I-Commerce: Tocqueville, the Internet, and the Legalized Self

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I want to begin by identifying a social problem, and then think together with you about potential solutions. The problem is easy to state, for it was Tocqueville's problem: in democracy, people refuse to defer to any authority except for public opinion. And the beginning of the twenty-first century, the age of the Internet and Reality TV, is an age where the logic of democracy is infiltrating more and more aspects of our personal and professional lives. As a teacher, I have an incentive to be popular and entertaining, rather than arrogant and condescending, so that my students will give me good teaching evaluations. As an author, I can watch my Amazon ratings rise and fall several times a day. As a seller on eBay, my reputation points for trustworthiness will soar or plummet based on how reliably I deliver the goods.

A democratic society in which people's status goes up and down based on popular approval is one in which there is not a lot of social consensus about how individuals should behave. In traditional hierarchical societies, behavior can be regulated by a sense of shame and honor rather than law: In fifteenth century Spain, for example, a woman who cohabited with a man less than a year after her widowhood was considered "infamous" and dead to respectable society.[1] By contrast, in a pluralistic democracy, the only behavior that everyone agrees is shameful is acting as if you think you are better than everyone else. In aristocracies, Tocqueville wrote, "genuine dignity of manners consists in always showing oneself in one's place, neither higher nor lower." By contrast, in democracies "a certain incoherence in manners always reigns because they conform to the sentiments and individual ideas of each rather than to an ideal model given in advance for imitation by all."[2]

This leads, as Tocqueville recognized, to the problem of the legalized self. As respect for traditional forms of authority in all its forms erodes, Americans turn increasingly to law and the courts to regulate the kind of behavior that used to be governed by manners and mores. In schools, in workplaces, in churches, and in politics, our interactions are increasingly conducted in the shadow of legalese. But when the courts take sides in social and political disputes about which people

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1. *See* Lucy A. Sponsler, *The Status of Married Women under the Legal System of Spain*, 42 LA. L. REV. 1599, 1602-04 (1992) (discussing restrictions placed on women in Spain).

2. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 578 (Harvey C. Mansfield & Delba Winthrop eds. & trans., 2000).

vigorously disagree, they find their own authority just as undermined as all the other mistrusted institutions in our mistrustful culture. The self-immolation of the Supreme Court in *Bush v. Gore*[3] is only the latest example. So, what happens when we no longer respect the courts?

That is the problem: law is like an antibiotic—when we use the courts too much, they lose some of their power to stigmatize, and shame, and usefully restrain behavior because they get no more deference than anyone else does. A hundred years ago, a felony conviction would lead to social infamy. Today, pardoned tax fugitives are welcome at New York dinner parties. We have been saturated with laws and legalisms, and are now eager for more effective, non-legal alternatives for regulating behavior.

In a recent article in the *New York Times Magazine*, I explored this problem of the legalized self,[4] and I will briefly summarize the argument this morning. But I want to devote most of our time together to exploring with you alternatives to the problem. In particular, I want to argue that the Internet may provide an encouraging alternative: a model for the resurrection of democratic manners—a mechanism for the application of democratic shame. Let me begin with just a few of the examples I offered up in the *Times*—examples of the explosion of legalisms, which have become a substitute for moral and political debate:

> Consider, on this score, the recent international Web drama concerning Brad the Cad, the 27-year-old British lawyer who received an e-mail message at work from his girlfriend, Claire, a 26-year-old P.R. executive for MagicButton.net. In the message, Claire expressed her appreciation for an intimate encounter they had shared the other evening. Brad proceeded to forward the message to six male friends, boasting, "Now THAT'S a nice compliment from a lass, isn't it?" Within a week, the message had circled the globe, and the Web site at Brad's firm crashed after receiving 70,000 hits in a single day. Claire and Brad fled their homes to escape from the tabloid press, and a Web site was set up to debate what should become of Brad.
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> But very quickly a debate that began by focusing on manners and morals devolved into one about legalisms and law. The Brad and Claire Web site took a poll about whether or not Brad should be fired from his law firm, Norton Rose. The largest percentage of respondents—39 percent—said he should be fired because he had abused company resources. A smaller percentage—26 percent—said he should be fired for abusing Claire's trust. No one took the position that would have seemed obvious 100 years ago: Brad should be shunned socially for being a braggart, but his boasting wasn't his employer's business.

