TECHNOLOGY DRIVEN RACIAL RECONCILIATION: A PRACTICAL GUIDE FOR THE USE OF TECHNOLOGY IN TRUTH COMMISSIONS

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Abstract

Truth and Reconciliation Commissions have played a valuable role internationally in providing an outlet for meaningful dialogue concerning systemic factors contributing to regional instability. At the same time, technology has become an important vehicle for dialogue. This Article therefore introduces considerations about how technology can be used to expand dialogue and strengthen the objectives of American truth commissions in addressing racial inequities. As a larger segment of the population shows increasing preference for technology-based systems, this Article emphasizes

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that technology can and should complement, rather than supplant, in-person engagements to respond to differing stakeholder preferences for online and in-person interactions. In discussing how some social media platforms have played a negative role in issues of national concern, this Article also emphasizes that there are alternate frameworks for developing online spaces that are inclusive and capable of fostering mutual understanding between different groups. The Article acknowledges the benefits and risks of communication platforms. Just as technology has introduced benefits for transportation, commerce, and entertainment, technology can also transform how reconciliation occurs without geographic limitations.

I.   INTRODUCTION

America's historical challenges grappling with racial tension and distrust of state institutions have been highlighted in the aftermath of the George Floyd protests[1] and social movements that have arisen to contest police brutality. These social movements have mobilized a multi-generational, multi-racial coalition,[2] expressing dismay with ongoing social inequities. At the same time, multiple district attorneys have recognized the value in creating truth and reconciliation commissions to help address complaints and issues raised by these coalitions.[3] With their focus on addressing systemic issues through community engagement, a truth and reconciliation commission (TRC)

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[1] The protests that developed in response to George Floyd's murder had immediate national consequences, ranging from major cities reallocating millions of dollars away from the police's budget to fund marginalized communities, "autonomous zones" being created in Seattle, and increased support to recognize Juneteenth as a national holiday. *See* Giulia McDonnell et al., *A Timeline of What Has Happened in the Year Since George Floyd's Death*, N.Y. TIMES (May 25, 2021), https://www.nytimes.com/2021/05/25/us/george-floyd-protests-unrest-events-timeline.html [https://perma.cc/M4EG-UZRB].

[2] *See* Kim Parker et al., *Amid Protests, Majorities Across Racial and Ethnic Groups Express Support for the Black Lives Matter Movement*, PEW RSCH. CTR. 1, 5 (June 12, 2020), https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement/ [https://perma.cc/SRD9-8FSL]. From 60% of white adults to 86% of black adults, two-thirds of the general adult American population expressed some support for the Black Lives Matter Movement. *Id.*

[3] *See generally* Tom Jackman, *Prosecutors in Three Cities Launch Commissions for Victims of Unjust Policing and Prosecution*, WASH. POST (July 1, 2020, 8:50 PM), https://www.washingtonpost.com/crime-law/2020/07/01/prosecutors-philadelphia-boston-sf-launch-truth-justice-reconciliation-commissions-justice-system-victims/ [https://perma.cc/UL8E-M5X6].

can advance much needed transformative change—even in the United States where racial inequities run deep.[4] TRCs offer the possibility of promoting much needed dialogue—allowing for valuable communication between different groups while creating an environment conducive for restorative justice.

At the same time, technology has become an essential component of communication in the modern era. Accordingly, incorporating technology into the system design of these commissions can introduce unique benefits for facilitating dialogue and promoting understanding on topics that, despite being ever-present, have historically divided different communities. Moreover, the ongoing health-related restrictions implemented in response to the coronavirus pandemic have highlighted that technology is not just nice to have, but increasingly essential to safely facilitate communication.[5] Furthermore, technology opens doors to uniquely flexible communication that is not possible in traditional in-person processes.[6] For example, the Supreme Court has seen considerable support from much of the general public for the expansion of technology-enabled communication to ensure live audio streams, even after the COVID pandemic subsides.[7] Despite these benefits of technology in expanding communication, attention must be paid to the complicating factors that technology can introduce into reconciliation dialogues.

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[4] Bonny Ibhawoh, *Do Truth and Reconciliation Commissions Heal Divided Nations?*, THE CONVERSATION (Jan, 23, 2019, 3:44 PM), https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925 [https://perma.cc/D3E8-JX6T].

[5] Minh Hao Nguyen et al., *Changes in Digital Communication During the COVID-19 Global Pandemic: Implications for Digital Inequality and Future Research*, SOC. MEDIA & SOC'Y (Sept. 9, 2020), https://journals.sagepub.com/doi/full/10.1177/2056305120948255 [https://perma.cc/5AP8-V8PZ].

[6] Indeed, without technology, the entire machinations of dispute resolution across much of the world would have grinded to a halt, potentially leaving billions of disputants and practitioners with no capability to resolve disputes. In America alone, forty-two states and territories would issue stay-at-home orders, effectively preventing disputes from being resolved in-person. *See* Amanda Moreland et al., *Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement—United States, March 1–May 31, 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 1198, 1198 (2020).

[7] *See, e.g.*, Melissa Wasser, *87 Organizations Urge Supreme Court to Make Live Audio Streaming Permanent and Accessible*, PROJECT ON GOV'T OVERSIGHT (Sept. 8, 2021), https://www.pogo.org/letter/2021/09/organizations-urge-supreme-court-to-make-live-audio-streaming-permanent-and-accessible/ [https://perma.cc/9GY6-DNBL].

Technology and computer-mediated communication (CMC) have become mainstays of our modern society. Individuals now utilize technological tools in almost every area of their lives, and they expect to be able to leverage the same tools in resolving their disputes. As a result, technology has become increasingly critical for dispute resolution systems.[8] This is especially true for TRCs because they involve many stakeholders and an expansive set of complex issues.[9] TRCs' effectiveness relies on their ability to integrate restorative principles and implement restorative practices.[10] Restorative justice has been defined as "a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations."[11] The three principles underlying restorative justice are: (1) in recognizing that a harm to one is a harm to the broader community, justice requires addressing the underlying harm; (2) harms create obligations requiring accountability; and (3) stakeholders impacted by the harm should participate in the restorative processes.[12] In incorporating these restorative practices and principles,[13] TRCs are different than traditional dispute resolution systems that focus on individualized dispute resolution between a limited number of individuals.

It is this difference that makes TRCs capable of addressing systemic problems following national and regional crises. Consider, for instance, that commissions have previously been used to address a variety of issues, from atrocities during Guatemala's 36-year civil war[14] to exploring the historical

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[8] *See* Orna Rabinovich-Einy & Ethan Katsh, *Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment*, 1 INT'L J. ONLINE DISP. RESOL. 5, 27 (2014) ("the use of technology provides ODR with more opportunities to identify systemic contributors to conflict and systemic opportunities to reduce conflict").

[9] *See* Jonathan Allen, *Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission*, 49 U. TORONTO L.J. 315, 319 (1999).

[10] *See* AMY GUTMANN ET AL., TRUTH V. JUSTICE: THE MORTALITY OF TRUTH COMMISSIONS 79–80 (Robert I. Rotberg & Dennis Thompson eds., 2010).

[11] HOWARD ZEHR, THE LITTLE BOOK OF JUSTICE 37 (2002).

[12] *Id.* at 22–24.

[13] The noteworthy distinction between TRCs and restorative justice is that an explicit objective of the former is to promote reconciliation while the latter provides a context without creating expectations for reconciliation. *See id.* at 8 ("[F]orgiveness or reconciliation is not a primary principle or focus of restorative justice . . . [even if it] does provide a context where either or both might happen.").

[14] As is often the case, there were several micro-justifications for Guatemala's truth commission, including holding the government to account for inflicted harm, creating a record of harms that occurred, and individualized investigation into lost persons. *See* Amy Ross, *Truth and Consequences in Guatemala*, 60 GEOJOURNAL 73, 73 (2004).

consequences of imperialism in Korea[15] to most recently state-sanctioned human rights violations in The Gambia.[16] In addressing such challenging systemic issues, TRCs necessarily depend on a diverse range of stakeholders, often with conflicting interests and distinct experiences. As such, the use of diverse communications channels to maximize engagement between stakeholders is of vital importance to a truth commission's effectiveness. This article therefore aims to provide a blueprint for using technology in TRCs that acknowledges and addresses pitfalls of online communication.

Section II of this article discusses how technology can support a TRC's investigation and reconciliation initiatives by promoting stakeholder engagement, facilitating genuine personal connections, and promoting greater flexibility in the TRC's system design. This Section describes how the online dispute resolution (ODR) industry, particularly as seen with family law disputes, has demonstrated how technology can be leveraged to promote understanding and agreement regarding challenging topics. Section III seeks to emphasize that technology-driven systems should be seen as a complement, rather than a replacement, to physical interactions to expand how and when individuals can engage in proceedings. Section III also argues that well-designed online spaces can overcome the challenges some social media platforms have experienced. Providing an alternate paradigm to problematic social media platforms continues to be of immediate value for civil society and the tools are currently available to capture the benefits of online spaces while limiting the harms. Section IV concludes.

A. *Technology's Relevance for Transformative Reconciliation*

Technology has a critical role to play in advancing the restorative principles at the center of TRCs. Technology introduces greater flexibility and empowerment for community members engaged in reconciliation initiatives. At the essence of TRCs is a dual mandate to (1) investigate the variety of factors contributing to social instability and (2) implement procedures

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[15] Though only created in 2005, this commission sought to investigate and bring healing into human rights violations that occurred during Japan's occupation. *See* Kim Dong-Choon, *The Long Road Toward Truth and Reconciliation*, 42 CRITICAL ASIAN STUD. 525, 526 (2010).

