

Journalism as Reason-Giving: Deliberative Democracy, Institutional Accountability, and the News Media's Mission

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Offering reasons for public choice is the central act of deliberative democracy. These reasons, however, must meet a stern criterion; they must be grounded in principles that cannot be reasonably rejected by citizens seeking fair terms of cooperation. Because reasons given in actual political argument regularly fail to meet this criterion, journalism should be asked to participate not merely by presiding over an uncritical forum for reason-giving but by acting as a reasoning institution that aggressively pursues and compellingly renders reasons satisfying the criterion. Moreover, because deliberation must be regulated by procedural principles that include mutual accountability, journalism should be asked to participate by demanding the accountability of public institutions to citizens, each other, and most importantly the ideals of the polity. A case study of journalism demanding accountability to the ideals of justice—one newspaper's campaign for death penalty reform—provides a constructive model of journalistic reason-giving in a situation of deep moral disagreement.

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That journalism ought to be a means of democratic empowerment is a truism for both journalists and their critics. For journalists, expressions of this ethical conviction often affirm in straightforward terms the value of news and information for citizenship. “The primary purpose of journalism,” write two distinguished practitioners, “is to provide citizens with the information they need to be free and self-governing” (Kovach & Rosenstiel, 2001, p. 17). For critics, however, expressions of the same fundamental conviction often question whether the information that citizens receive really meets the needs of freedom and self-government. “What democracy requires is public debate, not information,” argues historian Christopher Lasch (1995, p. 44). “Of course it needs information, too, but the kinds of information it needs can be generated only by vigorous popular debate. From these considerations it follows that the job of the press is to encourage debate, not to

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supply the public with information. But as things now stand the press generates information in abundance, and nobody pays any attention.”

While questions about what journalism can do to command attention and promote debate are now frequently asked—and sometimes even insightfully answered—they are not the only questions that practitioners and critics should ask about the intimate but troubled relationship between journalism and democracy. In his assessment of the actual powers of news, Michael Schudson (1995) poses a crucial but quite different question by returning to Walter Lippmann’s argument that the people do not in fact govern but rather, “by their occasional mobilization as a majority, people support or oppose the individuals who actually govern” (1925, p. 61). To merely support or oppose those who actually govern, the people need know only a little of public affairs, thus rendering their general indifference, at least from an economic behavior perspective, entirely rational. What, then, ought the mission of journalism to be?

Schudson’s answer is paradoxical: The news media should function as if Lippmann’s conception of democracy both is and isn’t correct. On the one hand Schudson argues, “Helping citizens toward ‘adequate understanding’ has long been and still should be a leading aim of the news media” (1995, p. 212). A responsible effort to provide such understanding entails more than providing information that allows citizens to match their preexisting preferences to politicians who share those preferences. “What is at issue in politics is not manipulating predetermined tastes but shaping morally constituted values and value choices,” he writes (1995, p. 213). “This is the faith upon which a democratic polity rests.” On the other hand, if Lippmann’s skepticism is correct, journalism can have little success performing this classical democratic function. “If the press cannot communicate effectively about government to the people at large, it can nonetheless hold the governors accountable to the relatively small number of other informed and powerful people,” argues Schudson, indicating a function the news media can realistically perform. “The press can serve as a stand-in for the public, holding the governors accountable—not to the public (which is not terribly interested), but to the ideals and rules of the democratic polity itself” (1995, p. 217).

If by “informed and powerful people” we mean not only individuals but the organizations and institutions that they manage, whether in civil society, government, or the marketplace, then we have begun to specify a realistic role for journalism in contemporary democracy. “Some media, it is true, provide a vertical link between government and private citizens. However, the journalism of prestige dailies is often better viewed as a horizontal discourse between elites,” writes James Curran, presaging this institutional theme. “The media system, more generally, provides multiple links between state institutions, political parties, civil society, and citizens” (2005, pp. 121–122). Thus, journalism may well direct attention and promote debate, but in this conception such communicative action must be analyzed not only at the interpersonal level but the inter-organizational and inter-institutional levels as well.

Deliberation and Accountability

Journalism is considered here as an instrument of institutional accountability, a means to hold the governors accountable to informed and powerful people and more fundamentally to the ideals and rules of the democratic polity itself. The value of journalism in this regard is examined within the terms of a specific political theory—deliberative democracy—as explicated by Amy Gutmann and Dennis Thompson (1996, 2004), whose work clearly defines the theory’s conceptual vocabulary.¹ Devised as a means to inclusively and justly

form the public will, deliberative democracy may seem an unlikely framework for this analysis. However, the theory includes the concept of accountability within a system of morally sensitive language that suggests standards of performance for journalism when it attempts to function not only as a resource for citizen education but also as a social institution seeking the accountability of other institutions. At the same time, examining journalism as an exercise in institutional (or inter-elite) accountability can shed light on the possibilities for deliberative democracy within contemporary mass-mediated politics (cf. Cook, 1998, 2006; Tulis, 2003).

Deliberative democracy, according to Gutmann and Thompson, is “a form of government in which free and equal citizens (and their representatives) justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future” (2004, p. 7). Deliberative democracy confronts the fact that political arguments are irreducibly moral arguments, and it asks that the reasoning in such arguments be morally compelling rather than merely politically efficacious. “The reasons that deliberative democracy asks citizens and their representatives to give should appeal to principles that individuals who are trying to find fair terms of cooperation cannot reasonably reject” (2004, p. 3).