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3. Bush v. Gore, 531 U.S. 98 (2000).
4. Jeffrey Rosen, *In Lieu of Manners*, N.Y. TIMES MAG., Feb. 4, 2001, at 46.

> Norton Rose, for its part, cranked up a formal disciplinary procedure, grilling Brad and his colleagues in an exhaustive hearing. Finally, the law firm posted a statement about "e-mail abuse" on its own Web site, saying that it was "concerned about a clear breach" of company rules and that Brad and the others had been "disciplined but not dismissed." The moral debate about whether Brad should be punished for his caddish behavior was transformed into a legalistic debate about workplace rules.[5]

The drama of Brad the Cad reflects a social transformation: the vocabulary of law and legalisms is the only shared language we have left for regulating behavior in an era in which there is no longer a social consensus about how men and women, and even boys and girls, should behave. But, rather than leading to more understanding and empathy, the legalization of our personal and professional lives is leading to more social polarization and more mistrust of authority in all its forms.

This phenomenon has vindicated the prediction of Alexis de Tocqueville, who argued that as citizens became more equal in American democracy, public opinion was the only source of authority.[6] He wrote: "As citizens become more equal and alike, the penchant of each to believe blindly a certain man or class diminishes."[7] "The disposition to believe the mass is augmented, and more and more it is opinion that leads the world."[8] The rule of public opinion—which holds that no one should be treated better than you are—led Americans, according to Tocqueville, to consider all other forms of authority "with the eye of a malcontent."[9] As traditional sources of authority were undermined by democracy, legislators would pass an increasingly mind-numbing web of laws and regulations designed to eradicate special privileges and to prevent those in power from favoring some citizens over others. Tocqueville warned that these laws would run the risk of creating despotism of a different sort, administered by lawyers and politicians who acted not like "tyrants but rather schoolmasters."[10] Looking far into the future, Tocqueville feared that as individuals increasingly turned to the nanny state to regulate the minutest aspects of social life, personal interactions might be governed by "a network of small, complicated, painstaking, uniform rules."[11] These rules might be so arcane, he feared, that citizens would eventually stop trying to understand or resist them, and increasingly large aspects of social and political life would be overseen by the American lawyer, "the lone interpreter of an occult science," who would resemble an Egyptian priest.[12] And

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5. *Id.* at 49.
6. *See* TOCQUEVILLE, *supra* note 2, at 409.
7. *Id.*
8. *Id.*
9. *Id.* at 639.
10. *Id.* at 662.
11. *Id.* at 663.
12. *Id.* at 255.

the "immense tutelary power . . . absolute, detailed regular, far-seeing, and mild," would extend its arms over society as a whole.[13] "It does not tyrannize, it hinders, compromises, enervates, extinguishes, dazes, and finally reduces each nation to being nothing more than a herd of timid and industrious animals of which government is the shepherd."[14]

When Tocqueville came to America in 1831, American society was still vertical enough to have clearly identifiable social hierarchies. And in an age when citizens had no doubt where they stood in the ruthless pecking order, interactions among different classes of people were regulated by a sense of honor and shame. The idea that gentlemen should behave honorably, for example, was an idea that high-status people traditionally used to differentiate themselves from low-status people. In a traditional honor-based society, like the Old South, if you were insulted by a social equal, you challenged him to a duel, and if you were insulted by a social inferior, you bludgeoned him with a cane. But under no circumstances would a gentleman sue another gentleman, because the honor code held that an offense against honor could only be answered by a physical attack.[15]

In twentieth-century America, thankfully, identity became far more open and fluid: like Jay Gatsby, you could choose who you wanted to be rather than being defined by your social status at birth. And as American society became less hierarchical, the code of honor came to be seen, understandably, as oppressive and patriarchal—a way of keeping women and minorities in their places.

But these changes had unintended consequences.

> The social critic Christopher Lasch has noted that as traditional hierarchies in families, schools and workplaces collapsed in the 1960's, the authority of parents and bosses came to be replaced by a panoply of experts—guidance counselors, psychiatrists, therapists, and judges—who imposed social control in more therapeutic but no less confining ways. And at the same time, law began to fill the social space previously occupied by manners and mores. The rights revolution of the 1960's had many noble achievements, but in rebelling against hierarchical authority in all of its forms, it arguably threw out the baby with the bath water. In the late 1960's, as the authority of teachers and parents came under siege, school discipline began to be legalized. . . . The rights revolution gave way to what Lawrence M. Friedman, the Stanford legal historian, has called a general expectation of "total justice"—the idea that courts could compensate individuals for every misfortune, social slight or general brush with unfairness or bad luck. This trend accelerated in the 80's and 90's, as the democratizing effects of the Internet made vast amounts of

13. *Id.* at 663.

