful are likely to judge an organisation not by how well it is doing its job but by how well it is serving their interests. Various means can be used against an effective agency.

Furthermore, no agency should be expected to do everything well. A more realistic expectation is that it does some things well, especially the most important things. An example is a court that makes wise decisions on the most significant cases.

Curiously, there seems to be relatively little writing about organisations doing the right thing. Most of the attention is on problems, shortcomings and failures. There are relatively few news stories about well-functioning organisations, and relatively little scholarly attention to explaining how they do as well as they do.

Under attack

Sometimes agencies come under attack, for various reasons, including for doing the right thing. This occurs when judges make rulings that politicians or people don't like, so there is talk about limiting the autonomy of judges, for example with mandatory sentencing laws.

When a watchdog agency actually does its job well, this can be threatening to corrupt groups and so there is pressure to rein in the agency, for example by cutting its funding, changing its staff, imposing controls over its powers or even shutting it down.

Indonesia's anti-corruption body KPK (Corruption Eradication Commission) has been highly effective, and as a result has had a high degree of public support. Legislators have made many attempts to muzzle the KPK.

As tools

Many government-funded agencies are nominally independent. They are required to operate according to legal mandates. In practice, some agencies operate as tools of others. An example is a corporate regulator that, instead of dealing with illegal and unethical business activities, protects the corporations it is supposed to monitor and sanction. There's a body of writing about "captured bureaucracies" and "regulatory capture."[1] These terms refer to regulatory agencies that serve the interests of the industry

---

1 For example, Ernesto Dal Bó, "Regulatory capture: a review," *Oxford Review of Economic Policy,* vol. 22, no. 2, 2006, pp. 203–225.

groups they are supposed to regulate: the agencies have been "captured" by the industry.

Also fitting in here are front groups, for example corporate-funded groups that look like they are grassroots environmental groups but actually have little or no citizen involvement. These are different in that they were never intended to be independent.

It's not clear whether or how to distinguish captured bureaucracies and front groups. The origin of the capture and how the capture operates may be different but the result is much the same: what appears to be an independent group is actually serving a master, and the service to the master is all the more effective the more the group is perceived as being independent. In both cases, exposure is an effective way to challenge these groups.

In many cases, there is direct sponsorship, for example of front groups. However, captured bureaucracies are not usually formally dependent on the relevant industry group: there is a process of accommodation, interaction and sharing of worldviews. Finally, there are instances in which groups can be "captured" even without any action by the industry that benefits. The classic treatment is Matthew Crenson's *The Un-politics of Air Pollution.*[2] Crenson documented that a local government body made decisions in support of the dominant corporation in the area, US Steel, even though US Steel apparently did nothing overt to influ-

---

2 Matthew A. Crenson, *The Un-politics of Air Pollution: A Study of Non-decisionmaking in the Cities* (Baltimore: Johns Hopkins University Press, 1971).

ence the decision-making process. Just by being there, it seemingly shaped the agenda of the government.

Attacking

Sometimes agencies go on the attack against anyone posing a threat to the groups they are supposed to regulate. For example, a police force, instead of pursuing organised crime, might instead attempt to harass and frame whistle-blowers who are challenging organised crime.

As misleading symbols

In many cases, agencies and processes appear to be doing something when actually little or nothing is happening. This serves to reassure people.

Courts and prisons give the appearance of protecting society from transgressions. This occurs in some cases, but in a very selective fashion. Some sorts of transgressions, especially some crimes of violence, are treated severely, whereas others, like massive corporate corruption, are implicitly approved.[3] There are numerous other examples, including whistleblower laws and other cases in this book.

In many of the cases in which official channels serve as misleading symbols, they are also serving as tools of others. In most of the backfire cases, that is the whole point. After a massacre that causes a tremendous outcry, governments set up investigations as a means of showing that the

---

3 Thane Rosenbaum, *The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right* (New York: HarperCollins, 2004).

problem will be fixed, even though not much change may happen.

As theatre

Official channels sometimes operate as a type of theatre for observers. One example is royal commissions that seek publicity, turning the formal part of the investigation into a show. The New South Wales royal commission into police corruption, held in the mid 1990s, was able to turn one corrupt policeman to become an informant, and he covertly videoed some of his dealings, which had tremendous impact when broadcast on television. A few of the investigations of the Independent Commission Against Corruption in NSW have followed the same path (see appendix 3).