[16] *See* Gafar Ayodeji et al., *Human Rights Violations and Quest for Justice: Interrogating the Role of Truth, Reconciliation and Reparations Commission in the Gambia*, 2 GAM. L. REV. 74, 79–82 (2019).

designed to facilitate reconciliation between communities.[17] While this dual mandate is simple to delineate, its execution comes with inherent complexities. Consider, for example, an unjust situation where one identity-based group is systematically excluded from vital resources and political representation. Conflict can quickly develop as the class benefiting from the status quo seeks to further suppress the disadvantaged group by refusing to address the underlying systemic inequities. A TRC operating in such a situation may be able to articulate the need for both conducting investigations and promoting reconciliation. Still, implementation can be complicated, especially in the face of historical oppression. This makes system design critical to the success of the reconciliation process.

      Although historical inequities continue to be present throughout American society, a few notable examples in current times include the racial wealth gap,[18] incarceration rates,[19] as well as a variety of inequities contributing to dramatically different mortality rates.[20] Identifying these issues may involve some simplicity; however, implementing the process for TRCs to address these issues involves greater complexity. It is essential to design the processes to investigate the causal factors and how initiating dialogue between

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[17] *See* Oladeji Tiamiyu, *Truth Commissions as an Antidote to Unrest: Where Dialogue and Transparency Promote Reconciliation*, HARV. NEGOT. & MEDIATION CLINICAL PROGRAM (Feb. 17, 2021), https://hnmcp.law.harvard.edu/hnmcp/blog/truth-commissions-as-an-antidote-to-unrest-where-dialogue-and-transparency-promote-reconciliation/ [https://perma.cc/D54B-MM4E].

[18] *See* Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV. SYS. (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm [https://perma.cc/Q2P9-LJDU]. On average, White families have eight times the wealth of Black families and five times the wealth of Hispanic families. Particularly relevant for emergency situations, the average White family has four times the amount of liquid savings compared to their Black and Hispanic counterparts. *Id.*

[19] *See* Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENT'G PROJECT 1, 6–7 (Oct. 13, 2021), https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf [https://perma.cc/G4Y5-ZJ8S]. Blacks are incarcerated nearly five times as much as Whites in state prisons. *Id.* In addition, there are at least fifteen states with majority black inmates. *Id.*

[20] *See* Dorothy E. Roberts, *The Most Shocking and Inhuman Inequality: Thinking Structurally About Poverty, Racism, and Health Inequities*, 49 MEM. L. REV. 167, 171 (2018) (discussing how a host of factors contribute to mortality inequities, including "wealth, employment, health care, housing, incarceration, and education, along with experiences of stigma and discrimination").

different communities can involve greater complexity. TRC design considerations must therefore include: (1) increasing stakeholder trust; (2) facilitating genuine personal connections without sacrificing mutual understanding; and (3) adopting flexible systems that can adapt to changing circumstances during the reconciliation process. At each step, well-designed technology can help to achieve these objectives by enhancing the proceeding's effectiveness.

B. *Technology's Role in Promoting Stakeholder Trust*

Fostering stakeholder trust is integral to the success of a TRC. Commissions require robust stakeholder engagement for reconciliation initiatives that grapple with the challenging topics that lie at the heart of social upheaval.[21] Indeed, different communities may have concerns and fears in discussing certain topics. If trust is lacking, the commission's dual mandate is likely to be compromised.[22] Moreover, without this trust, stakeholders will be less likely to share their experiences even though this information sharing is essential for ascertaining the truth in the absence of state-sanctioned punishment.[23]

Limited trust between stakeholders also compromises meaningful reconciliation, as genuine dialogue and understanding cannot exist in the absence of trust. For instance, a common design feature is the granting of amnesty to incentivize the group with prior political power to come to the "reconciliation table."[24] However, granting amnesty could, depending on the context, weaken the trust that stakeholders have in the reconciliation process as the perpetrators of harm are protected from legal liability while harmed

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[21] PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE THE CHALLENGE OF TRUTH COMMISSIONS 183 (2d ed. 2010).

[22] *Id.* at 147.

[23] *See, e.g.*, Thomas Buergenthal, *The United Nations Truth Commission for El Salvador*, 27 VAND. J. TRANSNAT'L L. 497, 514–15 (1994) (discussing that distrust of the El Salvadoran truth commission's ability to create meaningful societal change was a leading factor contributing to stakeholder disengagement and intentionally sharing inaccurate information).

[24] *See, e.g.*, GUTMANN ET AL., *supra* note 10, at 13 (describing how a variety of countries used amnesty as a political compromise to gain valuable information about factors contributing to the crisis).

groups have reduced options for recourse.[25] Power within a process may also impact trust. For example, US-based TRCs are often led by district attorneys, which can foster distrust among stakeholders and civil society organizations that have traditionally focused on systemic inequities within the criminal justice system.[26] Stakeholders may view the process as "rigged" or skewed, given district attorneys' roles within these problematic criminal justice systems.[27] As such, utilizing technology to diversify leadership, with the goal of promoting the perception of fairness and impartiality amongst stakeholders, becomes all the more vital.

Furthermore, even where there is skepticism around TRC leaders, technology may foster trust by increasing transparency around the process. For TRCs, it is not just the process of conducting investigations and promoting reconciliation that is relevant. TRCs must also ensure that this dual mandate is perceived as fair and objective.[28] The value of technology-enhanced transparency with TRCs is somewhat analogous to the judiciary's prioritization of technology to promote transparency. New Mexico's Chief Justice has identified technology to be a valuable component of strengthening

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[25] *See, e.g.*, Ziyad Motala, *The Use of the Truth Commission in South Africa as an Alternative Dispute Resolution Mechanism Versus the International Law Obligations*, 45 SANTA CLARA L. REV. 913, 922 (2005) ("[S]ome would argue that [South Africa's] TRC did more for the perpetrators than for the victims. For telling their story, even without an apology, the perpetrators avoided any liability and were not required to compensate the victims in any way.").

[26] *But see* Patrisse Cullors, *'Black Lives Matter' is About More than the Police*, Am. Civ. Liberties Union (June 2020), https://www.aclu.org/news/criminal-law-reform/black-lives-matter-is-about-more-than-the-police/ [https://perma.cc/YC3Z-FWYE] (co-founder of Black Lives Matter movement describing how the movement goes beyond inequities in the criminal justice to include health disparities highlighted with the pandemic). *See generally* Nazgol Ghandnoosh, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, THE SENT'G PROJECT (Feb. 3, 2015), https://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/ [https://perma.cc/RN3B-TFUQ] (identifying leading factors contributing to racial inequities in the criminal justice system, including policies, laws, the broad use of discretion, and inequitable resource allocation).

[27] *See* Deborah Becker, *Boston Creates Truth, Justice and Reconciliation Commission*, WBUR (June 30, 2020), https://www.wbur.org/news/2020/06/30/boston-truth-justice-reconciliation-commission [https://perma.cc/Y4VH-WPQY] (of the three truth commissions created in 2020, all are led by district attorneys).

[28] *See, e.g.*, GUTMANN ET AL., *supra* note 10, at 246 (describing how South Africa's truth commission sought to promote a positive public perception in order to strengthen trust in the process).

trust in judicial proceedings.[29] Transparency can play a key role in informing the substance of the commission while, perhaps equally importantly, improving the public's trust in the overall initiative.[30]

Transparency is important for multiple aspects of a TRC, including in understanding: (1) what reconciliation procedures will be implemented and towards what ends; (2) the decisionmaking process among the commissioners; and (3) the extent to which the commission's findings and conclusions are merely persuasive or binding on State actors. In each of these aspects, technology can play an important role in increasing transparency in order to strengthen the legitimacy of the process. For instance, having an online process flow chart and calendar describing when specific reconciliation activities will be conducted can enable stakeholders to be prepared for an extended multi-year initiative. Moreover, just as the Supreme Court permitted the use of information and communication technology (ICT) to broadcast live oral arguments for the first time in history,[31] so too can commissioners use ICT to demystify the process and promote greater transparency in their decisionmaking. For instance, having insight into how and why commissioners reached specific findings about a given systemic problem can strengthen the legitimacy of related conclusions issued in the TRC's final report.

Opening physical doors to TRC activities has been important, historically, and technology allows for even greater transparency by opening

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[29] *See* Kent Walz, *Court Transparency Key to Justice*, ALBUQUERQUE J. (May 23, 2021, 12:02 AM), https://www.abqjournal.com/2393298/court-transparency-key-to-justice.html [https://perma.cc/JWR7-NYU7] (quoting Chief Justice Michael Vigil stating, "New Mexico courts recognize the critical importance of allowing the public to see and hear for themselves how our justice system fairly and impartially resolves legal disputes. Without that transparency and access, we risk an erosion of public confidence in the rule of law and trust in our independent judicial branch of government. Our democracy depends on maintaining that public confidence and trust.").

[30] *See, e.g.*, CATHERINE M. COLE, PERFORMING SOUTH AFRICA'S TRUTH COMMISSION: STAGES OF TRANSITION 103–05 (2009) (discussing how South Africa's truth commission recognized that public scrutiny was the "best of disinfectants" and that using the television, as an innovative technological tool at the time, to increase transparency strengthened public perception).

[31] *See, e.g.*, Amy Howe, *Courtroom Access: Faced with Pandemic, the Supreme Court Pivots*, SCOTUSBLOG (April 16, 2020, 2:58 PM), https://www.scotusblog.com/2020/04/courtroom-access-faced-with-a-pandemic-the-supreme-court-pivots/ [https://perma.cc/VJZ6-GUVW].

virtual doors to an even wider set of participants.[32] This open atmosphere is valuable for these initiatives to be conducted in an inclusive and transparent manner. Livestreaming hearings, while nonetheless protecting private dialogue among stakeholders where necessary to the process, can foster willingness for a wider range of participants to engage with the process. Further, it is detrimental to exclude the public from engaging with other communities' experiences and reactions throughout the reconciliation process.[33] Integrating technology[34] into the commission's system design, for instance, can allow audio and video recordings of reconciliation dialogues to be disseminated to a wider audience. At the same time, making deliberations and hearings available live online allows individuals to listen to personal narratives and remotely experience events as they occur, even when they cannot attend in person due to work, family, travel, and other logistical constraints.

