Chapter 9
The Right to Be Forgotten

9.1 Second Chances

A young man in upstate New York drinks too much and gets a little rowdy, picks a fight, smashes up the bar, and is arrested. When he gets into trouble again a short time later, the judge sends him to jail for a week. After his release, he gets fired and cannot find a new job because he has a record. The local newspaper carries a story about his misconduct. The merchants on Main Street refuse to sell him anything on credit. The young women gossip about him and refuse to date him. One day, he has had enough. He packs his meager belongings, leaves without a good-bye, and moves to a small town in Oregon. Here, he gains a new start. Nobody knows about his rowdy past, and he has learned his lesson. He drinks less, avoids fights, works in a lumberyard, and soon marries a nice local woman, has three kids, and lives happily ever after. Cue the choir of angels singing in the background.

The idea that people deserve a second chance is an important American value. Perhaps it grows out of America's history as a nation of immigrants who moved to the United States to start new lives. And as the American West was settled, many Easterners and Midwesterners found a place there for a second beginning. More profoundly, the belief in a new beginning is a tenet of Christianity, which allows sinners to repent and be fully redeemed, to be reborn. In a similar vein, the secular, progressive, optimistic, therapeutic culture of today's America rejects the notion that there are inherently bad people. As individuals, Americans seek insights into their failings so they can learn to overcome them and achieve a new start. From a sociological perspective, people are thrown off course by their social conditions—because they are poor, for instance, and subject to discrimination. But these conditions can be altered, and then these people will be able to lead good lives. Under the right conditions, criminals can pay their debt to society and be rehabilitated, sex

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offenders can be reformed, and others who have flunked out can pass another test. Just give them a second chance.

Today, a wide variety of public figures call for giving everyone a second chance. Texas Governor and former presidential candidate Rick Perry said, "The idea that we lock people up, throw them away, and never give them a chance of redemption is not what America is about […] Being able to give someone a second chance is very important" (Izad and Wald 2014). New York Representative Charles Rangel is "a firm believer that upon release, ex-offenders should be afforded a second chance to become productive citizens by providing rehabilitation and education that will help them join the workforce" (Rangel 2013). Former Secretary of State Hillary Clinton frequently asserts that "everyone deserves a second chance, a third chance to keep going and to make something of themselves […] That was one of the most important lessons of my life" (Merica 2014). Famous singer and former drug addict El DeBarge called for "the world to know that everybody deserves a second chance" (El DeBarge Debuts 2010). Rabbi Bernard Barsky asked, "How could a Jewish community not be committed to giving ex-felons a second chance? Our entire faith is based on stories of second chances" (Barsky 2013). And even church leader the Reverend Glenn Grayson, whose 18-year-old son was shot and killed, said that "if [God] can give us a second chance, […] there are things you have to atone for, but you deserve a second chance" (Gibb 2010).

The internet poses a great technological challenge to social forgiveness. By indexing digital versions of local public records, the internet acts as a bright light that casts people's shadows much further than ever before: criminal or otherwise debilitating records now follow people wherever they go. True, arrest records, criminal sentences, bankruptcy filings, and even divorce records were accessible to the public long before being digitized. Some were listed in blotters kept in police stations, others in courthouses; anyone who wished to take the trouble could go there and read them. But most people did not. Above all, there was no way for people in distant communities to find these damning facts without going to inordinate lengths.

Making records at least inconvenient to attain was sensible because the American legal system has never been quick to wipe offenders' slates clean. In her book *Ctrl+Z: The Right to be Forgotten*, Meg Leta Jones outlines the system's criteria for expungement and concludes, "Legal forgiveness is not offered lightly in the U.S" (Jones 2016, p. 141). Indeed, certain crimes—especially sexual offenses—are not considered forgivable, so we maintain public offender registries and protracted statutes of limitations. For most crimes, however, "the U.S. legal system acknowledges that punishment should not necessarily be eternal and that limiting the use of information about an individual can be a form of relief" (Jones 2016, p. 144).