14. *Id.*

15. *See id.* at 597-98 (stating that nobles in the Middle Ages "were required to make use of the lance and the sword" to settle disputes).

> information available online, and ordinary citizens found it easier to challenge the authority of traditional intermediaries, like lawyers, doctors, and teachers. A result was an explosion of legalisms, as vast areas of life that used to be regulated by a complicated array of formal and informal social conventions—from school discipline to abortion, gay rights, and sexual harassment—became regulated instead by rules and laws.[16]

The explosion of legalisms has become so pervasive that it is transforming even the last bastions of traditional authority, where consensus about what sort of behavior is shameful still exists. Some religions have a practice called "shunning," which requires members of the church to avoid all social contacts with members who have been expelled for breaking the church's moral code. Shunning and shaming are the traditional ways that hierarchical societies enforced standards of behavior before personal interactions became legalized. Although these rituals may seem archaic to outsiders, they are central to the church's ability to practice its religion without interference from the state. In the past few years, however, some parishioners who have been shunned for immoral behavior have responded with lawsuits.

In a curious case from the 1980s, a woman who had moved to a small town in Oklahoma sued the Church of Christ after it expelled her for having sexual relations outside of marriage with a local resident who was not a member of the congregation.[17] The church had followed the disciplinary procedure set forth in Matthew 18: The elders confronted the woman three times, and after she refused to repent of her fornication, they formally announced her transgressions to the entire congregation, which then refused to acknowledge her presence.[18] The woman sued the church, claiming that the shunning ritual violated her privacy and caused her emotional distress.[19] A jury awarded her $435,000, and in an outlandish opinion, the Oklahoma Supreme Court upheld the claim that the Church could be sued for shunning conduct that occurred after the woman resigned from the church.[20] Once the woman resigned during the expulsion procedure, the court held she was no longer a member of the church, and therefore the church had no right to discipline her.[21] In the wake of this opinion, lawyers are advising churches to dismantle their traditional shaming rituals and to offer wayward parishioners arbitration agreements instead.

Decisions like this point to the paradox of our increasingly democratic age. As traditional authorities find themselves under siege, citizens increasingly turn to laws and legalisms to resolve their social and political disputes. But when courts actually

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16. Rosen, *supra* note 4, at 49.
17. Guinn v. Church of Christ, 775 P.2d 766, 767 (Okla. 1989).
18. *Id.* at 768-69.
19. *Id.* at 769.
20. *Id.* at 784-85.
21. *Id.*

take sides in those disputes, they find their own legitimacy challenged by the losers, who disagree too violently with the rulings to accept them with good grace. As a result, the one branch of government that society trusts to exercise its authority—the courts—loses its authority the more that it tries to assert itself.

The paradox of the legalized self is something that Tocqueville did not entirely anticipate when he wrote about ways of forestalling the mild despotism to which democracy is prone.[22] In particular, Tocqueville identified a series of intermediate institutions that could bring individuals out of their self-regarding shells and induce them to form productive social relationships without relying on the stultifying beneficence of the nanny state.[23] He singled out judges and juries, local self-government, and intermediate associations such as temperance societies and other civic groups.[24] Tocqueville also stressed the importance of shame and manners, as opposed to law, in regulating behavior embodied in respect for forms and formalities, the moderating power of religion, and above all, the virtue of women.[25]

Each of these institutions has been eroded, however, by the same relentless egalitarianism and mistrust of authority to which Tocqueville hoped they might serve as an antidote. The jury has been transformed from an inscrutable and mystical authority whose verdicts were accepted on faith to a multicultural and representative body that is expected to reflect the racial and sexual fissures in society. This means that jury verdicts are just as hotly contested as the decisions of every other branch of democratic government. The authority of judges has suffered for the reasons I have just described, as courts have interjected themselves increasingly into social disputes about which people vigorously disagree. The virtues of local self-government have been undermined by the Supreme Court's decision in recent years to apply equal protection norms to our decentralized electoral system, which has called into question local control over the structure and design of state and federal elections. (In this sense, *Bush v. Gore*[26] is a ludicrous expansion of cases like *Shaw v. Reno*,[27] which have plunged judges into the political thicket.) The decline of voluntary associations has been exhaustively chronicled by social critics such as Robert Putnam in *Bowling Alone*.[28] Finally, there is the decline of the two moral forces that Tocqueville identified as bulwarks against the vices of democracy—traditional religions and the virtue of women.[29] But why don't we leave those for another lecture.