However, not every royal commission seeks or achieves a high public profile and becomes a drama in this sense. According to Rodney Tiffin in *Scandals,* only a few royal commissions go down this road.[4]

There's a complication in talking about official channels as dramas, in that nearly anything in life can be treated as a drama. Indeed, drama is a common metaphor, and one can point to actors, stages, plots and so forth.

If everything can be thought of in dramatic terms, what is different about the dramas involving official channels? One is the outcome, the denouement of the plot, which is supposed to dispense justice. Another is the plot line, which is the process of dispensing justice. A key difference

---

4 Rodney Tiffen, *Scandals: Media, Politics and Corruption in Contemporary Australia* (Sydney: University of New South Wales Press, 1999).

between different cases is the size of the audience, small in many instances but occasionally huge. The NSW Police Royal Commission and Soviet shows trials were intended to have large audiences, and did. The performers in the OJ Simpson episodes probably didn't want a large audience, but the media ensured that they did.

The next two appendices are case studies intended to illustrate some of the categories outlined above.

Appendix 2
Watching the doctors?

If you live in the Australian state of New South Wales and you want to make a complaint about a doctor or nurse, the obvious place to go is the Health Care Complaints Commission (HCCC). It was set up by the state government to deal with shortcomings in the health professions. According to its web page, the HCCC "acts to protect public health and safety by assessing, resolving, investigating and prosecuting complaints about health care."[1]

The HCCC is a classic sort of official channel. It is a watchdog body, aimed keeping practitioners in the health system under scrutiny.

Here, I quote media reports about the HCCC, especially about its inadequacies. The purpose of this is to illustrate some of the roles of official channels.

A health watchdog with no fangs
It was April Fool's Day, 1 April 2004, but the front-page headline in the *Sydney Morning Herald* was no joke. The *Herald* is one of Australia's quality newspapers, well respected and not given to scandal-mongering. The unusually long headline read:

---

1 Health Care Complaints Commission, https://www.hccc.nsw.gov.au, 1 March 2020.

They entered hospital full of trust. Now they are dead or damaged. And no case was properly investigated. Not one.

In the centre of the front page was a box titled "16 cases that demand answers." The first one read:

> A visiting surgeon who was given the okay from the relative of a patient to perform a mastectomy. The consent form was incomplete and referred to the incorrect operating site. The wrong breast was removed.

This is the sort of case that the HCCC was set up to deal with. There was a serious failure of procedures that needed to be investigated. The problem was that the HCCC wasn't investigating properly. The main story began this way:

> As many as 16 doctors working at Camden and Campbelltown hospitals face further investigation and possible disciplinary action after an inquiry found that the NSW health watchdog had botched investigations into every complaint it considered.
>
> The interim report, prepared for a special commission of inquiry by Bret Walker, SC, identified 10 patients whose cases were mismanaged.
>
> They include a woman who lost the wrong breast in a mastectomy and a patient who broke her pelvis when she fell out of bed but whose condition was not recorded in notes.
>
> In all, 70 complaints were examined but Mr Walker said not one of them was properly investigated by the Health Care Complaints Commission (HCCC).

The message was stark. The HCCC, set up to investigate complaints about health providers, wasn't doing its job. Why not? In an accompanying article also on the front page, a journalist offered a comment under the title "Who put the muzzle on the watchdog?"

> Bret Walker's interim analysis of the Camden and Campbelltown hospitals quagmire can be distilled into one arresting finding: the state's health watchdog is no sick puppy. It has long been armed with well articulated jaws and sharp legislative teeth.
>
> The problem at the heart of this shocking human tragedy is that when it came to pursuing individuals — in this case 16 doctors and potentially as many nurses — the old watchdog was disobedient to its legislative master.
>
> And it wilfully refused to bare its fangs.

The HCCC had been given considerable powers by the state parliament. It had the power to deal with complaints about the health system generally and complaints about individual doctors and nurses. But it decided to treat complaints about individuals as complaints about the health system. It meant that the HCCC essentially did nothing about complaints. And, according to the report by Bret Walker, the HCCC's investigations all had flaws.

Another black mark for the HCCC was the case of Graeme Reeves, a surgeon who carried out numerous operations that maimed or killed patients, targeting women and babies for unnecessary or excessive operations. In one case, he removed a woman's vulva without permission; the oper-

ation is normally only considered when cancer is present, but there was none in this case.

In early 2008, Channel 9's television show *Sunday* broadcast three programmes about Reeves titled "Who watches the doctors?" The programmes exposed Reeves' behaviour based on numerous complaints. Channel 9's coverage was followed by major stories in the *Sunday Telegraph* newspaper. As a result of the media exposés, hundreds more women came forward with complaints about Reeves.