Yet for those citizens whose misdeeds the legal system has elected to forgive and forget, the ever-expanding, interminable memory of the internet undermines the possibility of redemption by dismantling any information monopoly once held by government records and careful journalistic accounts. In fact, several companies have started compiling criminal records and making them available to everyone in the country and, indeed, the world. For instance, in 2008, PeopleFinders, a company based in Sacramento, introduced CriminalSearches.com, a free service to access

public criminal records, which draws data from local courthouses (Stone 2008). Similar services provide access to many other types of public records that range from birth records to divorces. As long as the aggregated information is accurate, one has scant opportunity for legal recourse to salvage his reputation. According to the National Association of Criminal Defense Lawyers, this "growing obsession with background checking and commercial exploitation of arrest and conviction records makes it all but impossible for someone with a criminal record to leave the past behind" (Zimmerman and Stringer 2004). This is particularly apparent in the United States due to its level of technological development and strong protections of free speech.

These developments disturb privacy advocates and anyone who is keen to ensure that people have the opportunity for a new start. Beth Givens, director of the Privacy Rights Clearinghouse, says that internet databases cause a "loss of 'social forgiveness" (Givens 1995). For instance, a person's "conviction of graffiti vandalism at age 19 will still be there at age 29 when [he's] a solid citizen trying to get a job and raise a family"—and the conviction will be there for anyone to see (Givens 1995). Furthermore, as companies "rely on background checks to screen workers, [they] risk imposing unfair barriers to rehabilitated criminals," wrote reporters Zimmerman and Stringer (2004) in *The Wall Street Journal.* Eric Posner argues that "[p]rivacy allows us to experiment, make mistakes, and start afresh if we mess up [… it] is this potential for rehabilitation, for second chances, that is under assault from Google" (Powles 2014). In short, as journalist Brad Stone (2008) wrote in *The New York Times,* by allowing database producers to remove "the obstacles to getting criminal information," Americans are losing "a valuable, ignorance-fueled civil peace." Moreover, many arrestees "who have never faced charges, or have had charges dropped, find that a lingering arrest record can ruin their chance to secure employment, loans and housing" (Fields and Emshwiller 2014).

In a study conducted by Sarah Esther Lageson (2017) of digital records and expungement in the U.S., a subject who had spent one night in jail after an altercation with her partner—which resulted in no charges—found her mugshot in a search engine alongside erroneous information about her legal brush-up: "I've never been charged with assault, and now I see assault on my record." Even for those subjects whose records were published accurately, Lageson concluded, "The public reposting of these data left interviewees both incredulous and exhausted at the prospect of attempting to clear their digital trail." As one subject lamented, "It's just not good for someone that's really trying to get their life together. It just keeps dragging on" (Lageson 2017).

In response to this dilemma, some have advocated a "right to be forgotten," which entails allowing a person to delete or otherwise remove from public view information relating to them on the Internet. One of the leading intellectual advocates of online "forgiving and forgetting" is Viktor Mayer-Schönberger, a professor of Internet Governance and Regulation at Oxford. In his 2009 book *Delete: The Virtue of Forgetting in the Digital Age*, Mayer-Schönberger notes that Europeans have greater concern for privacy than have Americans; this characteristic dates back to World War II, when Nazi Germany used the Netherlands' comprehensive

population registry to facilitate the Holocaust, as well as to the East German surveillance state during the Cold War. Yet he argues that privacy fares even worse in the digital age than under the Stasi because online storage and transfer is far more efficient than using paper records. According to Mayer-Schönberger, society has traditionally accepted "that human beings evolve over time, that we have the capacity to learn from past experiences and adjust our behavior," with the fallibility of human memory and limits of record-keeping techniques allowing "societal forgetting" (Mayer-Schönberger 2009, p. 13). However, the internet, which may "forever tether us to all our past actions," threatens to make it "impossible, in practice, to escape them," with the result that, "without some form of forgetting, forgiving becomes a difficult undertaking" (Mayer-Schönberger 2009, p. 125). For example, Mayer-Schönberger notes that, for a woman who had spent time in prison a decade ago, having her mug shot posted online effectively renewed her punishment, as her neighbors began to scorn her: "Digital memory, in reminding us of who she was more than 10 years ago, denied her the chance to evolve and change" (Mayer-Schönberger 2009, p. 203). As a result, he advocates greater capacity for individuals to purge their personal information from the web.