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22. *See* TOCQUEVILLE, *supra* note 2, at 485-88.
23. *Id.* at 489.
24. *See id.* at 496-500.
25. *See id.* at 535-78.
26. Bush v. Gore, 531 U.S. 98 (2000).
27. Shaw v. Reno, 509 U.S. 630 (1993).
28. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000).
29. TOCQUEVILLE, *supra* note 2, at 264-302.

In fact, as I began by noting, shame and honor have lost much of their constraining force because citizens in a pluralistic democracy no longer agree about what sort of behavior should be considered shameful—the social hierarchies that can support clear conceptions of honor and shame have, thankfully, collapsed.[30] But that doesn't mean that notions of shame, honor, and social cooperation can't be resurrected in the twenty-first century, they just have to be cultivated in democratic rather than hierarchical ways. And in this regard, the Internet provides a model for a world where behavior can be regulated by shame, rather than law. But, the shame I have in mind is democratic shame—not the hierarchically imposed shunning rituals of the Church of Christ, but ranking systems in virtual communities where individual's status rises or falls based on the collective opinion of others.[31]

This part of my argument is tentative, so let me present it, and then we can discuss whether you find any of it persuasive. Recall Tocqueville's arguments about the value of participation in intermediate associations, from private contractual agreements to interest groups and political organizations.[32] Rather than retreating into atomized individualism, or surrendering control over their lives to the nanny state, Tocqueville argued individuals who participated in intermediate organizations could cooperate in ways consistent with their particular interests and abilities.[33] He wrote, "Local freedoms, which make many citizens put value on the affection of their neighbors and those close to them, therefore constantly bring men closely together, despite the instincts that separate them, and force them to aid one another."[34]

The challenge, according to Tocqueville, was to rouse citizens out of their individualistic stupor and to find ways of inducing them to cooperate.[35] "In democratic peoples . . . all citizens are independent and weak; they can do almost nothing by themselves, and none of them can oblige those like themselves to lend them their cooperation. They therefore all fall into impotence if they do not learn to aid each other freely."[36] But the Internet, in many ways, helps to solve Tocqueville's problem of social coordination. It allows the formation of voluntary associations that are not possible in real space by bringing together people of similar interests in ways that avoid the constraints of time and geographic space. The Internet combines the community-building qualities of a newspaper—which Tocqueville considered indispensable to the formation of associations[37]—with the interactivity of a town meeting. And it allows for the cultivation of democratic shame.

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30. *See id.* at 589-99.
31. *See id.*
32. *Id.* at 496-500.
33. *Id.* at 487.
34. *Id.*
35. *Id.* at 490.
36. *Id.*
37. *Id.* at 493-94.

We can all think of lots of examples where the Internet creates a sense of cooperation and mutual responsibility, from online medical support groups to communities of collectors who meet at conventions and exchange artifacts online. There is also extensive evidence that the Internet is a supplement to real space interactions rather than a substitute for it. The initial studies suggesting that people were lonelier as they spent more time online interacting with strangers and less time at home with their families and friends were too simplistic. Follow-up studies suggested that the Internet is a very flexible medium and that it acts as an amplifier for pre-existing personality traits: if you are outgoing, the Internet will help you to extend your social networks; if you are an introvert, it provides new opportunities for retreating into yourself.