Where was the HCCC during this time? Before the Channel 9 programmes, the HCCC had received two dozen complaints about Reeves. "Who watches the doctors?" put the spotlight on the HCCC's inadequate action.[2]

Reeves was charged with numerous crimes, including female genital mutilation, and was convicted and imprisoned. The legal system seemed to offer Reeves every consideration, while his victims received little, but that is another story.

Reeves, dubbed "the butcher of Bega" — Bega is a town in southern NSW — is the poster story suggesting the failure of the HCCC. Reeves' crimes were extensive and there were numerous complaints about him, but the health watchdog did nothing. However, Reeves was only the most

---

2 For the HCCC's perspective, see "Review of past handling of complaints against Dr Graeme Reeves," Media release, 5 March 2008, https://www.hccc.nsw.gov.au/Publications/Media-Releases/Review-of-past-handling-of-complaints-against-Dr-Graeme-Reeves.

prominent of numerous doctors whose misdeeds were unimpeded by the HCCC.

Was the HCCC a rogue operation? Or was its behaviour typical of medical regulatory bodies?

The Queensland Medical Board

In Sydney in November 2013, Whistleblowers Australia held its annual conference. One of the speakers was Jo Barber, a well-known whistleblower.[3] She had a background in policing and then obtained a job with the Queensland Medical Board. The QMB is a watchdog body tasked with dealing with complaints about doctors and nurses in the state of Queensland. It might be thought of as the Queensland equivalent of the HCCC.

Arriving at the job, Jo was assigned 50 cases. She found an office in a state of disarray. For some of the cases she was assigned, there were boxes of files that went back several years. These were boxes of complaints and related material about a single doctor. What this meant, in some cases, is that numerous patients and family members had made complaints about a particular doctor, and their complaints had sat in files at the office for years, nothing having been done.

Even worse, Jo discovered that the board had no proper filing system. There was no system for recording complaints received and the status of an investigation.

3 Jo Barber, "Queensland Medical Board allowed dodgy doctors to work," *The Whistle* (newsletter of Whistleblowers Australia), no. 77, January 2014, pp. 9–10.

Having been a detective, this level of poor record management was almost inconceivable to her.

After she started going through some of the files, she was even more appalled. There were records of doctors who had been harming patient after patient over a period of years — yet nothing had been done with this information.

Jo estimated that the number of "rogue doctors" — the ones causing serious harm to patients due to incompetence or malice — was only one or two percent of the total. Most doctors were doing a good job most of the time, and their mistakes were occasional and inadvertent. But a small number were causing immense damage, and it was easy to identify them by monitoring complaints.

Jo discovered there was enormous resistance to taking any action against these rogue doctors. The top managers in the QMB did not want to disturb the medical profession through exposures or vigorous prosecutions. The leaders of the Australian Medical Association in Queensland opposed exposure and prosecution. Why? Because it would threaten the public image of doctors as respected professionals.

Jo discovered this when she spoke out about problems. She suffered reprisals. Luckily, she obtained publicity for her claims. As a result, she was contacted by dozens of doctors and nurses from around the state confirming her claims.

She told about one particular doctor who seemed to be a psychopathic killer. He would turn off life-saving equipment or in other ways threaten the lives of patients. After the board received complaints and felt compelled to act, what did it do? It said the doctor could continue surgical operations but he was supposed to stay away from a partic-

ular item of equipment. Who was monitoring this restriction? No one. Jo said this doctor was still practising in the state.

Medical dominance

It may seem amazing that regulation of doctors can be so lax. Some insight into the reasons why is provided by studies in the sociology of professions.

Professions are occupations — like law, medicine, dentistry and engineering — in which the practitioners claim a special commitment and mandate. Unlike other occupations such as farming, carpentry and sales, professions claim a higher status because they are supposed to be highly trained and to make a special contribution to society. Lawyers provide adherence to the law, doctors save lives and engineers make sure bridges don't fall down.

Because of their special roles, professions claim special privileges, including control over training and the ability to restrict the number of practitioners. No special qualifications are required to be a farmer or a salesperson, but to become a doctor, it is necessary to obtain a special degree, pass specific tests and undertake an internship.