This is a moral mandate that, in itself, suggests a definition of journalism’s mission. Whether that definition emphasizes citizen discussion or institutional decision making, journalism can certainly be asked to seek and to offer reasons. But by requiring that these reasons appeal to principles that cannot be reasonably rejected by those seeking fair terms of cooperation, deliberative democracy makes a sterner request. Because reasoning in actual discussion and decision making regularly fails to meet this demanding criterion, journalism cannot be content to passively transcribe that reasoning or to uncritically preside over a forum for its presentation. Journalism must itself be a reasoning institution that aggressively pursues, rigorously tests, and compellingly renders reasons that satisfy the key criterion of deliberative democracy. If journalism ought to encourage debate as Lasch asks and hold governors accountable as Schudson asks, then we must ask journalism to not merely record the processes of deliberation but also to act as a reasoning participant in those processes. We must ask journalism to embrace a further paradox: to function as both a fair-minded moderator and a committed speaker.

Beyond the fundamental mandate to seek and give reasons, deliberative democracy raises challenges, at once ethical and intellectual, for journalism. The role of accountability in the theory is that of a “procedural principle” regulating the practices of reasoning among citizens and officials. “In a deliberative forum each is accountable to all,” write Gutmann and Thompson (1996, p. 128), pointing to a need for mutual responsiveness. “Citizens and officials try to justify their decisions to all those who are bound by them.” Thus, a challenge to journalism is that when mutuality breaks down and accountability is not forthcoming from elites or institutions because of differences in power and other social factors, practitioners must be ethically and intellectually prepared to demand an accounting. From the perspective of journalism’s mission, the expectation of mutual accountability and preparation to insist upon it is more than a mere procedural rule akin to “quote both sides.” It is itself a form of democratic empowerment.

Another procedural principle, publicity, is a precondition for accountability. It requires that reasons and their empirical or logical premises be accessible to all. In discussions of deliberative democracy, the concept of publicity often has an “of-course-ness” to it: Yes, of course, reasons must be publicly available if public affairs are to be publicly conducted. But media scholarship beginning with Lippmann recognizes that publicity,

understood as widely shared public understanding or even awareness, is not easily accomplished. Zaller (2003), for example, argues that journalists and critics should relinquish the ideal of the informed citizen in favor of the monitorial citizen who listens for mass-mediated alarms set off by truly important (or dramatic) events (cf. Schudson, 1998). But if the informed citizen is rare, not so the informed community-based organization, informed interest group, informed nongovernmental organization, informed legislative committee, and so on. The vigilance of groups and organizations, more than any devotion among elites to “the faith upon which the democracy polity rests,” allows Schudson to conclude that “visibility—public visibility—is of enormous importance even if few people read or watch the news. So long as information is publicly available, political actors have to behave *as if* someone in the public is paying attention” (1995, p. 25). In John Peters’s phrase, this is the effect of “public as robust fiction” (1995, p. 25).

Still another procedural principle, reciprocity, regulates public reasoning by setting the terms in which citizens justify their claims to one another. This principle holds that participants in deliberation must take “a moral point of view,” which Gutmann and Thompson argue (2004, p. 72) is “a disinterested perspective that could be adopted by any member of society, whatever his or her particular circumstance (such as class, race or sex).” In this way reciprocity “guides thinking in the ongoing process in which citizens as well as theorists consider what justice requires in the case of particular laws in specific contexts” (2004, p. 100). Moreover, reciprocity affirms the need to complement procedural principles with such substantive values as liberty and fair opportunity. Thus, these authors intervene in a debate among political theorists on behalf of those who reject a purely procedural conception of democracy (e.g., majoritarianism) and admit values into their theorizing. Both process and outcome of deliberation are the concern of the theory. This is to say, “Where necessary, [the theory] has no problem with asserting that what the majority decides, even after full deliberation, is wrong” (2004, p. 105).

Political theorists will recognize this “moral point of view” as a reflection of Rawls’s theory of justice. Critics of journalism will also recognize it as relevant to the enduring debate about what Haas and Steiner (2001, p. 137) characterize as “the proper reach of journalistic involvement.” In this debate, critics and practitioners alike often argue for what might be understood as a purely procedural conception of journalism. For example, “journalists should advocate democracy without advocating particular solutions,” asserts a champion of public journalism (Charity, 1995, p. 146). Deliberative democracy, however, intervenes on behalf of those who respond that “if journalism is indeed an important social institution, it retains the responsibility to advocate measures appropriate to particular problems under investigation” (Haas & Steiner, 2001, p. 137). That is to say, journalists as well as citizens and officials must participate in the ongoing consideration of what justice requires in the case of particular laws in specific contexts. Based on this reading of deliberative democracy, the mission of journalism is to reason about the application of substantive values to particular cases, and most dauntingly to stand ready to assert that what the majority decides may be wrong. Can journalism, under any circumstance, fulfill such a mission?

A Signature Issue

“Justice,” states John Rawls in the introduction to *A Theory of Justice* (1972, p. 3), “is the first virtue of social institutions.” This study examines an instance of journalism in pursuit of that virtue: the *Chicago Tribune’s* campaign for reform of capital punishment in Illinois. Beginning with coverage of overturned homicide convictions in the mid-1990s,

death penalty reform became what Nicholas Lemann, writing in *The New Yorker*, called the *Tribune's* "signature issue" (2005, p. 168). From the newspaper's extensive reporting on the topic, this study analyzes the two investigative series that created a template for subsequent work. The first, published early in 1999, focused on prosecutorial misconduct such as suppression of evidence. The second, published later that year, broadened its scope to include misconduct by police, incompetent defense attorneys, flawed forensics, and other miscarriages of justice. Two months after the second series appeared the governor of Illinois, citing the *Tribune's* reporting as a factor in his actions, announced a moratorium on executions and appointed a commission to study reform.