Understanding what occurs during the reconciliation process through direct channels, rather than through intermediary outlets that might obfuscate the dialogue or misinterpret communication, strengthens the connection stakeholders have with the commission's work. In addition, decisionmaking among commissioners informs the substantive outcomes of a commission. Consider that commissioners typically have highly distinct backgrounds from one another. Indeed, diversity in experiences and socio-economic status is critical for commissions to have broad representation, conferring greater

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[32] *See* Orna Rabinovich-Einy, *Balancing the Scales: The Ford-Firestone Case, the Internet, and the Future Dispute Resolution Landscape*, 6 YALE J.L. & TECH. 1, 31 (2004).

[33] Julie Mazzei, *Finding Shame in Truth: The Importance of Public Engagement in Truth Commissions*, 33 HUM. RTS. Q. 431, 433 (2011) (discussing that when a "TC does not directly engage public discourse, it cannot challenge the scripts that dominated the conflict period").

[34] From food supply chains to government decisionmaking, technology has proven to play an important role in improving transparency. *See, e.g.*, Jake Astill et al., *Transparency in Food Supply Chains: A Review of Enabling Technology Solutions*, 91 TRENDS FOOD SCI. & TECH. 240, 242–44 (2019) (describing technologies capable of enhancing transparency in food production and distribution); *see also* John Carlo Bertot et al., *Social Media Technology and Government Transparency*, 43 IEEE XPLORE 53 (2010) (describing government agencies using YouTube, blogs, and social media platforms to provide insight into government decisionmaking and foster greater connection with the public).

legitimacy to the commission's existence.[35] Opening virtual doors to the decisionmaking process can provide greater legitimacy to the proceedings. Establishing virtual forums and online portals where commissioners can share their rationale for substantive and procedural decisions can be a powerful way to increase transparency. Furthermore, these fora can easily be extended to enable direct feedback or aggregated feedback via online feedback systems. These same ideas have been core among advocates for using technology to expand voices in democratic systems.

In addition, technology can increase transparency in determining whether the commission's findings and conclusions are persuasive or binding on State actors. It is important to determine the persuasive authority of the Commission's work, as there can be a positive correlation between the degree of a Commission's binding authority and engagement of civil society to the process.[36] When a Commission's report has greater binding authority on legislators, for instance, civil society's knowledge that their contributions will have a greater effect on future policies can lead to more committed engagement and, consequentially, a more authoritative outcome.[37] Yet, the distinction between persuasive and binding authority is not binary and has multiple gradients.[38] For instance, within the persuasive framing, legislators and implementers of the Commission's report may view the report as a point of departure for their work, or as only one resource in a cadre of other relevant

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[35] Diversity with truth commission was sufficiently important that legislators have previously listed this as criteria for selecting commissioners. *See, e.g.*, Truth, Reconciliation and Reparations Commission Act, 2017, Part II, § 4 (Gam.) ("[i]n appointing members of the Commission, the President shall have regard to the geographical, religious, cultural and gender diversity of The Gambia"); *see also* Colleen Murphy, *The Ethics of Diversity in Transitional Justice*, 16 GEO. J.L. & PUB. POL'Y 821, 833 (2018) ("inclusion of individuals from diverse backgrounds . . . is required to prevent transitional justice processes from becoming instruments of injustice.").

[36] *But see* ONUR BAKINER, TRUTH COMMISSIONS: MEMORY, POWER, AND LEGITIMACY 99 (2016) (implementing a truth commission's recommendations typically requires civil society pressure even when the report is nonbinding).

[37] When the Argentine truth commission was designed in a way that initially led to reduced civil society engagement, commissioners were compelled to lobby extensively in the community to regain public participation. *See* Hayner, *supra* note 21, at 224.

[38] *See* BAKINER, *supra* note 36, at 98 (discussing different approaches heads of state in different countries have taken to a truth commission's report, including endorsing and disregarding the report).

resources.[39] Similarly, binding authority comes with different gradients as, for example, a soft requirement to implement recommendations subject to economic conditions or fully binding conditions.[40] As legislators and commissioners evaluate these possibilities, technology can provide transparency into the expectations civil society should have for implementing the commission's report.

C. *Technology's Role in Facilitating Genuine Personal Connections Without Sacrificing Mutual Understanding*

Racial reconciliation requires fostering genuine personal connections among groups and communities with different backgrounds. Often, communities do not have a shared understanding of historical events contributing to social instability.[41] It is this divergent understanding of historical events that can hinder genuine connections.[42] Moreover, where a common agreement on information is lacking, working towards mutual understanding also becomes paramount. Without a shared interest in understanding one another, the goodwill built from genuine personal connections cannot be channeled towards challenging conversations. Technology can play a valuable role in both of these factors, yet system designers should be mindful that a poorly designed system or one that is insufficiently inclusive[43] can do considerable harm to the process.

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[39] *See* Eric Brahm, *Truth Commissions*, BEYOND INTRACTABILITY (June 2004), http://www.beyondintractability.org/essay/truth-commissions   [https://perma.cc/NY3J-W2T2].

[40] *See* BAKINER, *supra* note 36, at 95 (discussing how even when a commission had binding authority in El Salvador and Sierra Leone, politicians had "a high degree of discretion on which reform proposals to adopt").

[41] This is exemplified with divergent opinions about what happened on January 6, 2020 in Washington D.C. *See* Mallory Newall et al., *Seven in Ten Americans Say the Country Is in Crisis, at Risk of Failing*, IPSOS (Jan. 3, 2022), https://www.ipsos.com/en-us/seven-ten-americans-say-country-crisis-risk-failing   [https://perma.cc/ZKZ4-MHT2] (roughly one-third of Americans believe there was fraudulent voting in the 2020 presidential election).

[42] *See* ROBERT HUCKFELDT ET AL., POLITICAL DISAGREEMENT: THE SURVIVAL OF DIVERSE OPINIONS WITHIN COMMUNICATION NETWORKS 9–10 (2004).

[43] Non-inclusive digital spaces are exemplified through 40% of Americans experiencing online harassment. Maeve Duggan, *Online Harassment 2017*, PEW RSCH. CTR. (July 11, 2017), https://www.pewresearch.org/internet/2017/07/11/online-harassment-2017/ [https://perma.cc/Q6BT-9ZUU] (70% of women, 74% of Blacks, and 72% of Hispanics view online harassment as a major problem).

This creates tensions with respect to the introduction of technology into the process. On the one hand, creating an online forum that is open to the public for comment can fall victim to bad actors and abusive communication—notorious on social media platforms like Twitter and Facebook.[44] On the other hand, careful inclusion of online-stakeholder engagement, with attentive moderation, can foster honest and open dialogue essential for understanding and healing.[45] Furthermore, creative use of technology can provide means for sharing emotion—as has been seen with the expansive use of emojis.[46] Accordingly, State actors have the ability to design their reconciliation platforms with a priority on promoting meaningful dialogue and reconciliation rather than having a narrow focus on profitability, like publicly-traded social media companies experience.[47] This emphasis on social value can surface important system-design distinctions that are quite divorced from traditional social media platforms. For instance, rather than placing an emphasis on maximizing user engagement in any form, the reconciliation platform can prioritize *meaningful* personal connections.[48] The use of custom-designed online forums can effectively filter out bad-faith

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[44] *See, e.g.*, Bradley Hanlon, *It's Not Just Facebook: Countering Russia's Social Media Offensive*, GERMAN MARSHAL FUND: ALL. FOR SECURING DEMOCRACY 1, 3–4 (Apr. 11, 2018), https://securingdemocracy.gmfus.org/wp-content/uploads/2018/06/Social-Media-Policy_Final-edit.pdf [https://perma.cc/NJ5Y-8P5J] (describing how foreign State actors used thousands of fake accounts on Facebook and Instagram to spread misinformation to as many as 150 million Americans prior to the 2016 presidential election).

[45] Terry Flew et al., *Internet Regulation as Media Policy*, 10 J. DIGIT. MEDIA & POL. 33, 40 (2019) (describing content moderation as seeking to "support and enforce positive communications behaviour online, and to minimize aggression and anti-social behaviour").

[46] Rachel Scall, 🉐©◻️*: Emoji As Language and Their Place Outside American Copyright Law*, 5 N.Y.U. J. INTELL. PROP. & ENT. L. 381, 388–89 (2016) (discussing the expansive role emoji have in online self-expression).

[47] While public-traded social media platforms have a narrow focus on profitability at the expense of meaningful interactions, reliance on subscriptions or advertising-based models can influence the extent content moderation is used to promote meaningful interactions. Yi Liu et al., *Implications of Revenue Models and Technology for Content Moderation Strategies*, 41 MKTG. SCI. 831, 836–838 (2022).

[48] This is akin to dynamics in the messaging industry where nonprofits do not have the same constraints as for-profit counterparts. *See e.g.*, Rob Pegoraro, *New Signal Boss: We're No WhatsApp*, PCMAG (Nov. 4, 2022), https://www.pcmag.com/news/new-signal-boss-were-no-whatsapp [https://perma.cc/Q25C-JKPK] (Signal CEO stating that "[w]e don't have shareholders or equity, so we are not being pushed to prioritize profits or forever growth").