Some sociologists say professions are not really so special in terms of their skills and are not really all that altruistic.[4] Instead, the idea of a profession is a way for an

---

4 Classic treatments include Eliot Freidson, *Professional Dominance: The Social Structure of Medical Care* (New York: Atherton, 1970); Terence J. Johnson, *Professions and Power* (London: Macmillan, 1972); Magali Sarfatti Larson, *The Rise of*

occupational group to obtain greater power and privilege. Restricting entry to the occupation means higher salaries. Imagine that anyone could call themselves a lawyer and do the things that lawyers usually do. Soon the market would be flooded with would-be lawyers and salaries would drop precipitously. On the other hand, if no one was allowed to fix or sell toilets except for a small, highly trained group, their wages would skyrocket.

In Australia, medicine is one of the most prestigious and high-paying professions. Entry to medical schools is highly competitive. At the top universities, studying medicine requires an exceptionally high score on standardised tests. This indicates that students are extremely keen to study medicine. Not every graduate has great career prospects, but specialists — after more training — can do very well. In 2014, news stories reported that surgeons earned, on average, more than $350,000 per year, about five times the average wage.

When occupational groups control their own conditions of work, they can make things cushy for their members — especially those at the top. They get the government to restrict entry to the occupation. They can also attempt to avoid scrutiny by outsiders. This is what the Australian medical profession seems to have accomplished.

There are limits to this process, because various other groups want to have a say. Governments try to impose financial controls. Companies seek to influence prescribing habits. Students compete for entry to medical courses, and

Professionalism: A Sociological Analysis (Berkeley, CA: University of California Press, 1977).

universities set up new ones to cater for the demand. Finally, patients demand accountability for poor performance.

In some countries, doctors are subordinate to the government. Their salaries are fixed or restrained. They are employees of hospitals or health systems. An easy way to determine the independence of the profession is to look at average salaries. If entry to the profession were much easier, there would be more doctors and salaries would drop.

In Australia, the medical profession is relatively independent, with strong support from the government to protect the profession from competitors. The result is high income, high status, restricted entry — and lax oversight.

Entering the vaccination debate

In 2009, the HCCC received an unusual complaint. It wasn't from a patient or a relative of a patient complaining about a doctor or nurse. Instead, it was from a member of the public, a fellow named Ken McLeod. His complaint was about the Australian Vaccination Network (AVN), a citizens' group critical of vaccination.[5]

Ken McLeod's complaint to the HCCC essentially asked for intervention in an ongoing public debate. Remember that the HCCC was set up to receive complaints about health practitioners, such as doctors and nurses. Why

---

5 For more details about this saga, see Brian Martin, "A vaccination struggle," chapter 8 in *Nonviolence Unbound* (Sparsnäs, Sweden: Irene Publishing, 2015), especially pp. 275–279 and 292–307.

should it pay any attention to the Australian Vaccination Network, whose key members are laypeople who are engaged in public debate, not acting as health practitioners? Despite this, the HCCC launched an investigation on the basis of McLeod's complaint and another complaint, from the parents of a child who died of whooping cough.

The HCCC's rationale was that the AVN was a "health education provider" and hence was a "health provider" and thus covered by the terms of the legislation establishing the HCCC. Whatever the legal niceties, treating citizen campaigners as "health education providers" in principle opens up nearly every public debate to the scrutiny of the HCCC. Critics of wind farms, bicycle helmets, seat belts, pesticides, nuclear power, fluoridation or climate change could be considered health education providers, with complaints made to the HCCC about allegedly false and dangerous information.

I've mentioned here only the critics, although in principle the proponents of bicycle helmets and the like are also health education providers. However, the HCCC only acted on one side the vaccination debate: as an enforcer for vaccination orthodoxy.

The HCCC demanded that the AVN put a disclaimer on its website. The AVN already had a disclaimer and, based on legal advice, declined to post the HCCC's disclaimer. Accordingly, the HCCC proceeded to issue a public warning about the AVN, which received widespread media coverage.

What is curious here is how the HCCC transformed itself from an arbiter of good health practice — by making judgements in response to complaints about doctors and

nurses — to an arbiter of what is allowed to be said in the vaccination debate. Given that the HCCC made no claim to have its own independent expertise concerning vaccination, what it did was accept the views of mainstream vaccination experts. The HCCC thus became a means of enforcing vaccination orthodoxy.

The HCCC's public warning had no legal force. The AVN was not forced to do anything in response. However, the AVN's reputation was seriously damaged by the HCCC's warning. Hence, AVN leaders decided to challenge the HCCC's jurisdiction in court, arguing that the HCCC had stepped outside the bounds of its charter in making a ruling against the AVN.

Normally, it would be quixotic for a small community group to challenge a well-funded government department in court. The AVN was only able to do this through the willingness of its legal team to work for little or no money. Amazingly, the AVN won the case. The HCCC immediately withdrew its warning.