Interactions in cyberspace are more egalitarian and democratic than those in real space because they mask the aspects of identity that can lead to social disagreement and dissentience in real space. On the Internet, as the famous *New Yorker* cartoon notes, "No one knows you're a dog," and no one knows your race or gender or religion either. Because non-verbal cues about identity—including not only immutable characteristics, but also facial expressions, gestures, eye contact, and so forth—are absent on the Internet, discussions there tend to be less hierarchical and less distorted by difference in status. "Women, for example, are less likely to be interrupted in cyberspace discussions."[38]

Robert Putnam is agonistic about whether the "flow of information itself fosters social capital and genuine community,"[39] because he worries that "[t]he poverty of social cues in computer-mediated communication inhibits interpersonal collaboration and trust, especially when the interaction is anonymous and not nested in a wider social context."[40]

On this point, I am more optimistic. Precisely because the interactive self in cyberspace is thinner than in real space, productive associations may be easier to sustain. A new field of reputation management is studying the ways that democratic reputation systems in cyberspace can build trust, even among strangers whose identities are virtually anonymous. User ratings are becoming a central feature of the Web. Amazon famously allows readers to be critics and allows them to rate the reviews of other readers. Along the same lines, a site called Epinions assembles product reviews from its users and gives "trust" points to especially respected contributors. The auction site eBay has a rating system that allows buyers and sellers to evaluate each other's trustworthiness after each transaction, and to earn "reputation points" that are affixed to each user's screen name, which may be a pseudonym. No

38. PUTNAM, *supra* note 28, at 173.
39. *Id.* at 172.
40. *Id.* at 176.

matter how positive or negative a review, it can only affect a seller's reputation by one point.

On sites like eBay, of course, people can escape bad reputations by changing their names, in the same way that people who behaved shamefully in nineteenth century novels could flee to another town and reinvent themselves. But, Paul Resnick of the University of Michigan has found that there are economic benefits to having a good reputation on eBay: some sellers will accept lower bids from buyers with good reputations, rather than choosing a higher bidder with a worse reputation and risking that he or she will not ultimately deliver. Because a positive reputation, unlike a negative reputation, tends to follow me throughout my eBay interactions, I have an incentive to cultivate and sustain a positive reputation—and to behave well as a result.

Resnick's insight is that manners can regulate behavior more effectively than law in a space where people have an incentive to be trustworthy because those who are not skilled or ethical enough to be trustworthy will not succeed in the marketplace. "You'll be found out right away, so it's not worth it," he says.[41] "So rewards for good behavior are more effective than punishment for bad."[42]

Fear of shame, in other words, can regulate behavior on the Internet precisely because a good reputation has tangible benefits in a space where your reputation can trail you for a long time. But, rather than relying on hierarchical conceptions of shame that are tied to notions of group status and identity, the Internet allows for the operation of a kind of democratic shame, as strangers who have never met rate each other based on the actual quality of their individualized interactions. Those who behave well in virtual interactions are rewarded. Those who do not are not. There is no need for pre-existing agreement about manners and mores in an open community, because the manners and mores are defined by the social interactions themselves.

The eBay example confirms Tocqueville's hope that the honor to be found in hardy commercial ventures might provide an antidote to individualism and the schoolmaster state. Private contracts teach individuals to tend to their own interests in relationships of mutual dependence, rather than passively relying on the state to look out for them. E-commerce does not create individuals who are genuinely attached to each other, as lords and their vassals might have been, but it allows individuals to respect each other as business partners, equally capable of exercising reason and free will. By abstracting away the extraneous aspects of identity that can divide individuals in a pluralistic society, the Internet makes sturdy economic affiliations possible and allows fear of shame—that is, of getting a bad reputation—to constrain behavior more effectively than law.

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41. Telephone Interview with Paul Resnick, Professor, University of Michigan (Oct. 2000).
42. *Id.*

Much the same dynamic takes place with political, literary, and social associations on the Internet. Like the temperance societies of Tocqueville's day, these Web sites allow like-minded individuals from around the country to unite for common purposes. And like eBay and Amazon, these Web sites use sophisticated reputation management systems to allow individuals to build trust in democratic and egalitarian ways without the need for hierarchical authorities and middlemen. For example, Slashdot.org allows members to discuss the technology related events of the day, from video games to First Amendment issues. Slashdot summons frequent users to serve as moderators for a fixed period of time—not unlike jury duty—and moderators have the power to rate contributions made by other users on a scale of zero to five. If your user contributions are highly rated, you accumulate something called "Karma" in the system, that gives you special privileges: your subsequent posts begin at a higher rating, and you are more likely to be chosen as a moderator in the future. Through the Karma system, you can maintain your status, but, as in journalism and book publishing, you are only as good as the last thing you write.