But is the internet age really destroying second chances, making us less forgiving, and hindering the possibility for rehabilitation and even redemption? The sad fact is that most convicted criminals in the pre-digital age did not use the second chance that their obscurity gave them, nor did they use their third or fourth chances. Convincing information shows that most criminal offenders—especially those that committed violent crimes—are not rehabilitated; they commit new crimes. Many commit numerous crimes before they are caught again. Thus, while obscurity may well help give a second chance to a small percentage of criminals, it helps a large percentage of them strike again.

Take the case of James Webb (not the former United States Senator from Virginia of the same name). He had served 20 years in prison for raping six women when, on August 16, 1995, he was released on parole. Rather than look for a new start, he raped another woman the day after he was released. He raped three more women in the next few months. He was re-arrested in December 1995, after he committed the fourth rape (New York Times 1995). Or consider the case of James Richardson, a New York resident who served 20 years of a life term for raping and murdering a 10-year-old girl. After he was paroled in 1992, he committed three bank robberies before being re-incarcerated ("Metro News Briefs…" 1998). Both cases happened before the advent of databanks of criminal convictions.

These two are typical cases. In its most recent study on recidivism in the United States, the Justice Department's Bureau of Justice Statistics tracked a large sample of the 405,000 prisoners released in 30 states in 2005. It found that within 3 years of their release, 45% of them were convicted for a new offense, and within 5 years 55% had been convicted again (Bureau of Justice Statistics 2014). These results were similar to a survey of prisoners released in 1994 (Bureau of Justice Statistics 2002).[1] In short, most people who commit crimes are more likely to commit crimes in the

[1] Unlike the 2005 study, this study only looked at prisoners in 15 states, in a 3-year window after their release.

future than to make good use of a second chance. This was true long before the digitization of criminal data and the loss of obscurity. Moreover, one cannot assume that the prisoners who were not convicted of new offenses did not commit any crimes. Many crimes are not reported, and of those that are, many are never solved and their perpetrators never caught (Gramlich 2017). Studies found that the majority of rapists and child molesters are convicted more than once for a sexual assault—and commit numerous offenses before they are caught again. On average, these offenders admit to having committed *two to five times* as many sex crimes than were officially documented (See Groth et al. 1982). That is, not only did they fail to use their second chances to start a new life, they used obscurity to their advantage. Overall, allowing offenders a measure of obscurity is likely to do more harm than good.

In short, the image of a young person who goes astray and who would return to the straight and narrow life if he were only given a second chance does not fit most offenders. Indeed, prisons are considered colleges for crime; they harden those sentenced to spend time in them and make them *more* disposed to future criminal behavior upon release. Social scientists differ about whom to blame for the limited success of rehabilitation. Some fault "the system," or poor social conditions, or lack of job training. Others place more blame on the character of those involved. In any case, obscurity hardly serves to overcome strong factors that agitate against rehabilitation.

Medical malpractice is a good example. Online databases display the records of physicians who do not live up to the Hippocratic Oath. The National Practitioner Data Bank allows state licensing boards, hospitals, and other health-care entities to find out whether a doctor's license has been revoked recently in another state or if the doctor has been disciplined. Doctors' licenses are generally revoked only if they commit very serious offenses, such as repeated gross negligence, criminal felonies, or practicing while under the influence of drugs or alcohol.

If these databases had been used as intended in the late 1990s and early 2000s, they could have tracked Pamela L. Johnson, a physician who was forced to leave Duke University Medical Center after many of her patients suffered from unusual complications. In response, Johnson moved to New Mexico and lied about her professional history in order to obtain a medical license there and continue practicing. After three patients in New Mexico filed lawsuits alleging that she was negligent or had botched surgical procedures, she moved again and set up shop in Michigan (Thompson 2005b).