However, the HCCC and its supporters did not give up. Instead, they lobbied the state government to change the law to give the HCCC greater powers. In a meeting of state parliament, one speaker after another supported vaccination and praised a bill that would enable the HCCC to legally go after the AVN.

After state parliament increased the HCCC's powers, in a way specifically designed to get around the court ruling, the HCCC launched its own investigation into the AVN. It looked through the AVN's website, seemingly trying to find any statements that conflicted with vaccination orthodoxy.

Given that the HCCC itself has no special expertise concerning vaccination, how did it justify its criticisms of statements on the AVN's website? It relied on advice from three vaccination experts. However, the HCCC refused to release to the AVN either the names of these experts or their reports. The AVN was thus put in the position of trying to justify its statements against the claims of anonymous experts whose comments were not open to scrutiny. The judge in this contest was the HCCC, which had launched the investigation.

The HCCC issued another public warning.[6] This time, however, it received little media attention.

In seeking and gaining expanded powers for the specific purpose of taking action against a citizens' group advocating a minority position in a public controversy, the HCCC had moved quite a distance away from its initial premise of handling complaints against health practitioners. It had strayed from the core business of addressing unethical and dangerous health practice to being an enforcer of medical orthodoxy.

While the HCCC was spending a huge amount of time and money in its pursuit of the AVN, a different sort of story broke in the media. A neurosurgeon, Suresh Nair, was exposed for clinical failures, with a list of surgery patients injured. Nair had a cocaine addiction and participated in orgies during which two prostitutes died. In June 2014, the Sydney newspaper *The Sun-Herald* editorialised about Nair:

---

6 The warning is dated 10 December 2018. As of October 2019, it was the central item on the HCCC's home page.

This week, [Carla] Downes told *The Sun-Herald* about the botched surgery that left her with 27 per cent impairment. Incredibly, she cannot access the findings of a Health Care Complaints Commission investigation into her treatment because Nair did not fight the charges.

The HCCC investigates and prosecutes serious healthcare complaints. It operates jointly with the Medical Council of NSW (formerly the NSW Medical Board) to ensure doctors are fit to practise.

Serious failures in its investigatory processes were uncovered in the case of Dr Graeme Reeves, the infamous Butcher of Bega. One newspaper declared in 2008 that the HCCC and the medical board had proved "by this case alone, their utter uselessness."

… The Medical Council operates a program to help troubled doctors continue to work. But on the strength of the board and the HCCC's performance in the Nair case, we can have no faith that doctors on this program are being properly supervised or complaints against them treated with rigour.

… As in the Reeves case, the healthcare complaints system must be held to account. As in the Reeves case, its handling of Nair was utterly useless.[7]

---

7 "Nair's patients deserve better than bureaucratic silence," *Sun-Herald,* 8 June 2014, p. 33.

Conclusion

The HCCC is supposed to be a watchdog body, intended to address abuse, corruption and other problems with health practitioners, primarily doctors and nurses. However, many of its investigations were later determined to be flawed. Furthermore, there had been numerous complaints to the HCCC about a doctor, Graeme Reeves, who was later found guilty through the courts; some observers thought the HCCC's response to complaints was inadequate. This is compatible with the HCCC serving as a misleading symbol. It gave the appearance of protecting the public but often without much substance.

The HCCC, based on complaints from pro-vaccination campaigners, then embarked on a different sort of venture, making adverse judgements against citizen vaccine critics who, in the normal sense of the word, were not health practitioners. The HCCC stretched the meaning of "health practitioner" and then, when thwarted by a court ruling, had its legal mandate expanded so it could embark on its vendetta against vaccine critics. In relation to vaccine critics, the HCCC's was in the role of attacker.

Curiously, the HCCC seemed far more determined to act against citizens involved in a longstanding public controversy than to act on complaints against rogue doctors. To its critics, the HCCC's trajectory suggests that it might better be named the Health Establishment Protection Commission. In this role it served as a tool of the medical profession, or rather of the reputation of the medical profession, by failing to act effectively against egregious malpractice.

The HCCC also fulfils other roles. No doubt there are some instances in which it is effective, doing the right thing. It also has the role of an organisation with its own internal dynamics.[8]

It is wise not to make sweeping judgements. The HCCC, like most organisations, plays many roles simultaneously. My comments here are based primarily on news reports, which seldom capture the day-to-day operations of any organisation. What the news reports do suggest is that it is sensible not to place too much trust in the HCCC. In particular, if you know about a dangerous doctor, it would be wise not to rely on making a complaint to the HCCC.