Sites like Slashdot, eBay, and Epinions allow people to be judged based on how they behave, rather than who they are. In this sense, they allow people who may disapprove vigorously of aspects of each other's private lives and identities to interact as citizens on equal terms. In real space, we are often told, it is impossible for citizens in a multicultural democracy to transcend the limitations of their racial, sexual, and cultural perspectives. In cyberspace, by contrast, only your public identity, rather than your private identity, is at stake. The eBay buyers and sellers who rate each other are interacting as buyers and sellers without the need to tell each other everything about themselves. And this resurrection of boundaries makes it easier for citizens to interact productively and to form trusting relationships in a pluralistic age.

A gun-toting, homophobic, good old boy in Montana may disapprove of the lifestyle of a cosmopolitan opera lover in New York, but shielded by the two-dimensionality of the Internet, which strips away the markers of their identity, both can interact on equal terms as participants in the marketplace of goods or ideas.

Indeed, a growing body of empirical research suggests that people will act selfishly when they think their fellow citizens are acting selfishly, but they are more likely to cooperate when they believe that everyone else is cooperating. This plays out in all sorts of ways. Colleges can decrease undergraduate drinking, for example, merely by announcing that drinking trends are going down. People are more likely to comply with tax laws, drunk driving laws, and anti-fraud laws when they perceive that others are behaving honestly or driving soberly. Increased penalties for tax fraud and drunk driving, in other words, may not be effective because they make people fear punishment, but because they create the impression that others are behaving better in ways that promote reciprocal cooperation.

The Internet is a space where this sort of reciprocal cooperation among strangers is especially possible because it abstracts away divisive group identities and commitments. On the Internet, people do not think of each other as members of particular races, genders, or religions, but as potential traders or fellow Slashdot debaters. Rather than forcing members to interact as balkanized members of polarized groups, the Internet allows strangers to rate and rank each other as individuals. Instead of denying the individualistic tendencies of democracy, therefore, it harnesses these tendencies in cooperative ways. By creating economic and political incentives for individuals to behave well, the Internet gives us a model of democratic shame.

Of course, the two-dimensionality of the Internet is only a quirk of its current architecture, and over the next few decades it is likely to be replaced by a three-dimensional networked world, in which strangers from around the globe are tied by interactive visual and auditory links, rather than simply by the ties of cyberspace. In the next decade or so, it is not unrealistic to imagine a world in which there are cameras at home, in the workplace, on street corners, and perhaps even floating in the air, and where biometric retinal identification technology will track our every move on public streets. (Already, cars are transmitting odometer records back to insurance companies in real time, allowing the insurance companies to adjust premiums on an hourly basis based on how fast we drive.) Last week, we learned that the Florida police took video scans of all the Superbowl fans who entered the Tampa stadium. They then used face recognition technology to match these pictures with the databases of criminal suspects. Even if some people resist these real-time technologies—which undermine the asynchronicity that is one of the main benefits of Web communications—the increasing integration of cyberspace and real space will ensure that the citizens of the twenty-first century may be subject to increasingly three-dimensional scrutiny by strangers around the globe.

A society in which we are on camera much of the time and judged by democratic feedback systems all the time will mean that private citizens increasingly have to conduct themselves like public figures. This will put increasing pressure on people to conduct themselves in publically and democratically acceptable ways.

This is a more extreme version of the dilemma that citizens faced in the nineteenth century, as American citizens and cities grew exponentially, and the question of how to present yourself to anonymous strangers became a central feature of urban life. Shame and embarrassment were a constant risk, as individuals lived in constant uncertainty about whether or not their status claims would be acknowledged or denied. To avoid exposing and shaming others, and to avoid participating in their shame, became a major principle of public conduct. The elaborate codification of manners in etiquette manuals was designed to prevent the uncertainty that could lead to shaming encounters between different classes of people who were insecure about their status on streetcars and trains, and in elevators and hotels. Ladies and

gentlemen avoided calling attention to themselves as individuals by wearing modest black clothing and keeping aloof from any personal engagement. The elaborate rituals of hat tipping, for example, were designed to preserve privacy and anonymity in public. By avoiding eye contact, and honoring a passing woman as a lady rather than as an individual, a gentleman could preserve her privacy as well as his own. And the rigidly proscribed rituals of deference prevented individuals from shaming or being shamed when they were uncertain about the status of strangers they encountered.