This study also analyzes the *Tribune's* editorials published throughout 2002 on behalf of reform. While the author of those editorials, Cornelia Grumman, and several other editorial board members opposed capital punishment, the editorial page had long supported it. "Change has to be done slowly or you lose intellectual credibility," Grumman said in an interview.² "I attempted to change our position on the death penalty but to no avail, so I thought the next best thing was to focus on what would make it work better." Although the board remained divided, Grumman and the editorial page editor did come to terms on the need for many reforms proposed by the commission. "We focused on the recommendations that we thought could pass [the legislature] and the ones that we thought would have the most impact," Grumman said. "My personal hope was that the same reforms that apply to the capital side could eventual filter down to the entire [criminal justice] system because, God knows, the rest of the system is even worse."

With this in mind, the editorialist often explicitly addressed legislators who, if not simply opposed to the reforms, suffered from an election year failure of moral courage. And when Grumman's work received the Pulitzer Prize in 2003, the *Tribune's* editor offered her this praise: "You have carried the torch of death penalty reform through many dark moments, and fought vigorously—both on the [editorial] board and as a voice of the institution—for changes to our laws" (Yates, 2003). Clearly, the implication was that before the editorialist could address criminal justice officials and legislators, she had to complete the mission of reason-giving within her own institution. Summoning a nearly forgotten image of the newspaper business, Grumman said of her work, "After a while, it did sort of become a crusade."

Whether journalism can be a constructive influence in situations of moral disagreement is an important issue in the exchange between political theory and journalism studies. Theorists of deliberative democracy are decidedly unenthusiastic about "the media," and yet they do not clearly envision any other practical means for publicity and accountability in the service of public debate.³ The lesson of this study is that journalism can and sometimes does provide such means. At the same time, however, decades of scholarship show that conventional methods of journalism, which amplify the voices of the powerful, must not be confused with the moral point of view that sees the world from a perspective that could be taken by anyone regardless of social position. Seeking the fair terms of cooperation on every important issue and finding the moral point of view on every big story is deliberative democracy's challenge to journalism.

The First Series: A Call to Account

"With impunity, prosecutors across the country have violated their oaths and the law, committing the worst kinds of deception in the most serious of cases," began the series of reports by Ken Armstrong and Maurice Possley collectively titled "Trial & Error." In the decidedly moral tone of much investigative journalism, the report continued: "They do it

to win. They do it because they won't get punished" (1999a). These opening lines, according to Chicago journalism critic Michael Miner (2000), "struck prosecutors like a fist to the face" and quickly earned the enmity of district attorneys across the nation.⁴ Recounting the choice of this uncompromising language Maurice Possley said simply, "I think the comprehensive nature of the series allowed us to say things in a powerful straightforward way." Indeed, he concluded, "You have a duty to present it in the most powerful way you can without overstepping your bounds."⁵

What made the series "comprehensive" for Possley was the analysis of all 381 homicide convictions from across the United States overturned by higher courts because of prosecutorial misconduct after the 1963 Supreme Court ruling against such misconduct. The report cited concealment of evidence and introduction of evidence known to be false as the most egregious ways prosecutors cheat justice. Among the 381 defendants, 67 had been sentenced to death. Among those 67, 29 were convicted at retrial with four returning to death row, but 24 were freed when they were acquitted, pardoned, or charges were dropped. The reporters, however, were little interested in the guilt or innocence of defendants. Regardless of the outcome, a fair trial is, in itself, an ideal of the polity for which the criminal justice system must be held accountable. And in the hands of these reporters, all of the cases fueled a relentless demand for accountability:

The failure of prosecutors to obey the demands of justice—and the legal system's failure to hold them accountable for it—leads to wrongful convictions, and retrials and appeals that cost taxpayers millions of dollars. It also fosters a corrosive distrust in a branch of government that Americans hold up as a standard to the world. (Armstrong & Possley, 1999a)

In overturning the 381 convictions, the appellate courts had used such language as "intolerable" and "unforgivable" to describe prosecutors' tactics. And yet among those cases no prosecutor was disbarred, fired, or even publicly sanctioned. "There is no check on prosecutorial misconduct," a law professor stated, "except for the prosecutor's attitudes and beliefs and inner morality." Speaking of the attitudes held by a specific district attorney's office, a Louisiana judge who had overturned three murder convictions in the previous decade said, "From [their] perspective, bad guys are bad guys and whatever we need to do to put them away is OK. The problem is, every now and then, it's not a bad guy. Every now and then, you've got the wrong guy" (1999a).

"Inner morality" was the subject of several other articles in the series that called specific individuals to account. One call was in the form of a vividly portrayed face-to-face encounter between a former prosecutor and an exonerated death row inmate:

On a weekday afternoon one year ago, in a conference room 39 floors above LaSalle Street, two men sat at opposite ends of a long oval table ringed by a dozen lawyers and a court reporter.

At one end was Dennis Williams, a man who had spent much of his life in prison awaiting execution. At the other was Scott Arthur, the prosecutor who put him there.

It was a moment 20 years in the making. Williams, now exonerated, was seeking financial retribution for a life lost to Death Row. And Arthur, now in private practice, was under oath, forced to answer the sort of hardball questions he usually relished firing at others. (Armstrong & Possley, 1999b)

Williams and three others, who had come to be known as the Ford Heights 4, had filed a suit alleging that sheriff's deputies framed them for rape and murder more than 20 years before. As a former prosecutor, Arthur was immune from such lawsuits, but he had been the one constant in the three trials of the four men over a period of 9 years. "In many ways," wrote the reporters, "he personified the miscarriage of justice that imprisoned the Ford Heights 4." At this meeting, however, the former prosecutor expressed no second thoughts or self-doubts. When asked if he still thought that any of the men had any involvement in the crimes, he simply said that he did. In response to his frustrating refusal to account for his beliefs or his actions, the reporters constructed a final accounting drawn from the long record of this tortured case:

Arthur clings to his belief even though other men have confessed; even though DNA tests implicated one of those who confessed and eliminated Williams and his friends as suspects; even though prosecution witnesses have either recanted or been discredited, and the scientific evidence at the trial exposed as bunk; even though Williams and his friends have received pardons from the governor and apologies from the state's attorney's office.