Even if the HCCC were a model agency, there would be disadvantages in relying on it, because this would divert attention away from other ways to address problems in the health system. One important option is to give patients and

---

8 According to Kate Aubusson, "Claims against medical watchdog back up," *Sydney Morning Herald,* 23–24 November 2019, p. 14, "The state's healthcare watchdog is taking almost a year to fully investigate serious allegations including malpractice and sexual misconduct amid rising numbers of complaints and dysfunction within the organisation" and refers to "months of reports of bullying and mismanagement within the commission." "Earlier this year, a whistleblower told the ABC [Australian Broadcasting Corporation] about the commission's 'dysfunctional workplace culture' and an exodus of staff that was affecting its capacity to assess hundreds of patient complaints. In August, the ABC revealed the HCCC had hired a convicted sex offender to investigate patient complaints and a 2017 consultant report in which some staff reported 'high levels of bullying' and 'extreme pressure' on workloads."

doctors skills in recognising and dealing with rogue practitioners. Another important option is to try to change the health-system culture so that good practice is the norm and exposing and addressing problems is routine. Agencies like the HCCC are like band-aids. When the problems are deep-seated, attention needs to be put on improving skills for challenging abuses and on changing the culture in the health system.

Appendix 3
Showtime in Wollongong

The headlines were spectacular: "Shockwaves," "City's darkest hour," "Black Tuesday." These were just a few of the front-page stories in the *Illawarra Mercury,* the daily paper in Wollongong. Corruption in the local government body was big news in Wollongong and throughout the state.

Wollongong is a city with a population of 300,000, on the eastern coast of Australia 80 kilometres south of Sydney. In Australia, there are six states and two territories, and within each state there are local governments called councils. Each council is run by elected officials called councillors, supported by paid staff who do most of the administrative work. One of the key functions of the council is managing development, including approving new buildings.

There is considerable scope for corruption in local government. Suppose a developer buys some vacant land. It is zoned for single-dwelling housing. However, the developer can make a lot more money if it is zoned for higher density housing, such as a high-rise block of units. Suppose the developer makes friends with a planning officer working for the council, and the planning officer approves a change in the zoning. The developer makes a windfall profit — an undeserved benefit — because the rezoning served the interests of this particular developer;

other developers didn't buy the land because it wasn't worth much until the rezoning.

If the developer provides some inducements to the planning officer, for example some cash or goods or arranging for tradespeople to fix up a house at no cost, this is a type of bribe — and is illegal. This type of corruption is pervasive in Australian local government. In Wollongong, it was exposed in a dramatic fashion.

ICAC

The key player in this case was the Independent Commission Against Corruption (ICAC), set up in 1989 by the New South Wales state government. With a budget of $25 million per year, ICAC has extraordinary powers to investigate. It can tap phones, confiscate computers and hold hearings in which witnesses are compelled to answer. However, ICAC cannot prosecute or sentence individuals. Anything said by a witness at an ICAC hearing cannot be used to prosecute them — except when witnesses lie, in which case they can be charged with perjury.

ICAC's efforts are regularly reported by the media, and naturally enough its biggest successes in exposing corruption receive the most attention. But behind the scenes, not everyone is happy with ICAC. In the late 1990s, the NSW branch of Whistleblowers Australia — the group based in Sydney — received numerous reports from individuals who had made complaints to ICAC about alleged corruption but whose complaints had not been acted on. Cynthia Kardell of Whistleblowers Australia collected information from 25 whistleblowers who had complained

to ICAC. One of them was partially satisfied; all the others were dissatisfied.

Sometimes going to ICAC was worse than doing nothing. Complaints to ICAC were supposed to be confidential, but in those days ICAC would refer them back to the government department involved, sometimes thereby revealing the identity of the whistleblower and opening them to reprisals.

ICAC is a typical official channel. In these instances, it gave the appearance of providing justice, namely acting against corruption, but from the perspective of many whistleblowers it was a toothless tiger. It provided the illusion of a solution. From the point of view of most whistleblowers, ICAC was a misleading symbol, promising justice but in practice seldom delivering any.

Years later, I happened to talk with a former ICAC commissioner, who told me that they received so many complaints that only two or three percent could be addressed. That figure fit perfectly with the cases collected by Whistleblowers Australia. Going by the percentages, out of 25 complaints, ICAC would probably have the capacity to act on one of them, or perhaps none.