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engagement intended only to seed chaos or misunderstanding (trolling) and ensure the dialogues stay focused on the topic areas central to the reconciliation process.[49]

There may be a temptation to disregard using online forums and technology to facilitate difficult conversations about controversial topics due to the poor precedent set by social media platforms.[50] The shortcomings of dialogue on social media platforms like Facebook and Twitter have been well documented and will be discussed further in Section III(B). However, the successful use of technology in resolving disputes (online dispute resolution or ODR) in areas like family law,[51] or the use of technology to reduce racial stereotyping on a platform like Nextdoor,[52] present a useful template for how technology can be leveraged to promote healing and constructive communication between those in conflict. Even prior to the start of the pandemic, ODR's effectiveness has contributed to its exponential adoption in courts throughout the country.[53] ODR platforms have demonstrated success in using technological approaches to promote collaboration when underlying

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[49] The British Columbia Civil Resolution Tribunal is a prime case study in using content moderation to promote positive interactions and preventing abuse and harassment. *See* Shannon Salter & Darin Thompson, *Public-Centered Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal*, 3 McGILL J. DISP. RESOL. 113, 132 (2016–17).

[50] Facebook, the world's largest and perhaps most infamous social media platform, has particularly struggled in curbing hate speech for users across the world including when such speech has physical consequences for endangered communities. *See, e.g.*, Newley Purnell & Jeff Horwitz, *Facebook Services Are Used to Spread Religious Hatred in India, Internal Documents Show*, WALL ST. J. (Oct. 23, 2021, 3:12 PM), https://www.wsj.com/articles/facebook-services-are-used-to-spread-religious-hatred-in-india-internal-documents-show-11635016354 [https://perma.cc/HBA4-LNK4].

[51] *See e.g.*, Kevin Bowling et al., *Improving Child Support Enforcement Outcomes with Online Dispute Resolution*, NAT'L CTR. FOR STATE CTS., https://cdm16501.contentdm.oclc.org/digital/collection/famct/id/1559 [https://perma.cc/DY4Y-PYGM] (last visited Jan. 15, 2022).

[52] *See* Phil Simon, *How Nextdoor Addressed Racial Profiling on Its Platform*, HARV. BUS. REV. (May 11, 2018), https://hbr.org/2018/05/how-nextdoor-addressed-racial-profiling-on-its-platform [https://perma.cc/9C8W-3WPW] (NextDoor using what is described as "a data-oriented and agile approach to design [that] reduced racial profiling by 75%" according to the company).

[53] *See, e.g.*, *Courts Using ODR*, NAT'L CTR. FOR TECH. & DISP. RESOL., https://odr.info/courts-using-odr/ [https://perma.cc/J3R2-DK2V] (last visited Jan. 15, 2022).

tensions could have easily escalated into threats, insults, and misunderstandings.[54]

One example of ODR's effectiveness in this regard has been in the family and divorce arena. ODR has been shown to help families reach agreements using computers and smart phones, with fewer costs or complications.[55] Courts across the United States are launching ODR systems to help divorcing couples resolve their disagreements before they get in front of a judge.[56] But these technologies are not only being leveraged inside of courts; coParenter is a private ODR service that helps separated, divorced, and never-married parents make and manage their co-parenting responsibilities, create court-ready parenting and holiday plans, resolve disputes, and make more informed child-centric decisions that save time and money, while keeping them out of court.[57] OurFamilyWizard offers similar tools to assist partners' communication.[58] These platforms have proven themselves so successful that courts are frequently ordering their use in high-conflict family

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[54] *See* Amy J. Schmitz & Leah Wing, *Beneficial and Ethical ODR for Family Issues*, 59 FAM. CT. REV. 250, 251–52 (2021). *See generally Court Compass: Mapping the Future of User Access Through Technology*, INST. FOR ADV. AM. LEGAL SYS. (May 23, 2017), https://iaals.du.edu/sites/default/files/documents/publications/court_compass_mapping_t he_future.pdf [https://perma.cc/98N9-2B4B].

[55] *See, e.g.*, Bowling et al., *supra* note 51 (describing how, after three years of using ODR, a Michigan county reduced monthly hearings, reduced child support-related arrest warrants, and increased child support collections).

[56] *See* Schmitz & Wing, *supra* note 54, at 255.

[57] *See e.g., Communicate, Manage, and Organize Everyday Coparenting Responsibilities.*, COPARENTER, https://coparenter.com/features/organize-and-connect/ [https://perma.cc/C47V-MT9P] (last visited Dec. 22, 2022) (providing an overview of features offered by coParenter).

[58] OURFAMILYWIZARD, https://www.ourfamilywizard.com/ [https://perma.cc/5UZ7-UQFA] (last visited Sept. 10, 2022).

cases.[59] Such ODR success in family law illustrates that technology and online platforms can be leveraged to navigate emotionally complex, multi-faceted issues.

At the same time, technology can open avenues for new forms of expression. Related to promoting mutual understanding, TRCs often struggle to introduce non-verbal methods to communicate the different lived experiences of participants.[60] Even the use of emojis has opened new ways to express emotion, which expands access in a myriad of ways.[61] Consider if one is not comfortable with typing or writing out ideas. Others may feel uncomfortable with in-person or online communications that involve their appearance. Emojis have proven to be a positive means for expressing how one feels without the "trappings" of traditional communication.[62]

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[59] *See generally* Amy J. Schmitz, *Expanding Access to Remedies Through E-Court Initiatives,* 67 BUFF. L. REV. 89, 101–63 (2019). For example, Ottawa, Michigan is using ODR to reduce show-cause hearings and resolve non-payment of child support. Matterhorn has been providing these services because before the 2016 ODR implementation, the court dealt with 100+ show-cause hearings per week. A recent study of the ODR program showed that the "majority of parties provided high ratings (i.e., ratings of 6 or 7) when assessing how much they were able to express what was important to them (58.3%), how fairly their caseworker treated them (69.2%), and how much the caseworker treated them with respect (66.7%). Two thirds (66.7%) gave high ratings for evaluations of how much they trusted their caseworker; 61.5% did so for ratings of whether their caseworker understood what was important to them." Donna Shestowsky & Jennifer Shack, *Online Dispute Resolution for Post-Judgment Family Law Cases: A Report to the Ottawa County, Michigan, Friend of the Court,* SSRN (July 27, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4173424 [https://perma.cc/5Y6D-9946].

[60] Because of the timing of social media's international use, it has been the two newest truth commissions to experiment the most with online reconciliation initiatives. *See Instance Vérité & Dignité,* FACEBOOK, https://www.facebook.com/IVDTN [https://perma.cc/6C9X-7MCB] (last visited Aug. 30, 2022); *see also Truth, Reconciliation and Reparations Commission,* FACEBOOK, https://www.facebook.com/moj.trrc [https://perma.cc/S34Q-D7TM] (last visited Aug. 30, 2022).

[61] *See* Scall, *supra* note 46, at 388–89.

[62] *See* Elizabeth Kirley & Marilyn McMahon, *The Emoji Factor: Humanizing the Emerging Law of Digital Speech,* 85 TENN. L. REV. 517, 519 (2018) ("Just as nonverbal cues such as intonation and gesture inform our verbal communications, emoji can improve our one-dimensional texting because they add emotional undercurrents that intensify our human networking."); *see also* Eric Goldman, *Emojis and the Law,* 93 WASH. L. REV. 1227, 1228 (2018) ("The right emoji can convey emotional valence, cultural jokes, or other valuable information to a message.").

The use of digital art can be a powerful tool to initiate dialogue between different groups while introducing another method for self-expression and personal narratives. Digital art can capture the human imagination by communicating with aesthetic power without the same geographic limitations as physical art.[63] The central role digital art can have in promoting reconciliation also has international precedent. The Documentation Center of Cambodia has used locally-produced music[64] and documentaries[65] as tools to promote national healing and understanding as the nation continues to grapple with the traumatic effects of civil war. The International Center for Transitional Justice (the ICTJ) has also hosted an online art gallery focused on the Lebanon civil war titled "The War as I See It," where members of the community used photography to express complex emotions and challenging experiences for victims of war crimes and violence.[66] Featured art includes a picture of a young boy looking out a window to symbolize hope as a weapon is held behind him.[67] Another powerful art submission shows the hands of two people exchanging a historical memento with a red rose.[68] Each submission includes a description of what the art is supposed to represent and can, for future use, include an area for others to comment on how the art impacts them.[69] These examples illustrate both the value in incorporating digital art and the interest stakeholders have to participate in the reconciliation process through this medium. Therefore, a multi-pronged reconciliation approach that does not rely exclusively on oral or written communication can introduce a wider range of personal and community-based storytelling to enable more groups to feel fully engaged in the reconciliation initiatives.

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[63] *See* Rose Marie San Juan & Geraldine Pratt, *Virtual Cities: Film and the Urban Mapping of Virtual Space*, 43 SCREEN 250, 251 (2008) ("[C]inema and cyberspace produce comparable effects of dislocation and disembodiment, arguably privileging the visual as a way to simulate proximity without physical presence, and thus transforming the relationship between subject and object of viewing in particular ways.").

[64] *See, e.g., Music and Performing Arts*, DOCUMENTATION CTR CAMBODIA, http://d.dccam.org/Archives/Musics/Music.htm [https://perma.cc/X45Z-4MZC] (last visited Jan. 15, 2022).

[65] *See, e.g., Films*, DOCUMENTATION CTR CAMBODIA, http://d.dccam.org/Archives/Films/Films.htm [https://perma.cc/5Q6J-NULC] (last visited Jan. 15, 2022).

[66] *"The War as I See It": Photo Contest & Exhibition*, INT'L CTR. FOR TRANSITIONAL JUST., https://www.ictj.org/multimedia/photo/war-i-see-it-photo-contest-exhibition [https://perma.cc/T7GN-2T87] (last visited Jan. 15, 2022).