When Arthur looked down that long oval table at Williams, he still saw a murderer. When Williams stared back, he saw the man who wanted him executed for a crime he did not commit. (Armstrong & Possley, 1999b)

When the Ford Heights 4 had been exonerated some years before, due in part to an investigation by journalism students, the case became a media icon supporting the moral logic of the investigative reporting that followed: Even if such injustices are not common, they still ought not to be tolerated. Pursuing this logic in the second article of the series, the reporters examined all 326 felony convictions in Illinois (207 of them in Cook County, including Chicago) that had been reversed in the past 20 years. "While the number of reversed cases is a small percentage of the tens of thousands of criminal charges that were filed during that period," they wrote, "examination of thousands of pages of transcripts and evidence in the Cook County cases reveals trial after trial where prosecutors cheated, lied or spun out of control during arguments before a jury" (Possley & Armstrong, 1999). By this moral logic, the actual percentage of cases in which misconduct occurred seems beside the point. It is enough to know that misconduct happens in "trial after trial." The reporters enlisted an assistant state's attorney to express the strictest interpretation of this stance. Insisting that misconduct occurs in an infinitesimal fraction of cases, the attorney nonetheless concluded, "But even one case is too much."

Together, the analyses of the 381 overturned homicide cases across the U.S. and the 326 overturned felony cases in Illinois established that prosecutorial misconduct, though not readily quantifiable, was not extremely rare. The numbers, after all, only reflected those cases in which prosecutors were actually caught. The reader, as Possley hoped, might well have second thoughts about insisting "it won't happen to me." These numbers, nonetheless, were not the most essential facts established by the series. The crucial moral facts were simply that prosecutorial misconduct was practiced and tolerated at all. In this regard, a number more compelling than the total of tainted cases is this: 24 of 67 defendants sentenced to death were freed when their convictions were overturned. Is 24 few or many? And even if few, is it few *enough*? Readers were not invited to calculate acceptable risk levels for execution of the innocent. Instead, they were summoned to the moral logic that offers this unambiguous answer to the question of how many such injustices are too many: even one. And even for that, the system must account.

The Second Series: An Agenda for Justice

“Illinois has claimed the dubious distinction of having exonerated as many Death Row inmates as it has executed. But many of the circumstances that sent 12 innocent men to Death Row have been documented by the *Tribune* in numerous other capital cases.” So began “The Failure of the Death Penalty in Illinois” by Ken Armstrong and Steve Mills (1999a). If the previous series had been reviled by prosecutors, this series came to be revered by many journalists for its careful analysis of all 285 cases resulting in imposition of the death penalty since the restoration of capital punishment in Illinois 22 years before. As is typical in an investigative series, the first report summarized the indictment against the system that had been found in moral disarray: At least 33 defendants sent to death row were represented by attorneys who at some point had been suspended or disbarred. At least 20 defendants were sentenced to die based on flawed or obsolete forensics. At least 46 defendants were sentenced to die based on evidence that included a jailhouse informant, a form of evidence so unreliable that some states warn jurors to treat it with special skepticism. These systemic failures, according to the report, were among the most damaging of the “numerous fault lines running through the criminal justice system, subverting the notion that when the stakes are the highest, trials should be fail-safe.”

Subsequent articles detailed the indictment. The article on incompetent attorneys, for example, began with a case in which the defense presented so little testimony at the sentencing phase of the trial that the judge had “almost begged” for something to be said on behalf of the defendant (Armstrong & Mills, 1999b). Articulating what the concern of citizens and institutions is—or ought to be—the report went on to explain a key principle of American justice:

For the adversarial system of justice to work, defense attorneys must vigorously test the prosecution’s evidence. But in capital trials so complicated and stressful they challenge even the best of lawyers, the courts themselves have compromised justice by often appointing ill-qualified attorneys to defend poor and uneducated defendants. Such defendants account for the overwhelming majority of Illinois’ Death Row population. (Armstrong & Mills, 1999b)

Dramatic stories of those who have suffered injustice are a familiar narrative strategy of investigative journalism. A key plot point is typically that the victims are innocent of wrong doing, or at least sufficiently innocent to make their victimization a moral outrage that might befall almost anyone (cf. Ettema & Glasser, 1998). As already noted, however, those who have suffered the injustice of prosecutorial misconduct or other failures of the criminal justice system may not be innocent. Some *are* murderers. For this reason, as one of the reports implicitly acknowledged, moral outrage at failures of the criminal justice system is not easily evoked:

Death-penalty cases in Illinois have included some of the most sympathetic victims, helping flare emotions at trial. Of the 285 cases since capital punishment’s reinstatement, there were multiple murder victims in 104. In 44 cases, at least one victim was 12 years old or younger. In 15 cases, the victim was a police officer.

When the drive to avenge such crimes reaches the courtroom, a prosecutor’s worst tendencies can come to a boil and spill over. (Armstrong & Mills, 1999a)

Of course, these “sympathetic victims” are not the victims of the injustice under investigation here; however, in the minds of many readers, no doubt, these murdered children and police officers are the only real victims. In this context, except for brief mentions of time spent in jail, the reporters did not try to portray the wrongfully convicted defendants as particularly sympathetic individuals. And except for brief quotes, neither did the reporters give the wrongfully convicted a strong voice. Confronted with victims of injustice who may also be murderers, the reporters opted to portray the right to a fair trial—justice itself—as the real victim here.