Imagine that ICAC had made this information public, with a statement saying "If you make a complaint to us, it's unlikely we'll be able to act on it. We may refer it to your employer, so watch out in case your identity is exposed and you are subject to reprisals." With this sort of honesty in its self-description and information for potential complainants, ICAC would no longer be a misleading symbol. It might still be a symbol of justice against corruption, but one perceived more realistically, and perhaps even more

sympathetically. On the other hand, this might not serve the state government if citizens demanded more action against corruption.

The Wollongong corruption scandal

In its investigation of corruption in Wollongong Council, ICAC became a form of high drama. The stage was its hearings, the players were ICAC officials and Wollongong identities called to testify at the hearings, and the audience was the entire population, at least those who bothered to watch the news. I refer to this as high drama, because every part of life can be interpreted in terms of a metaphor of drama, with stage, performers and audience. Most of ICAC's investigations were fairly limited in terms of audience: only those with a special interest in the topic paid much attention. The Wollongong Council saga played to a much wider audience.[1]

ICAC set the stage through its investigations, conducted covertly, collecting evidence of corruption. Someone or several people had alerted ICAC to corruption in Wollongong, but who, when and what are not known publicly. ICAC proceeded by tapping telephones and then, in a spectacular intervention, raided Wollongong Council, confiscating computers and other materials. This public action generated headlines and created apprehension among many individuals who believed they might be

---

1 My account here draws on my much more comprehensive treatment, "Corruption tactics: outrage management in a local government scandal," *Resistance Studies Magazine,* 2012, https://www.bmartin.cc/pubs/12rsm.html.

targets of ICAC. The raid served as advance publicity for the main show: public hearings.

Two factors seemed to move the Wollongong corruption scandal from a routine investigation to high drama: colourful actors and sex. Beth Morgan was a senior planner at Wollongong Council, in a position to influence approval of development applications. She dealt with applications from two developers while having sexual relationships with them, and received benefits from them, for example extensive renovations to her house at no charge. She aimed to leave her position at the council and set up her own consulting business. Forging connections with developers was in her interest, even without the direct favours involved.

This core story of sex in exchange for benefits drove media interest in the ICAC hearings, which were open to the public. But there was much more. Wollongong Council's high-profile general manager, Rod Oxley, was in the spotlight for his close connections to developers, in violation of rules for recording meetings and the like, and for his support for development applications seemingly in violation of rules on height, space and other requirements.

Elected politicians were also implicated. Several of them had dealings with developers and were claimed to have been paid for their support for development approvals.

Tying all this together was the so-called "Table of Knowledge." At a small table outside a modest kebab shop, various developers, council staff and councillors would meet over breakfast. This became a symbol of the improper relationships that were alleged.

In addition, there was a bizarre side story. Two "con men," who had been in prison for fraud, approached several of the key figures in the drama, pretending they worked for ICAC or had influence with ICAC. This was after ICAC's raid on the Council, collecting computers and paper files, but before the hearings. Beth Morgan and others paid hundreds of thousands of dollars to Ray Younan and Gerald Carroll in the hope of escaping ICAC scrutiny.

This complicated saga, involving developers, council staff, elected councillors and con men, made for colourful media stories. The usual type of development-related corruption in local government is tawdry: an elected councillor has investments, or gains benefits from a developer, and makes decisions serving their own interests. The Wollongong case of this had the added features of sex, the Table of Knowledge (a symbol of corruption), several levels of government, and con men.

The public hearings turned this juicy story into high drama. ICAC called various key figures to testify. Some were honest council workers who gave their professional views about whether projects complied with regulations. Others called to testify knew they were targets of ICAC. Their actions might be judged as corrupt, so many of them started off by lying about what they had said or done. This was risky, because lying to ICAC was perjury and could lead to criminal sanctions.

The ICAC hearings involved the ICAC Commissioner, Jerrold Cripps, presiding and an ICAC lawyer, Noel Hemmings, examining witnesses. This was not a court in which witnesses were represented by their own lawyers.

Instead, the witnesses were on their own, on stage in front of everyone present, including media.

A typical examination of a witness went like this. Hemmings would ask some specific questions, such as "Did you ever have a conversation about using Mr Gilbert's computer?" Thinking that no one would know about a private conversation, the witness answered "No." Then ICAC played an audio recording of a conversation, showing in stark terms that the witness was lying. After this, the witness would try to come up with some explanation — for example, "You had asked me, I believe a question that I did not understand correctly. By playing the tape I have heard now what you were asking me" — anything except admitting to lying to the commission.

This was dramatic material. For weeks, the public hearings generated numerous headlines and feature stories in the local Wollongong media and also in media in Sydney and the state. For a time, the very word "Wollongong" became a way of referring to corruption.