[67] *Id.* (photograph by Hanin Aboulhosn).

[68] *Id.* (photograph by Sophie Nader).

[69] *Id.*

Photograph by Hanin Aboulhosn.[70]

D. *Technology's Role in Promoting Greater Flexibility in the System Design*

TRCs benefit from significant flexibility in their system designs to respond to changing circumstances and new information that surfaces during the process. Indeed, because the systemic issues, U.S.-based TRCs may consider addressing have a long history, information discovered during the TRC's investigations may change the needs and priorities stakeholders have during the process. Having a framework that can nimbly adapt to the changing agenda of the participants is of paramount value in designing effective commissions. Significantly, technology brings flexibility in system design that is not possible with traditional in-person processes.[71] Consider how ODR has added flexibility into the Civil Resolution Tribunal (the CRT) in Canada[72]: The CRT has constantly evolved and reinvented itself over time based on

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[70] *Id.* (photograph by Hanin Aboulhosn).

[71] *See* Amy J. Schmitz, *Reviving the 'New Handshake' in the Wake of Epidemics*, 5 MEDIATION PRAC. & THEORY 32 (2020).

[72] Shannon Salter, *ODR and Justice System Integration: British Columbia's Civil Resolution Tribunal*, 34 WINDSOR Y.B. ACCESS JUST. 112, 116 (2017).

feedback and new information gleaned along the way.[73] It began when the British Columbia provincial government passed the CRT Act in 2012 calling for the creation of an ODR program to cover small claims and condominium property, or "strata" disputes.[74] A main impetus for the Act was the exorbitant costs of litigation in Canada, with the average two-day trial costing $31,330 in 2013, while the median Canadian family after-tax income was just over $50,000 in the same year.[75] The CRT first opened in 2016 for strata claims, and quickly expanded into small claims of up to $5,000 CAD on June 1, 2017.[76] It has since grown to cover larger value small claims, as well as personal injury.[77]

Flexibility has remained key in the development of the British Columbian expert system, called "solution explorer," which uses simple AI to guide individuals toward appropriate answers to questions regarding the legal issue they are seeking to address.[78] An expert system relies on a knowledge base which is filled with extensive experience within a given domain, collected from human actors.[79] This knowledge is structured in a specific way to make it computer readable, and is made accessible to the user through the system's user interface.[80] The CRT system has evolved as information has been added to the database, and it is currently experimenting with AI technology that analyzes texts and prompts the user with guidance questions like, "[your reply] sounds pretty hostile. Are you sure you want to phrase it this way?"[81] The CRT also includes a "report abuse button" in its negotiation phase to promote civil discourse.[82] Moreover, the CRT reports key statistics on an ongoing basis as

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[73] *Id.* at 118.

[74] *Id.*

[75] *Id.*

[76] *Id.* at 122; *see also The Civil Resolution Tribunal and Strata Disputes,* GOV'T B.C., http://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal [https://perma.cc/Z5HC-BF9K] (last visited Feb. 26, 2019).

[77] *See generally* Insurance (Vehicle) Amendment Act, R.S.B.C. 1996, c. 231, amended by S.B.C. 2018; Civil Resolution Tribunal Amendment Act, S.B.C. 2012, c. 25, amended by S.B.C. 2018.

[78] Salter & Thompson, *supra* note 49, at 129.

[79] Salter & Thompson, *supra* note 49, at 129.

[80] Salter & Thompson, *supra* note 49, at 129.

[81] Bill Henderson, *Is Access to Justice a Design Problem?*, LEGAL EVOLUTION (Jun. 23, 2019), https://www.legalevolution.org/2019/06/is-access-to-justice-a-design-problem-099/ [https://perma.cc/ND35-U7A6].

[82] *See id.*

part of their initiative for complete transparency, human-centered design, and continuous improvement.[83]

The CRT experience exemplifies how technology can add flexibility to system designs in a way that is not possible in static systems. In applying these lessons to truth commissions, the greatest need for flexibility is in responding to changing circumstances and information that surfaces during the process. Inevitably, new information is discovered as the commission investigates the truth about the underlying factors contributing to national or local crises. This new information can change the commission's goals or how stakeholder groups relate with one another. Consider, for instance, newly discovered information that reveals the extent of race-based redlining in a community[84] and how the practice led to inequities between racial groups. This information could change the substance of reconciliation dialogues over the course of the commission's work, demanding a dynamic reworking of the commission's agenda. As the CRT has demonstrated, utilizing a dynamic framework powered by technology can allow for greater responsiveness to changing circumstances during the reconciliation process.

Additionally, online-based forums inherently introduce flexibility as individuals can easily navigate between different topics based on their interests, or even generate new topics should the need arise. Having a general discussion focused on police accountability can easily spawn sub-groups that focus on topics of greater specificity. If individuals want to explore different topics, such as redlining, the technology empowers them to create the additional topic and continue the discussion there. These dynamic group-threads can incorporate both asynchronous and synchronous conversations, as deemed appropriate by the commissioners. Given the paramount importance of stakeholder preferences in engaging with commissions, there may be certain topics that individuals prefer to express asynchronously to enable more reflection on what they want to share, or on what their counterparts have

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[83] *CRT Statistics Snapshot – June 2021*, CIV. RESOL. TRIB. (July 6, 2021), https://civilresolutionbc.ca/blog/crt-statistics-snapshot-june-2021/ [https://perma.cc/H8FX-DEKL].

[84] Even if substantial research has been conducted into the detrimental effects of redlining for underserved communities, TRCs are well-suited to draw attention to that research so that a wider audience beyond academia can have a better grasp of the harms. *See, e.g.*, Daniel Aaronson et al., *The Effects of the 1930s HOLC "Redlining" Maps*, 13 AM. ECON.: J. ECON. POL'Y 355, 372–374, 389 (describing the "significant and persistent causal effect" the Home Owners Loan Corporation maps had with racial inequities in homeownership rates and house values decades after the Great Depression).

shared without the time pressures of synchronous messaging.[85] Ephemeral messaging[86] also introduces unique flexibility so that exchanges are not recorded for perpetuity. In some scenarios, such as when commissioners are struggling to introduce greater candor in reconciliation dialogues, ephemeral messaging can be particularly powerful. For example, by its very nature of being ephemeral, this technological approach introduces a requirement for reconciliation participants to focus on the present moment with their counterparts while still furthering the dialogue's objectives.[87]

A flexible reconciliation system design also benefits from receiving input and feedback from stakeholders to gain insight into their experiences and interests while engaging with the commission. Though direct feedback from participants can be valuable, having an online presence can allow the truth commission to collect valuable information about how the individuals themselves are finding the interaction with reconciliation initiatives. Furthermore, feedback in real time is generally more accurate than post hoc comments.[88] There is a concrete and measurable distinction between revealed and stated preferences.[89] What one reports in a survey, for example, may be different than what one feels in reality. Accordingly, in the design of an online forum, back-end mechanisms can capture real time reactions and even real-time "clicks" to see what topics are attracting attention. Specifically, imagine if a truth commission could see in real-time what forum topics are attracting the most stakeholder engagement, or how long the average individual is interacting with a particular topic within a forum. This data has proved immensely valuable for marketing companies and lead generators for

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[85] *See generally* Joanne Willard, *12 Benefits of Asynchronous Learning*, BIG THINK (Nov. 10, 2022), https://bigthink.com/plus/benefits-of-asynchronous-learning/ [https://perma.cc/K3C8-ZKYJ] (highlighting the myriad of ways asynchronous communication can be advantageous).

[86] Messages that are automatically deleted after a certain period of time.

[87] *See generally* Ran Kivetz & Daniel He, *Being in the Moment: The Effects of Ephemeral Communication in Social Media* (Mktg. Sci. Inst., Working Paper No. 17-112, 2017) (describing studies showing the benefits of ephemeral messages to increase engagement, including one study showing ephemeral messages creates more immersion in the experience when compared to permanent messages).

[88] *See* Michelle Knight, *The Importance of Real-Time Data Accuracy in Your Business*, RTINSIGHTS (July 13, 2021), https://www.rtinsights.com/the-importance-of-real-time-data-accuracy-in-your-business/ [https://perma.cc/3RDW-H9B7] (discussing the importance of real-time data for analysis purposes).

[89] *See* Kaat de Corte et al., *Stated Versus Revealed Preferences: An Approach to Reduce Bias*, 30 HEALTH ECON. 1095, 1096 (2021).

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decades[90]—it is time for social justice platforms to harness this same power in service of nobler objectives.

Furthermore, analyzing the tone of an asynchronous conversation can be particularly valuable to determine whether engagement is productive or problematic. In online forums, IBM Watson Tone Analyzer has gained greater recognition for its ability to detect harmful speech, while ODR platforms have leveraged natural language processing to detect when problematic communications may be arising between participants.[91] The CRT, as described earlier, also utilizes this same approach.[92] Similar technology can prove valuable for virtual components of a TRC, so as to prevent the proliferation of problematic communication and potentially serve as a mechanism to acknowledge or reward productive communication. All this data can help to inform the commission on what their priorities should be, when to switch topics, and what subjects are ill-suited for online settings.[93]

II.   TENSIONS AND CAVEATS AROUND USING TECHNOLOGY WITH TRUTH COMMISSIONS

While a technology-driven approach to racial reconciliation introduces unique benefits, there are also limitations that illustrate why technology should be seen as a complement, rather than a replacement, for in-person TRC initiatives. First, siloing communication into one medium of engagement can limit the commission's effectiveness. Just as technology can serve as a complement to in-person interactions, in-person interactions can also serve as a benefit to technology-driven processes. Additionally, the challenges social media platforms have experienced in promoting greater understanding and empathy[94] provides valuable lessons for how technology can be used to facilitate dialogue about difficult topics. Rather than restricting the use of technology in a commission, these challenges call on system

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[90] *See* Sunil Erevelles et al., *Big Data Consumer Analytics and the Transformation of Marketing*, 69 J. BUS. RSCH. 897, 900 (2016) (big data has "enable[d] marketers to realize new gaps or areas of ignorance in marketers' understanding of consumer behavior").