If the phrase “travesty of justice” had not been reduced to a morally vacuous cliché, it would capture the shameful farce that was the story told of one death row inmate’s trial after another. A defendant in a small Illinois county, for example, was represented by a lawyer who specialized in real estate. This had come to pass when the county’s part-time public defender quit the case after the judge refused his request for the assistance of an experienced private investigator. “If you don’t do this regularly, you shouldn’t do this at all,” the former public defender said. “Because they’re not going to kill you if you screw up. They’re going to kill your client” (Armstrong & Mills, 1999b). The real estate lawyer had his client plead guilty without attempting to negotiate for leniency. The client was sentenced to death. “I didn’t do a job like a death penalty lawyer could have done,” said the lawyer, who had retired to Las Vegas. “But the county just wasn’t going to hire someone who would break them doing a good job.” If this one example is not enough to restore some moral gravity to “travesty of justice,” there are many, many more.

In the second series, like the first, such artfully told narratives conveyed the crucial moral fact that such travesties of justice were practiced and tolerated. But in the second series, even more than the first, the summary statistics were crucial to the argument. By mapping the “numerous fault lines” running through the system (33 defendants represented by attorneys who had been suspended or disbarred, for example), the analysis of the 285 Illinois death penalty cases helped set the agenda for reform by estimating the type and frequency of systemic failures. This moved the debate forward by emphasizing specific reforms that ought to be undertaken—emphasizing, in other words, “what justice requires in the case of particular laws in specific contexts.” By these methods, the investigative reports, just as Lasch asked of journalism, invited public debate by publicizing a reality that affronted the values of the polity. And, as Schudson asked, they insisted that officials account for and, what’s more, respond to those facts.

Journalism as Public Moral Argument

Under felicitous circumstances, news can be an argument of some subtlety, complexity, and power. Even as they documented failures of the criminal justice system, these investigative series explicated and defended key premises of justice. Readers were reminded, for example, that trials must be rule-governed yet aggressively adversarial: Defense attorneys must vigorously test the prosecution’s evidence. When defense attorneys are not competent to do so, trials cannot be fair. Nor can trials be fair when prosecutors cheat to win. Inviting rejection of the premise that “bad guys are bad guys and whatever we need to do to put them away is OK” may have been an incantation of the obvious for some readers; however, for others it may have been a rudimentary but necessary lesson in the terms of the debate, an affirmation of the “ideals and rules of the democratic polity itself.” This journalism was a lesson in taking a “moral point of view” that encompasses those in very different, especially vulnerable, circumstances.

As media-constructed deliberation, the first series illustrates journalism as a call to account—the enumeration of reasons for demanding that something be done. But what? The second series, by documenting the array of failures in the administration of capital punishment, began looking toward, if not yet squarely at specific answers. The *Tribune* eventually did take responsibility for advocacy of “measures appropriate to particular problems under investigation,” but it did not take first or primary responsibility for the specification of such measures. That responsibility remained with Governor Ryan and the commission he appointed to study death penalty reform. Nonetheless, these series did direct attention and promote debate, perhaps among individual citizens but certainly among officials and institutions, as the governor himself made clear. When he announced the moratorium on executions and the creation of the commission in January of 2000, the governor mentioned, along with the work of the legal community, that of the *Tribune*. “Disbarred lawyers, jailhouse informants,” he said, citing the second series. “Those kinds of problems are in the system and we’ve got to get them out” (Armstrong, Mills, & Long, 2000, p. 1).

The Editorials: An Appeal to Public Conscience

With the release of the commission’s report, the *Tribune* began editorializing in support of the recommended reforms. In this extended exercise in reason-giving, the editorialist commanded several key moral resources. The *Tribune*’s reporting had unified the varied cases of injustice into a coherent social problem—the failure of the death penalty in Illinois—and had amplified that problem in the minds of any readers inclined to think that injustice had not reached intolerable levels. These effects of publicity are, in the vocabulary of social movement theory, “articulation” and “punctuation” (Snow & Benford, 1992). Further, the commission’s report confirmed that the reality and severity of this problem were not merely the opinions of the reporters or editorialist but the professional judgment of a politically diverse panel including prosecutors, defense attorneys, and others. The report provided, again in the terms of social movement theory, the definitive “attribution” of the problem by identifying culpable agents as well as specifying actions necessary to ameliorate the problem.

“More than two years ago,” one of the earliest editorials began, “Gov. George Ryan declared a moratorium on capital punishment in Illinois and handed 14 people a breathtaking challenge: Tell us how to repair a justice system that repeatedly has condemned innocent people to be put to death” (“Nothing Short of Justice,” 2002). Invoking the *Tribune*’s previous reporting, the editorial summarized the attribution of the problem:

We know the problems. We’ve known them for a long time. Judges who don’t understand the law. Prosecutors who pursue convictions at the cost of truth. Defense attorneys who are incompetent. Crime lab technicians who report whatever results cops want to hear or police who coerce false confessions. (“Nothing Short of Justice,” 2002)

Subsequent editorials highlighted key prescriptions among the 85 proposed by the commission and defended them against criticisms raised by criminal justice officials. An editorial advocating the videotaping of interrogations, for instance, was a point-by-point response to seven common excuses for official inaction. An example: “Excuse No. 3: This is one more technicality that will let murderers and rapists go free.” To this the editorial responded: “Many prosecutors and police who use videotapes say just the opposite is true:

Videotape helps win their cases or leads to faster plea bargains” (“No More Excuses,” 2002). These reasons were dramatized with a succinct but nicely crafted narrative:

Detectives listened intently to Connery’s repeated denials that he had raped and stabbed Melissa Osman to death. By the time investigators left the room to interview another witness, though, Connery appeared to have forgotten something—he had agreed that his interview could be videotaped. A tiny camera was perched behind the thermostat.