This was one of ICAC's finest hours. By dramatising the corruption scandal, ICAC achieved one of its key goals, to raise awareness. No doubt the hearings provided a cautionary tale for the numerous other councils throughout the state where corruption was a possibility or a reality.

At the conclusion of the hearings, the main act of the drama was over. The remainder of the play was less exciting and showed another aspect of how official channels work — or don't work. After the hearings, ICAC produced several reports. This staged approach to reporting helped maintain interest in the issue, but nevertheless it was slow

going. The reports took months to prepare, and meanwhile interest died down.

There was one dramatic outcome. ICAC recommended that the state government dissolve the council, namely dismiss the elected councillors, and replace them with administrators for a period of time until a new election. The government acted on this recommendation promptly. This was an act of political expedience. Wollongong Council had been run by the Labor Party, and some of the Labor politicians were the ones targeted by ICAC. If there had been an immediate new election, most likely Labor would have been soundly defeated. The state government was also a Labor government, so by installing administrators, the risk of local electoral defeat was postponed.

The installation of administrators angered local citizens, especially those who had been campaigning for honesty in government. ICAC's hearings had generated huge support for reform, but apparently this reform was to be implemented from the top, by administrators, without significant citizen input.

ICAC could be criticised on another ground: it had pulled back from pursuing the extent of corruption associated with the Wollongong affair when it involved state politicians. Noreen Hay was a well-known Labor member of state parliament representing one of the electorates in Wollongong. Her name came up in the course of ICAC's inquiry, but ICAC declined to name her as a "person of interest," meaning they would not investigate her. She incorrectly represented this as meaning she was cleared. Similarly, a well-known Labor powerbroker who worked for Wollongong Council, Joe Scimone, was one of ICAC's

key targets. He was appointed to a high-paid job in a state government body, but ICAC declined to investigate the role of state politicians in the appointment.

ICAC thus did a much better job in exposing corruption in Wollongong Council than in pursuing higher level political corruption. This might be simply because inquiries need to be limited, because otherwise they could go on forever, pulling in figures from all sorts of connections. In other investigations, ICAC has gone after state politicians.

Looking at ICAC as an official channel, it's possible to see several roles.

• In dealing with whistleblower complaints, ICAC was primarily a misleading symbol. It gave the promise of providing justice, but because it could act on only a small percentage of complaints, the promise was more symbolic than substantive.

• In investigating and exposing corruption in Wollongong, ICAC was doing the right thing.

• In its public hearings into corruption in Wollongong Council, ICAC was high drama. The hearings, designed to attract media attention, served to put corruption in the spotlight. High drama achieved one of ICAC's purposes. Members of the public throughout the state were alerted to the potential of corruption.

• In the aftermath of the hearings, ICAC reverted to being a misleading symbol. ICAC's subsequent reports took a long time to prepare, while media and public interest declined. The investigation led to few prosecutions and even fewer convictions.

In terms of challenging corruption, ICAC's most useful role was in exposing the problem, stimulating changes in Wollongong Council and removing some of the most serious transgressors. On the other hand, by appearing to be the saviour, ICAC undermined citizen action against corruption: it seemed that the solution to corruption was official action. ICAC did not recommend or stimulate measures for greater citizen involvement in local decision-making. The challenge for citizen campaigners was how to make use of official channels such as ICAC without having their own agency removed.

Whatever ICAC's limitations, its efforts were unwelcome in some quarters. In 2017, ICAC's funding was cut, causing it to reduce its number of full-time investigators. In a comment criticising the funding cut, barrister Geoffrey Watson, who had worked as counsel assisting ICAC, wrote:

> In June 2016, then premier Mike Baird made two consecutive announcements. His first announcement was he and his government had "zero tolerance" for corruption. This was a strong, positive sentiment for which he could be admired. But his second announcement was he intended to inflict massive funding cuts on the ICAC.
>
> Baird never got around to explaining how he could reconcile these two apparently inconsistent propositions.
>
> Just as a matter of timing, the funding cuts were made shortly after the ICAC had exposed numerous members of Baird's party as committing election fund-

ing "irregularities." It is hard to imagine the funding cuts were completely unrelated to the ICAC's work.[2]

This was another role for ICAC: coming under attack. The government's message seemed to be that watchdogs should be seen but not heard.

---

2 Geoffrey Watson, "Brace yourself for a return to the bad old days," *Sydney Morning Herald,* 22 November 2017, p. 20.

Index