[91] Mohamed Mostafa et al., *Incorporating Emotion and Personality-Based Analysis in User-Centered Modelling*, INT'L CONF. ON INNOVATIVE TECHS. & APPLICATIONS A.I. 383, 384 (2016).

[92] *See* Salter & Thompson, *supra* note 49.

[93] E.g., spotlight forums that have active and positive engagement.

[94] *See* Paul Mozur, *A Genocide Incited on Facebook, With Posts from Myanmar's Military*, N.Y. TIMES (Oct. 19, 2018), https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html [https://perma.cc/59HB-S7ZJ].

designers to act strategically to harness the benefits of technology while limiting the impact of the challenges.

A. *Providing Optionality Rather than Creating Silos*

Reliance on any single medium of communication with reconciliation initiatives can undermine the TRC's effectiveness. Indeed, being responsive to stakeholder needs and interests is critical to strengthen public engagement. Relying predominantly on one medium of engagement—whether in-person dialogues or online forums using digital art—overlooks the wide range of preferences among the general public. Different communities have varying degrees of comfort with and access to the internet,[95] while other communities have preferences for online engagement[96] or have limited access to reliable transportation for in-person engagements.

Indeed, it is essential to consider not only cultural comfort with ICT tools, but also the digital divide. Online communications can empower marginalized groups by easing some of the social and power pressures of in-person communications.[97] This is especially true for individuals who fear

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[95] The Internet has become a necessity, with Pew Research Center reporting in 2019 that 90% of U.S. adults used the Internet. *Internet/Broadband Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/ [https://perma.cc/2KWV-7TFW]. This included 73% of adults over 65, versus 97% of adults 30–49 and 100% of adults 18–29. *Id.* Accordingly, age remains a factor in differential use of the Internet. The 2019 study also showed that 92% of white people used the Internet, versus 85% of Black and 86% of Hispanic people. *Id.* Race therefore also remains a differentiating factor. Income also remains an issue, as 98% of U.S. adults making over $75,000 used the Internet, in contrast with 82% of adults making less than $30,000. *Id. See also* Ajit Pai, *Bridging the Digital Divide*, FED. COMMC'NS COMM'N (July 13, 2017, 2:25 PM), https://www.fcc.gov/news-events/blog/2017/07/13/bridging-digital-divide [https://perma.cc/R7EA-G9SR]. According to the International Telecommunication Union, approximately 4.1 billion used the Internet in 2019 across the world (an 5.3% increase from 2018). *Measuring Digital Development: Facts and Figures*, INT'L TELECOMM. UNION 1 (2019), https://www.itu.int/en/ITU-D/Statistics/Documents/facts/FactsFigures2019.pdf [https://perma.cc/6K5P-AU7Q].

[96] *See* Wasser, *supra* note 7 (describing the strong demand for civil society for the Supreme Court to preserve live audio streaming of oral arguments).

[97] *See e.g.*, Andrea Medrado et al., *Favela Digital Activism: The Use of Social Media to Fight Oppression and Injustice in Brazil*, *in* DIGITAL ACTIVISM, COMMUNITY MEDIA, AND SUSTAINABLE COMMUNICATION IN LATIN AMERICA 177, 183–84 (2020) (discussing the important role digital spaces have had in empowering groups in Brazilian favelas).

stereotypes or biases based on appearance, voice, or accent.[98] Nonetheless, a "digital divide" persists in terms of individuals' differential access to and comfort with technology and the internet.[99] Income, age, and educational attainment remain considerable barriers to the use of technology,[100] although smartphones have narrowed this divide with respect to race and ethnicity.[101] This has become apparent in the wake of the pandemic, as families without adequate access to the Internet have struggled to educate their children.[102] The Pew Charitable Trust reported that one-in-five parents with schoolchildren said that their children were very or somewhat likely to miss school due to

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[98] *See* Paul Stylianou, *Online Dispute Resolution: The Case for a Treaty Between the United States and the European Union in Resolving Cross-Border E-Commerce Disputes*, 36 SYRACUSE J. INT'L L. & COMM. 117, 125 (2008).

[99] *See* Thom File & Camille Ryan, *Computer and Internet Use in the United States: 2013*, U.S. CENSUS BUREAU 1, 10 (Nov. 13, 2014), https://www.census.gov/library/publications/2014/acs/acs-28.html [https://perma.cc/6X46-Q5HS].

[100] *See* Monica Anderson & Andrew Perrin, *Tech Adoption Climbs Among Older Adults*, PEW RSCH. CTR. (May 17, 2017), https://www.pewresearch.org/internet/2017/05/17/technology-use-among-seniors/ [https://perma.cc/G7S3-7ER9].

[101] Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.*, PEW RSCH. CTR. (July 16, 2021), https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/ [https://perma.cc/5GEM-DJNB] (while there are racial disparities with computer and home broadband ownership, there are dramatically less disparities for smartphone ownership).

[102] Suzanne Woolley et al., *U.S. Schools Trying to Teach Online Highlight a Digital Divide*, BLOOMBERG (Mar. 26, 2020, 7:00 AM), https://www.bloomberg.com/news/articles/2020-03-26/covid-19-school-closures-reveal-disparity-in-access-to-internet [https://perma.cc/SJJ7-TPGV] (noting that NYC has an estimated 300,000 students without access to electronics); Carrie Jung, *Without Internet Access, Students and Teachers In Rural Areas Struggle To Keep Up*, NATIONAL PUBLIC RADIO (May 23, 2020, 5:17 PM), https://www.npr.org/2020/05/23/861577381/without-internet-access-students-and-teachers-in-rural-areas-struggle-to-keep-up [https://perma.cc/8G5C-SDR9] (noting deficiencies for children in some rural communities); Lara Fishbane & Adie Tomer, *As Classes Move Online During COVID-19, What Are Disconnected Students to Do?*, BROOKINGS (Mar. 20, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/20/as-classes-move-online-during-covid-19-what-are-disconnected-students-to-do/ [https://perma.cc/8F4M-PLZR] (citing data in internet disparities, suggesting that there are challenges faced by low-income students and their families).

lack of access to a computer or internet.[103] The pandemic has shined a light on this technological disparity.[104]

Because TRCs benefit in providing stakeholder optionality for engagement, it is beneficial to make ICT tools mobile friendly. This is important in light of differentials within in-home broadband.[105] Pew reported that as of February 2019, 73% of U.S. adults were home broadband users.[106] Furthermore, Pew reports that in 2019, 17% of U.S. adults are smartphone-only Internet users (meaning they use a smartphone, but do not have home broadband).[107] Importantly, this segment is made up of individuals who disproportionately self-identify as non-white and lower income.[108] In 2019, 12% of White U.S. adults did not have home broadband, compared with 23% of Black and 25% of Hispanic adults.[109] At the same time, 6% of U.S. adults making over $75,000 per year were smartphone-dependent, compared with 26% of adults making less than $30,000.[110] Significantly, as of "December 2018, only 60% percent of Tribal lands in the lower 48 states had high-speed

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[103] Emily A. Vogels, et al., *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, PEW RSCH. CTR. (Apr. 30, 2020), https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/ [https://perma.cc/WNA5-BZ9Y].

[104] *See* Dana Goldstein, *The Class Divide: Remote Learning at 2 Schools, Private and Public*, N.Y. TIMES (May 9, 2020), https://www.nytimes.com/2020/05/09/us/coronavirus-public-private-school.html [https://perma.cc/M7GQ-Q7DR]. Students at private schools have had extra lessons via Zoom and resources sent to them, while there is less access to these resources at the public schools. *Id.* This will have deep impacts on educational gaps overall.

[105] *Internet/Broadband Fact Sheet, supra* note 95.

[106] *Internet/Broadband Fact Sheet, supra* note 95.

[107] *Internet/Broadband Fact Sheet, supra* note 95.

[108] *Internet/Broadband Fact Sheet, supra* note 95.

[109] *Internet/Broadband Fact Sheet, supra* note 95.

[110] *Internet/Broadband Fact Sheet, supra* note 95.

Internet access."[111] Nonetheless, in-person processes can also suffer from accessibility inequities; even when transportation is theoretically accessible to all, certain groups can be exposed to greater burdens in access and use.[112] These demographic differences in access to online and in-person spaces is precisely why TRCs should use technology to complement in-person processes.