Alone in the room, Connery started singing, “Ding, dong, the wicked witch is dead. . . .” Connery has now taken up lifetime residence at the Pontiac Correctional Center. (“No More Excuses,” 2002)

Continuing the constructed debate between journalist and official, another editorial addressed the large disparities among Illinois counties in the percentage of homicide cases for which prosecutors sought the death penalty. “Sentences can depend not just on what crime has been committed, but on which side of the street the defendant happened to be standing,” the editorial argued (“Disparities on Death Row,” 2002). “That provides a prime reason why a centralized statewide system of approving death penalty prosecutions is needed.” The debate over such a system proceeded not with an imagined interlocutor but with an actual prosecutor:

Livingston County State’s Attny. Thomas “Maximum Tom” Brown has a reputation for seeking the most severe sentence possible in most cases. In his mind, his duty is to reflect the values and the outrage of the county residents who elected him.

“This isn’t Chicago. This is Livingston County,” Brown said on a recent harried day in the small red brick courthouse in Pontiac’s town center. “I don’t particularly want some panel with a representative from Cook County on it who’s seen 150 murders of the same type as the one we’ve got down here, telling us whether we can seek the death penalty on our case.” (“Disparities on Death Row,” 2002)

The editorial stated that across Illinois since 1977, when the death penalty was reintroduced, 1.1 death sentences were imposed for every 100 homicides. In Cook County, 0.7 death sentences were imposed for every 100 homicides. In Livingston County, however, the total of 7 homicides had resulted in 3 death sentences. Rejecting an appeal to a narrowly communitarian standard of justice, the editorial assigned the locus of moral responsibility as follows:

County prosecutors are used to autonomy. They see themselves as representatives of their community and its values. And, to a great extent, they are. But death penalty prosecutions rise above local cases. They are carried out on behalf of the state, and more broadly, society. (“Disparities on Death Row,” 2002)

As the editorials defended the ameliorative steps recommended by the commission, they also urged the legislature to take those steps. “When lawmakers return to the state capital for a post-election session in November, they will have no excuses left,” the editorialist wrote in September (“Fixing the Death Penalty,” 2002). “They will fix Illinois’

humiliating system of broken justice, or they will prove that they are too timid to take up the task.” This editorial took advantage of the newspaper’s position in support of reform rather than abolition to press those legislators whose resistance to reform reflected their support of the death penalty:

If insufficient political will exists to [enact reform], then the moratorium must stay right where it is. State lawmakers, by their unwillingness to act, will have, in effect, repealed the death penalty. This is not a system of justice. This is a system of injustice. It is deeply fractured, and it must be repaired if Illinois is ever again to carry out a sentence of execution. (“Fixing the Death Penalty,” 2002)

The entire series of editorials can be read as reason-giving to reluctant lawmakers. One of the first concluded with a call for moral courage among legislators contemplating the fall election. “Election-year jitters should not cloud anyone’s resolve to support these measures. The public understands that being tough on crime doesn’t mean sentencing the innocent to death” (“Nothing Short of Justice,” 2002). Eleven months later, however, the editorialist was still trying to convince the legislature to behave *as if* the public was paying attention. “No more delays,” she wrote. “It’s time for the Illinois legislature to reform the death penalty—the broken system that led to the release of 13 wrongly convicted men from Death Row and prompted the nearly three-year-old moratorium on executions” (“Crime, Punishment and Politics,” 2002). As the nation watched, the editorialist struggled to hold the legislature accountable not so much to the electorate as to a fundamental ideal of the polity: justice. “Lawmakers have an opportunity to create a model for the rest of the nation. They have the chance to raise confidence that Illinois will never again convict the wrong people of terrible crimes while letting the guilty ones go.”

Throughout the 2002 campaign season, the legislature exhibited no political will to address any of the reforms. “They were dead—all of them,” said Grumman. “I was told that by the senate judiciary chairman who said, ‘Look, I’d like to see these passed but . . .’ and then he just threw up his hands.” But in that campaign season Barack Obama, the Democratic candidate for the United States Senate from Illinois, made the death penalty a campaign issue. Obama’s victory in November, according to Grumman, was one turning point. Another came in January 2003 as the governor’s term in office came to a close. He pardoned four recently exonerated death row inmates and commuted the death sentences of all others awaiting execution. In doing so, the governor again cited the *Tribune*’s work among the factors that guided his “journey from staunch supporter of capital punishment to reformer” (“Governor Explains,” 2003).

The governor’s actions set off alarms of the sort imagined by Zaller across the state and the entire nation. “It had become a national issue at that point,” said Grumman, recalling the point at which the legislature began to experience just how robust that public-as-mediated-fiction can be. “Illinois was the shame of the nation on TV and in newspaper coverage.” For this effect, Grumman eagerly gave credit to the investigative reporters. She saw her own contribution as enabling sympathetic legislators to make their case more effectively both to the public and their peers. “Legislators are busy people or they are overwhelmed people,” she said. “I can’t tell you how many times they would take an editorial on the state house floor or in a committee and that would be enough because most of them are just turning to their neighbor and saying, ‘How are you voting on this?’ So if it’s short, concise, makes a good argument, and sounds logical, it’s more powerful than I ever imagined it could be.” In November 2003, the newly elected governor and the legislature finally came to terms on a reform bill. “The deal,” reported the *Tribune*, “caps

years of uproar over problems with the state's capital punishment system that resulted in 17 men being released from Death Row" (Chase & Long, 2003, p. 1).

Editorializing as Interinstitutional Deliberation

The *Tribune's* editorial reason-giving sought, in Schudson's terms, to shape the morally constituted value choices of reluctant legislators, but it did not attempt to completely remake their values. Rather, it offered a way for those who supported the death penalty to simultaneously support death penalty reform. The argument that capital punishment "must be repaired if Illinois is ever again to carry out a sentence of execution" advanced a reason to act on reform that could be more widely embraced by legislators and citizens even if not by all. Thus, the argument was not only an appeal to the abstraction of justice but to concrete political consequences of continued injustice. As Grumman wrote, "Lawmakers, by their unwillingness to act, will have, in effect, repealed the death penalty."