Nineteenth century rituals of shame avoidance were closely linked to emotional control: by rigidly controlling all aspects of the body, etiquette manuals urged, individuals could command themselves. "The highest cultivation in social manners enables a person to conceal from the world his true feelings," wrote Ward McAllister, the arbiter of New York's nineteenth century elite.[43] Ever since the 1960s, by contrast, citizens have faced powerful democratic pressures to confess as many details of their private lives as possible, in order to express their authentic selves and prove that they are no better than anyone else. In the last presidential election, Al Gore and George Bush had to act like Oprah, presenting themselves as victims by revealing their most embarrassing secrets—Bush's former drinking problem and Gore's fraught relationship with his father—to establish a democratic connection with voters. But a confessional culture in which individuals demand simultaneously the right to let it all hang out and the right to be treated precisely the same as everyone else is a culture in which people disagree vigorously about what sort of behavior should be considered shameful.

By masking the aspects of identity about which people disagree, the Internet reminds us that strangers can interact most productively when they maintain some boundaries between their public and private selves. In this sense, the most successful individuals in the twenty-first century may be those who can master the art of democratic manners and avoid forms of democratic shame in all spheres of their lives.

What kind of democratic manners are necessary for success in a world where our status depends on the judgment and scrutiny of strangers? It is important, above all, not to act in an elitist fashion—not to make it appear that you think you are better than anyone else. (This is why Bill Gates and Warren Buffet wear open neck shirts and recently ate together at McDonalds.) You should treat everyone with whom you interact with equal concern and respect, because each encounter has the power to affect your reputation in potentially indelible ways. The one thing that can ruin a personal or professional career is hate speech or sexual harassment—evidence of the undemocratic sin of treating other individuals or groups with contempt. It is

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43. Ward McAllister, *A Glimpse of High Society*, *in* THE NATION TRANSFORMED: THE CREATION OF AN INDUSTRIAL SOCIETY 311 (Sigmund Diamond ed., 1963).

important to affirm the contribution and worth of everyone with whom you interact—from students and readers to business associates and C-Span callers—and to convey the impression that each of them is equally deserving of concern and respect, even though some comments may be more equal than others. And it is important to expose enough of yourself so that you can establish a democratic connection, but not so much that you reveal divisive aspects of your private thoughts and behavior of which some people may disapprove.

In a world where technology, the media, cyberspace, and law are tearing down the boundary between the public and private sphere, in short, those who display democratic manners—exercising individual self-restraint with an eye toward winning the good opinion of others—may be the most successful. Increasingly, we are all public figures in one way or another, and as public figures, we have to behave like politicians in our public and private lives, acting in a way that establishes democratic connections and avoiding bad behavior that could come back to haunt us.

In short, as society becomes more egalitarian and more transparent, treating everyone with respect in face-to-face interactions becomes ever more important. And the most successful personalities may be those who move seamlessly between different social spheres, presenting in each a similarly respectful face to the world. In this sense, we may be returning to the democratic manners that were prized during Tocqueville's time, when the malleability of status in the Jacksonian era resulted in a social premium on transparency and sincerity, and a horror of hypocrisy and confidence men who appeared to be something they were not. (Later in the nineteenth century, as a more hierarchical corporate structure replaced the small industrial entrepreneur of the 1830s, manners became more ritualized, more concerned with surface appearance, and less concerned with individual trustworthiness.)[44] In the twentieth century, Lionel Trilling, the great literary critic, distinguished between sincerity and authenticity. Sincerity involves finding your true, socially embedded self and remaining faithful to it for a lifetime. Authenticity involves the acting out of many different selves and constantly reinventing your identity in different situations. If the decades since the 1960s were an age of authenticity, perhaps we are returning to an age of sincerity, in which the integrated, transparent, and well-mannered personality is best suited for democratic success.

All this is not to say that the resurrection of shame and manners will stop the inexorable development of the legalized self. Democracies, as Tocqueville recognized, grow ever more democratic; similarly legalized democracies grow ever more legalistic. Cyberspace will, doubtlessly, be transformed over the next decades from a place where shame and manners rule, to a place covered by a web of small, uniform, painstaking, uniform rules and laws. But this will give citizens of the

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44. *See* TOCQUEVILLE, *supra* note 2, at 530-32.

twenty-first century even more of an incentive to behave well in all spheres of life: to avoid being shamed by technology on one hand, or the fear of lawsuits on the other.