Historically, few TRCs have had the opportunity to use technology to provide multiple access points to reconciliation initiatives.[113] As modern ICT tools have gained greater adoption, their relevance for TRCs have recently gained increased attention. By being two of the more recently established TRCs in the digital age, Tunisia and The Gambia have both leveraged technology to provide multiple reconciliation access points for the general public. Both TRCs have incorporated robust engagement on social media[114] while also providing online videos and radio-based channels to introduce greater transparency into the commissions' initiatives. These TRCs have found a healthy balance in incorporating technology without relying

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[111] H Trostle, *Report: Case Studies Detail How Tribes Are Expanding Internet Access*, INST. FOR LOC. SELF-RELIANCE, (Feb. 3, 2021), https://ilsr.org/report-indigenous-future-zones/#:~:text=As%20of%20December%202018%2C%20only,of%20Ojibwe%2C%20a nd%20the%20St [https://perma.cc/3U4E-WACC]. *Cf. Internet/Broadband Fact Sheet*, *supra* note 95. More than 83% of people in the U.S. access the internet on their smartphones, tablets, or other mobile devices. And these devices are the only means of internet connection for 15% of Americans. *How Do Americans Connect to the Internet?*, PEW CHARITABLE TRUSTS (July 7, 2022), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2022/07/how-do-americans-connect-to-the-internet [https://perma.cc/74YM-LSMH]. *See also* John Busby et al., *FCC Reports Broadband Unavailable to 21.3 Million Americans, BroadbandNow Study Indicates 42 Million Do Not Have Access*, BROADBANDNOW RSCH. (Feb. 3, 2020), https://broadbandnow.com/research/fcc-underestimates-unserved-by-50-percent [https://perma.cc/PN4G-AS3G]; Rebecca R. Ruiz, *F.C.C. Chief Seeks Broadband Plan to Aid the Poor*, N.Y. TIMES (May 28, 2015), https://www.nytimes.com/2015/05/28/business/fcc-chief-seeks-broadband-plan-to-aid-the-poor.html [https://perma.cc/36PW-SCA7] (discussing plans to expand access to the internet for the poor).

[112] *See, e.g.*, THOMAS W. SANCHEZ ET AL., CTR. FOR CMTY. CHANGE & CIVIL RIGHTS PROJECT HARV. UNIV., MOVING TO EQUITY: ADDRESSING INEQUITABLE EFFECTS OF TRANSPORTATION POLICIES ON MINORITIES 12 (2003) ("research suggests not only that low-income families are spending more of their incomes on transportation, but also that transportation costs are increasing at a faster rate for these households").

[113] This is because the vast majority of truth commissions were created prior to the digital age.

[114] *See generally* sources cited *supra* note 60.

exclusively on in-person or remote dialogues.[115] By incorporating greater use of ICT tools, these commissions have prevented reconciliation dialogues from being geographically limited. The Gambia's TRC, for example, has allowed Gambians in the diaspora to interact with and understand what is occurring during the investigation phase.[116] Rather than requiring individuals to relocate to a specific location in order to participate, this multi-pronged approach has proven valuable for increasing institutional transparency and stakeholder engagement.

B. *Implications of Social Media Challenges*

Section II(B)'s discussion on the importance of genuine personal connections underscored that the success of a truth commission often depends on effective interpersonal communication between participants. Developing systems to promote mutual understanding is of critical importance in the reconciliation process. Yet social media platforms have illustrated the benefits and risks in using technology to facilitate discussing challenging topics. Social media has provided considerable value to the general public by: (1) allowing new forms of global yet interest-based communities to be formed;[117]

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[115] To complement technology integrated systems, The Gambia's truth commission also used the Never Again Campaign, where in-person town halls and women's circles were organized to address pre-existing trauma and inequities, all with limited use of technology. *See Never Again*, TRUTH, RECONCILIATION & REPARATIONS COMM'N https://web.archive.org/web/20210622223246/http://www.trrc.gm/never-again-campaign/ [https://perma.cc/Q2BD-6G8L] (last visited Nov. 1, 2021).

[116] For instance, The Gambia live-streamed each hearing and created a YouTube playlist for anyone to watch the nearly 200 hearing videos on-demand. *See QTV Gambia*, YOUTUBE, https://www.youtube.com/channel/UCgxFuxIi9EwZlPL4iZ-g0Ww/playlists [https://perma.cc/D8KE-8VNB] (last visited Jan. 16, 2022).

[117] These communities are highly reminiscent to John Perry Barlow's vision of cyberspace as a network of "transactions, relationships, and thought itself, arrayed like a standing wave in the web of our communications." *See* John Perry Barlow, *A Declaration of the Independence of Cyberspace*, ELEC. FRONTIER FOUND. (Feb. 8, 1996), https://www.eff.org/cyberspace-independence [https://perma.cc/7SEL-LX5Q].

(2) serving as a vital tool for civil society activism;[118] and (3) increasing government transparency,[119] among other benefits. The potential for a virtual truth commission to harness similar benefits can be seen with technology providing theme-based community engagement not necessarily tethered to physical locations, broader means for stakeholder engagement, and increased transparency into proceedings.

Yet despite these significant benefits, social media platforms have experienced a variety of institutional shortcomings, including their ability to promote mutual understanding in confronting challenging topics. While Facebook has been beleaguered with scandals and design defects beyond the scope of this article,[120] most relevant is how an attempt to make the social media platform more focused on strengthening relationships between friends and family instead amplified "misinformation, toxicity, and violent content" while raising internal company concerns about their "long term effects on

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[118] *See, e.g.*, Philip Howard et al., *Opening Closed Regimes: What Was the Role of Social Media During the Arab Spring* (Project on Info. Tech. & Pol. Islam, Working Paper No. 2011.1, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595096 [https://perma.cc/6A8Z-H2Q5] (analyzing social media data suggesting that "social media played a central role in shaping political debates in the Arab Spring" and that "a spike in online revolutionary conversations often preceded major events on the ground"); *see also* Yomi Kazeem, *How a Youth-Led Digital Movement Is Driving Nigeria's Largest Protests in a Decade*, QUARTZ (Oct. 13, 2020), https://qz.com/africa/1916319/how-nigerians-use-social-media-to-organize-endsars-protests/ [https://perma.cc/K3ML-QFJY] (describing how Twitter and WhatsApp were critical tools civil society groups used to protest police brutality in Nigeria under the #EndSars movement).

[119] *See, e.g.*, Gohar Feroz Khan et al., *Social Media Risks and Benefits: A Public Sector Perspective*, 32 SOC. SCI. COMPUT. REV. 606, 608 (2014) (describing different models for the public sector using social media "to disseminate useful information, to foster mass collaboration, and to enforce laws and regulation").

[120] The Wall Street Journal's Facebook Files series presents a host of problematic behavior conducted at Facebook, based on internal research report and employee discussions. *The Facebook Files*, WALL ST. J. (Sept. 2021) https://www.wsj.com/articles/the-facebook-files-11631713039?mod=article_inline [https://perma.cc/VU38-BQ9Q].

democracy."[121] However, leading social media companies could change their structure to promote more understanding and empathy, but they choose not to.[122] Considering that a virtual truth commission would attract bad actors seeking to exploit weaknesses in the online forum to advance misinformation and violence, Facebook's challenges in these categories are particularly relevant. Indeed, at Facebook's lowest point, bad actors have used the company's platform to promote ethnic violence in Myanmar[123] and Ethiopia,[124] as well as enabling U.S. white supremacist groups to spread hatred without significant repercussion.[125] While Facebook may be an extreme example, considering most TRCs will not draw more than a billion participants, the broader social media industry has also experienced challenges

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[121] This unexpected outcome has largely been attributed to Facebook's News Feed algorithm that advertisers and content creators have exploited to promote more toxic content and misinformation, including health and safety initiatives that contradicted the stated goals of the company's CEO. Keach Hagey & Jeff Horwitz, *Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead.*, WALL ST. J. (Sept. 16, 2021), https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215?mod=article_inline [https://perma.cc/XH9J-VC3Q]; *see also* Sam Schechner et al., *How Facebook Hobbled Mark Zuckerberg's Bid to Get America Vaccinated*, WALL ST. J. (Sept. 17, 2021), https://www.wsj.com/articles/facebook-mark-zuckerberg-vaccinated-11631880296 [https://perma.cc/7FZN-CPXX] (describing how anti-vaccine groups used "Facebook's own tools to sow doubt about the severity of the pandemic's threat and the safety of authorities' main weapon to combat it").

[122] *See* Anne Applebaum et al., *How to Put Out Democracy's Dumpster Fire*, THE ATLANTIC, https://www.theatlantic.com/magazine/archive/2021/04/the-internet-doesnt-have-to-be-awful/618079/ [https://perma.cc/C77V-A8C6] (Mar. 11, 2021) ("Facebook can make its site 'nicer,' not just after an election but all the time. It can do more to encourage civil conversation, discourage disinformation, and reveal its own thinking about these things. But it doesn't, because Facebook's interests are not necessarily the same as the interests of the American public, or any democratic public. . . . [I]t is a for-profit organization that wants users to stay on Facebook as long as possible and keep coming back.").

[123] *See* Mozur, *supra* note 94.

[124] *See* Justin Scheck et al., *Facebook Employees Flag Drug Cartels and Human Traffickers. The Company's Response Is Weak, Documents Show.*, WALL ST. J. (Sept. 16, 2021), https://www.wsj.com/articles/facebook-drug-cartels-human-traffickers-response-is-weak-documents-11631812953?mod=article_inline [https://perma.cc/MFV2-A42Y].

[125] *Hateful and Conspiratorial Groups on Facebook*, ANTI-DEFAMATION LEAGUE (Aug. 3, 2020), https://www.adl.org/blog/hateful-and-conspiratorial-groups-on-facebook [https://perma.cc/KLM2-WHFA].

in addressing hate speech and promoting understanding for difficult topics of social consequence.[126]

Despite these short-comings, social media platforms operate under market conditions where they are expected to maximize profit,[127] leading to outcomes where platform users are not the primary consideration for how the platform should be designed.[128] TRCs, which in their current incarnation are usually housed in government institutions, do not operate under the same conditions of shareholder primacy and can be designed to prioritize meaningful exchanges.[129] Indeed, non-profit messaging services like Signal have been able to take more user-centric approaches since they are less beholden to stakeholders who are not users. Because of the TRC's dual mandate to investigate the truth and promote reconciliation, the quality of user engagement should be the system design's focus. Some defending Facebook have argued that the company is a passive actor, merely revealing human traits

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[126] *See generally* Kunal Relia et al., *Race, Ethnicity and National Origin-Based Discrimination in Social Media and Hate Crimes Across 100 U.S. Cities*, 13 PROCS. OF THE INT'L ASS'N ADVANCEMENT A.I. CONF. ON WEB & SOC. MEDIA 417 (2019) (drawing a causal link between identity-based hate speech on social media and hate crimes); *see also* Ciarán O'Connor, *Hatescape: An In-Depth Analysis of Extremism and Hate Speech on TikTok*, INST. FOR STRATEGIC DIALOGUE (Aug. 24, 2021), https://www.isdglobal.org/wp-content/uploads/2021/08/HateScape_v5.pdf [https://perma.cc/LC9D-7LG3] (showing the extent that identity-based hate speech occurs on TikTok).