Both Grumman and Possley saw the *Tribune's* position of reform rather than repeal as essential to any effect their journalism may have had. "I think that the series got traction politically even though it involved a highly charged issue—Should the state execute people?—because we never came out and looked at the issue as: Is it morally right or wrong to kill people in the name of the state?" Possley said. "Our premise was aimed at a different sort of target which Ryan certainly picked up on: Can the state be trusted to convict, imprison, and execute the right person? Legislators and politicians could stand up and say 'Nobody's in favor of innocent people being convicted, sent to prison, and executed.'" Theorists of deliberative democracy might be willing to view that "different sort of target" as an economization of moral disagreement. "By economizing on their disagreements," wrote Gutmann and Thompson (2004, p. 7), "citizens and their representatives can continue to work together to find common ground." That, in any case, was the spirit in which Grumman accepted her compromise with the editorial board. "The debate had shifted from a moral one to a pragmatic one," she said. "When I came to the board I was mindful that not everything would be my personal opinion and that I had to write as the voice of the newspaper. This was the ground on which to play a leadership role—to provide some answers to the questions raised by the newsroom."

Beyond the basic position of reform rather than repeal, Grumman's editorials provided legislators with several other arguments that offered potential political cover. One was that of "the wrong man." That is, if the wrong man was jailed, then the murderer was not. "Police are just resistant to change," said a retired officer in the editorial recommending changes in the way witnesses identify suspects. "But cops know as well as anyone, it does no good to clear a crime and have the wrong guy in jail" ("When Believing Isn't Seeing," 2002). Perhaps because this argumentative appeal elides lack of justice for the wrongfully convicted with lack of retribution for the guilty, the editorialist used it sparingly. Nonetheless, in writing of a wrongfully convicted prisoner's release, the editorialist used the appeal with haunting effect: "Victims' families are burdened anew with the knowledge that the real perpetrator of the crime has been free for all those years" ("Future of Capital Punishment," 2002).

The burden of the wrong man was presented in the context of the financial as well as the emotional costs of wrongful convictions. "An accurate, fair and reliable system of capital punishment will not come cheap," noted the editorial that summarized many reform recommendations. "The costs of getting it wrong, though, are far worse" ("Future of Capital Punishment," 2002). The editorial mentioned, along with the emotional costs to the wrongfully convicted, the huge financial settlements awarded to them, such as the \$38.5

million to the Ford Heights 4. The appeal to the financial cost of wrongful convictions might be read as morally suspect given the gravity of the affront to justice. On the other hand, the appeal might be read as emphasizing the gravity of the issue by describing it in staggering yet readily understandable terms. In whatever way they are read, the appeals of the wrong man and the public pocketbook can be described, once again in the vocabulary of social movement theory, as examples of “frame alignment” (Snow et al., 1986)—the creation of images and ideas that help align a particular position with preexisting political values.

Within the boundaries of the newspaper’s decision to support death penalty reform rather than abolition, however, the editorials were less an attempt to align justice with the demands of politics than to realign politics with the demands of justice. A final example: The legislature, often in a mood to get tough on crime, over the years had greatly expanded the number of situations constituting felony murder (homicide committed in the course of another crime) under the theory that a kidnapper or rapist might be deterred from killing the victim if the penalty for murder was far greater. In its most controversial move, the reform commission had recommended felony murder be eliminated as a capital punishment eligibility factor because it contributed to large sentencing disparities among similar homicides. The *Tribune* recommended that it be retained on a more limited basis, but even this proved controversial within the legislature. “It’s not too much a stretch to argue that this is death penalty by virtue of legal technicality” argued the editorialist, artfully defending the recommendation by inverting the cliché about criminals freed on technicalities (“Narrowing the Wiggle Room,” 2002). “The legislature’s expansion of the death penalty factors has placed at risk the principle of proportionality, that the ultimate punishment—the state sanctioned taking of a life—should be reserved for the worst murders.” In this way the editorialist aligned the recommended reform with a basic principle of justice, proportionality, that could not reasonably, or at least as readily, be rejected by those seeking fair terms of cooperation.

Reciprocity in Journalistic Reason-Giving

Deliberative democracy, especially the principle of reciprocity, draws on a philosophical tradition extending from Kant to Habermas that is familiar in media studies, and in turn media studies have enhanced that vocabulary for use in practical communication settings. Bennett and colleagues, for example, have specified three qualities of “mutual responsiveness” that should be respected in the “construction of debate” within news columns: *access* of many and diverse voices to the debate, *recognition* of those voices as comparable in worth, and *responsiveness* of opposing voices to each other (2004, p. 437). Page similarly analyzed “constructed deliberation” within editorial and opinion columns by focusing on diversity of authors and range of positions expressed (1996, p. 19). These qualities, as Page made clear, all reflect a conception of journalism shaped by the metaphor of news-as-forum. “Since public deliberation concerning policy issues is now largely carried out through the mass media, by professional communicators,” he wrote, “there is good reason to look closely at forums within which the most prominent and influential communicators interact with each other and speak to broader audiences” (1996, p. 17).

As standards for news as a well-moderated forum, these qualities enrich the vocabulary of reciprocity as it applies to the real world of professional communicators. However, these qualities do not specify standards for news as a powerfully made argument. Indeed, the self-described newspaper “crusade” reviewed here raises questions about whether strict adherence to the qualities of mutual responsiveness can or should apply to a journalistic mission devoted to relentlessly publicizing injustice and vigorously demanding

institutional accountability to fundamental values. Exactly how, in other words, is journalism to embrace that paradoxical request to function as both a moderator that encourages mutual responsiveness and a speaker that advances reasoning grounded in values?