[127] *See generally* Dodge v. Ford Motor Co., 204 Mich. 459, 468, 170 N.W. 668, 671 (1919) ("To employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. . . . A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end.").

[128] *See, e.g.*, Laura Forman, *Meta's Ad Returns Are Its Redemption for Advertisers*, WALL ST. J., (Nov. 2, 2021, 7:00 AM) https://www.wsj.com/articles/metas-ad-returns-are-its-redemption-for-advertisers-11635850800 [https://perma.cc/9Z57-TVGW] ("For all the recent controversy surrounding Meta Platforms algorithms and their potential to cause users harm, their unique power is irresistible for its real customers: advertisers." Moreover, estimates are that Facebook "will reach more than $114 billion in 2021, or about 17% of the entire global ad market."). Through the first three quarters of 2021, Meta's family of apps, including Facebook and Instagram, earn an average of roughly $50 per monthly user. *Id.*

[129] *See* Robert J. Rhee, *A Legal Theory of Shareholder Primacy*, 102 MINN. L. REV. 1951, 1957 (2018) ("Shareholder primacy seems to exist not as a pinpoint citation, but in the ether. It is real in that no one disputes the sense of obligation in the boardroom and executive suites, but finding the law's command is elusive.").

that exist in digital and physical spaces alike.[130] If this was true, the promise of TRCs incorporating online engagement would be threatened. This would mean that large segments of the population who have accessibility challenges for in-person interactions or with preferences for online spaces would be excluded from reconciliation proceedings.

The dynamics contributing to Facebook's ill-effects need not be the inevitable outcome of online communication. For instance, in recognizing that platforms vary in their influence of how users consume information,[131] a group of researchers have shown that Facebook's system design, and in particular its algorithmic rules, generate an echo chamber that polarize users.[132] This research showed that Facebook users relying on their network (e.g., family and friends) on the platform for information negatively impacted their ability to understand opposing perspectives.[133] In contrast, the research also showed that Reddit's reliance on topic-based communities had a moderating shift in favor of increasing one's ability to understand opposing perspectives.[134] This shows that online spaces can be designed to promote healthy human interactions and that harms associated with Facebook can be mitigated.

Moreover, as discussed in Section II(B), the ongoing trend towards increased use of ODR illustrates that well designed digital spaces can be a powerful tool for helping individuals reach agreements. Perceiving conflict and polarization to be inevitable in online spaces is analogous to "saying noise and fights at bars exist because of human nature: It's true to an extent, but the function, design and norms of the space—not to mention the alcohol—sure help."[135] TRC system designers have the ability, and should seize this opportunity, to structure online spaces to prioritize engagements where

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[130] *See, e.g.,* Eli Pariser et al., *To Thrive, Our Democracy Needs Digital Public Infrastructure,* POLITICO (Jan. 5, 2021, 11:33 AM), https://www.politico.com/news/agenda/2021/01/05/to-thrive-our-democracy-needs-digital-public-infrastructure-455061 [https://perma.cc/X98E-T924] ("[P]olarization and bad behavior on social platforms is an inevitable result of human nature—our animal spirits, our narcissism, our need to be right.").

[131] *See* Brent Kitchens et al., *Understanding Echo Chambers and Filter Bubbles: The Impact of Social Media on Diversification and Partisan Shifts in News Consumption,* 44 MGMT. INFO. SYS. Q. 1619, 1621 (2020).

[132] *Id.* at 1626 (recognizing that Facebook's algorithms consider what information to present based on: (a) a user's likelihood of engagement; (b) recent posts made by a user's social network; (c) a user's historical engagement; and (d) popularity of content).

[133] *Id.* at 1641.

[134] *Id.*

[135] Pariser, *supra* note 130.

differences are present, yet individuals interact with respect and curiosity. Posts engaging in harmful speech can be deprioritized using forum-specific mechanisms and appointed commissioners can be responsible for monitoring harmful interactions. The challenges social media platforms have experienced can be a guiding light for how and how not to design online spaces with TRCs.

Alternate models for designing inclusive online spaces continue to be developed. The question of how we can "change our digital spaces so that they bring us together instead of tear us apart"[136] is one of the most important questions of the 21st century. Properly answering this question would reduce ongoing divisions in society. One promising model for creating inclusive online spaces uses four "building blocks": *Welcome, Connect, Understand,* and *Act.*[137] As the creators of this model describe, "[a] flourishing digital public space should be *welcoming* and safe for diverse publics, help us *understand* and make sense of the world, *connect* people near and far across hierarchies and divides, and enable us to *act* together."[138] In an in-person context, each of these aspirations are at the foundation of a TRC's aspiration, and they can also be preserved in a digital context. Each "building block" is subdivided into multiple "signals" that further the related block's objective. For instance, to further the *welcoming* building block, system designers should consider the signals of ensuring people's safety in the online space and creating spaces that "recognize and affirm the humanity of other people."[139] Additionally, promoting the *understanding* building block benefits from the signals of showing reliable information "based on the best available evidence" and promoting thoughtful conversation that normalizes "consideration and recognition of others' perspectives."[140] Focusing on these principles in designing TRCs can help create online spaces that welcome participation, build connection, and foster restorative justice.

These TRCs can be part of the construction of what Ethan Zuckerman has described as "digital public infrastructure,"[141] building the foundation of

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[136] Pariser, *supra* note 130.

[137] *See Building better digital public spaces*, NEW PUBLIC, https://newpublic.org/signals [https://perma.cc/BLA6-QXPY] (last visited Jan. 15, 2022).

[138] Natalie Stroud, *Civic Signals: The Qualities of Flourishing Digital Spaces*, UNIV. TEX. CTR. FOR MEDIA ENGAGEMENT (Jan. 12, 2021), https://mediaengagement.org/research/civic-signals-the-qualities-of-flourishing-digital-spaces/ [https://perma.cc/5SLS-VNQP].

[139] *Id.*

[140] *Id.*

[141] Ethan Zuckerman, *What is Digital Public Infrastructure?*, CTR. FOR JOURNALISM & LIBERTY, (Nov. 17, 2020), https://www.journalismliberty.org/publications/what-is-digital-public-infrastructure [https://perma.cc/PX57-49VM].

an online civil society that is becoming increasingly valuable for populations who conduct much of their lives in digital spaces. The problematic models that some social media companies have developed are not the only successful design for online interaction. Importantly, there are also ways for using technologies to track communications and ensure the accuracy of those communications. This can further public trust while using technology to promote "the good" instead of passively letting negative voices commandeer technology for the worse.[142] Incorporating alternate frameworks for online spaces can introduce unprecedented benefits for TRCs while increasing the potential for enduring transformative change in America.

III.   CONCLUSION

There is little doubt that technological innovation is relentlessly pushing civil society online. Every day more industries, public agencies, and non-governmental organizations are migrating their activities from an in-person environment onto the internet. This change was already inevitable, but the pandemic has accelerated it markedly. This migration has already transformed the way we work, play, and communicate in ways that would have been unimaginable just thirty years ago. As these transformations continue, we must find ways to leverage the online spaces that communities are increasingly inhabiting to address societal conflict.

Truth and Reconciliation Commissions have already proven to be powerful processes for opening dialogue, enabling people to be heard, and restoring a sense of justice in the wake of conflict or crimes. As dialogue remains paramount to the process, system designers must consider how technology can be incorporated to promote flexibility and ease of communication among stakeholders. Doing so can lower the barriers of entry. Participants in TRC processes expect access to work with their daily digital lives. If they can use their phones for their daily lives, why not use that same phone to voice their views on important issues of racial inequality? If a student is asked to attend school online, why should that student be restricted from voicing their opinions on policing online? The current generation in particular

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[142] *See* Gilad Edelman, *The Father of Web3 Wants You to Trust Less.*, WIRED, (Nov. 21, 2021, 8:00 AM), https://www.wired.com/story/web3-gavin-wood-interview/ [https://perma.cc/Z3Z8-XRQ3]. Building on ideas around blockchain, Web3 refers to a decentralized online ecosystem and may provide means for democratizing access to voice. *Id.* Platforms and apps built on Web3 would not be owned by a central gatekeeper. *Id.* Instead, users will earn their ownership stake by helping to develop and maintain the services. *Id.*

is no longer willing to engage in paper-based processes that occur exclusively in person, even if those processes were acceptable to their parents and prior generations. It can be exclusionary to require that everyone have the time and resources to attend an in-person process. As a result, TRCs must leverage the online environment to not only stay relevant, but also to become more transparent, accessible, and effective.

This evolution will not be without challenges. Technology has proven to be a tool that promotes division, just as it has capabilities to catalyze mutual understanding and connection not limited by geography. Technology opens doors to new ideas and new audiences, but it can fall victim to new villains. Indeed, the time has arrived to set best practices and develop a framework for using technology in TRCs. This can be exciting and inviting—but it is important to come into the digital dispute system design with eyes wide open. This article thus introduced ways technology can be used to further a TRC's dual mandate in a manner that serves as a complement to in-person processes.