Clearly, the journalism reviewed here speaks with the power of exhaustively documented fact and carefully crafted argument. Consider, then, the extent to which it also fulfills a promise of mutual responsiveness. The terms of access, recognition, and responsiveness, for example, pose the question of whether “Maximum Tom,” the county prosecutor, was allowed to adequately voice the morals of those small towns he serves. The editorial did seem to assign him the duty to do so: “In his mind, his duty is to reflect the values and the outrage of the county residents who elected him” (“Disparities on Death Row,” 2002). Even if that duty was really only in his mind, the editorial at least acknowledged the existence of the community’s values and the depth of its outrage; however, that was all the editorial allowed. The big-city paper moved quickly past small-town values, arguing that death penalty prosecutions rise above local cases because they are carried out “on behalf of the state, and more broadly, society.” If we credit “Maximum Tom” with willingness to seek fair terms of cooperation, it seems that we have not yet found the reasons for reform that he and the citizens of his county could not reasonably reject—but perhaps we never will.

The terms of mutual responsiveness, which emphasize the offer of public voice to those who are otherwise voiceless, also highlight the lack of voice given by this journalism to families victimized by murder. The investigative reports and editorials spoke almost not at all on their behalf or the justice owed them. This journalism merely invoked their existence. “The governor’s commission on capital punishment has offered dozens of ways to improve on Illinois’ capital punishment system,” concluded the editorial on videotaping confessions. “Move on them. No one craves truth more than victims” (“No More Excuses,” 2002). Unsurprisingly, media farther on the political right also tried to appropriate the victims. Quoting the father of a murder victim who denounced the governor’s commutation of death sentences, for example, the *Washington Times* maintained that victims’ families felt “abused, mistreated and turned into political pawns” (“Disgraceful George Ryan,” 2003). How these victims served as political pawns was not made clear in this editorial,⁶ but victims were allowed, at least, to voice their own emotions. In the *Tribune*’s editorial, the victims served their rhetorical function in silence.

A critic’s response to such silences might be that journalists, as speakers taking the moral of point of view we have asked of them, have rightly decided to make the most compelling arguments possible on behalf of justice. At last the wrongfully convicted have been given voice, according to this response, and until their pleas are fully heard their prosecutors and all others should listen in respectful silence. Elsewhere the newspaper can provide a forum for the values and the grief of others but not now, not here. If journalism is asked to be both a committed reason-giver and the moderator of a mutually responsive forum of reason-giving, the critic might argue, it cannot be both in the same instance, at least on any issue such as this. In this view, the terms of mutual responsiveness usefully critique the many stories in which only the powerful are given voice, but those terms ought not to be applied here.

Should the paradox be resolved in favor of advocacy, at least in this instance? Perhaps, but even if we deem unnecessary any extended rejoinder to the arguments that these journalists have given their readers, the principle of reciprocity also insists that we listen carefully to the quality of voice that journalists have given their subjects—the wrongfully convicted. It is inviting to think of the editorials and investigative reports as access of the wrongfully convicted to public debate, as recognition of their identity and the worth of their voice, and as response to their claims. However, this journalism did not so

much give the wrongfully convicted a voice as take voice on their behalf. Their stories, crafted largely as outrageous courtroom farce, were not of their own telling. Their identities, recognized largely as illustrations of system failure, were not of their making. And their claims were, in fact, not heard. If journalists had not made claims *for* them, what might those claims have been? Complete abolition of the death penalty? Other reforms in criminal justice? Social justice? Or was this justice enough for them?

Is asking that the call for justice be heard in full asking too much of journalism? Again perhaps so, given that any journalistic achievement in pursuit of justice is, from an economic perspective on the media business, merely a fortuitous externality to the market for news. But whether judged as sufficient or not, the journalism reviewed here did help achieve some measure of justice. As an exercise in deliberative democracy, moreover, this journalism exemplifies a resolution of the paradox that provided our point of departure. On the one hand, it offered citizens the opportunity for “adequate understanding” of death penalty reform by documenting both how the system had failed and why that ought not to be tolerated. In explaining the meaning of and threat to the right to a fair trial, it elucidated the ideals and rule of the democratic polity and undoubtedly helped accomplish exactly what Benjamin Franklin (1793/1961) expected of news: “preparing the minds of the people for the change” (p. 115). On the other hand, this journalism also confronted the institutions of criminal justice, demanding accountability to the same ideals and rules. Even if this journalism did not fully resolve the further paradox of how the news is to function as both a moderator that facilitates debate and a speaker that demands accountability, it provides at least a glimpse of how the journalistic mission of reason-giving can actually be advanced.

Notes

1. Commentary on deliberative democracy includes Fishkin and Laslett (2003) and Macedo (1999).
2. Interview conducted by the author in April 2006.
3. “The media teach consumerism far more effectively than deliberation,” write Gutmann and Thompson (2004, p. 36). “Journalists and newscasters, editors and publishers, and producers of television news nonetheless have a professional responsibility to attend to the quality of public discussion.” They conclude, however, that these practitioners “do not provide effective forums for collective action based more on citizens’ considered judgments than on their momentary preferences” (1996, p. 125).
4. See Miner (2000) for a review of prosecutors’ criticisms of both series and their involvement in Pulitzer Prize politics. Miner notes that the two series, bundled together, were finalists in the public service category, but prosecutors and their professional associations sent “blistering letters” to the Pulitzer Board. For whatever reason, the series did not win.
5. Interview conducted by the author in April 2006.
6. This refers to accusations that George Ryan’s actions on behalf of death penalty reform were intended to divert attention from charges of corruption during his tenure as Illinois secretary of state and governor. While Maurice Possley concluded from conversations with senior staff that the governor’s actions were sincerely motivated, Ryan was convicted of 18 counts of corruption in April 2006. To Ryan’s staunchest critics his conviction, not his reform efforts, “redeemed Illinois” (Kass, 2006).

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