Similarly, Joseph S. Hayes, a medical doctor licensed in Tennessee, was convicted of drug abuse and assault, including choking a patient, which resulted in the revocation of his Tennessee license in 1991. But his license was reinstated in 1993. When he was charged with fondling a female patient in 1999, he simply moved to South Carolina to continue practicing medicine (Thompson 2005a). Likewise, Michael Skolnik died in Colorado in 2001 after what has been reported to be unnecessary brain surgery, which led his mother to become an advocate for medical transparency. The surgeon involved had recently moved from Georgia, where he had lost a malpractice suit of which no record existed in Colorado databases (Allen

2010). Similar cases involve many scores of other doctors, especially those who acted while on the influence of controlled substances or alcohol. Yet the National Practitioner Data Bank is not open to members of the general public, who may request only that data that does not identify any particular individual or organization. Even that access was temporarily cut off in 2011 by the Department of Health and Human Services at the request of a Kansas doctor with a history of malpractice suits (Wang 2011). Thanks to the rise of the internet, the public has some chance, through a web search or through a detailed search of state licensing board websites, of uncovering such information that has leaked out into the public sphere, but the lack of a more reliable or accessible option gives some poorly performing doctors their own right to be forgotten—to the detriment of the public.

Beyond the fact that internet databases do little harm to those who are not likely to reform themselves, the widespread dissemination of information about wrongdoers has real benefits for potential victims. Hospitals hire few doctors these days without first checking them through digitized data sources. Before you hire an accountant, such data makes it possible to discover whether he or she has a record of embezzlement. A community can find out if a new school nurse is a sex offender. Employers may direct ex-offenders to other jobs, or they may still hire them but provide extra oversight, or just decide that they are willing to take the risk. But they do so well-informed—and thus warned—rather than ignorant of the sad facts.

Registration and notification laws for sex offenders provide a good case in point. The Washington State Institute for Public Policy conducted a study in 2005 that evaluated the effectiveness of the state's community notification laws. In 1990, Washington passed the Community Protection Act, a law that requires sex offenders to register with their county sheriff and authorizes law enforcement to release information to the public. The study found that the recidivism rate among felony sex offenders in the state had dropped, and "the influence of community notification laws cannot be ruled out" (Drake and Barnoski 2006). In addition, a separate study found that "[o]ffenders who were subjects of community notification were arrested for new crimes much more quickly than comparable offenders who were released without notification (Schram and Milloy 1995, p. 3).

The advocates for second chances and an opportunity to start anew without being dogged by one's record tend to call for a generic right. That is, they favor the same basic right for killers and political extremists, rapists and those who were merely arrested but not convicted. This is the case for both normative and practical reasons. Normatively, there is a moral case to be made for giving *everyone* a chance to redeem themselves. A practical reason is that when information only existed on paper, as most of it did until 1980 or so, information about all these different categories of people was difficult to access and distribute. However, as I just tried to show, such a generic right to be forgotten fails the liberal communitarian test, because it causes a great deal of harm to the common good and only limited benefit to personal good. A person truly out to redeem himself had best start by acknowledging his wrongdoing, expressing true remorse, making amends, and showing that he has restructured his life, not by attempting to erase his past (See Etzioni and Carney 1997; Etzioni 1999).

9.2 A Hedged Right to Be Forgotten

What is needed is a mixture of technological and legal means to ensure a hedged right to be forgotten that is differentiated according to the scope of the harm done by the initial act, the extent to which the person has rehabilitated himself, and the scope of privacy that will be granted.

For example, where the inefficiency of paper records once ensured that information would not travel far, the digitized world now requires restrictions if certain kinds of information are to be kept isolated. Formerly, in smaller communities, if a person was arrested his neighbors would learn whether he had been exonerated or convicted. The community might even have had a sense of whether a person who was released had in fact committed the crime, or whether the arrest was unjustified. These days, it is possible to access an arrest record across the globe, but it may be difficult to find out if the arrest was justified. Either arrest records should not be made public (although they might be made available to police in other jurisdictions), or they should be accompanied by information about the outcome of the case.

In addition, a criminal record could be sealed both locally and in online databases after a set period of time, for example after 7 years, if the person has not committed any new crime. Considerable precedent for such a move exists. For instance, information about juvenile offenders and presentations to grand juries are often sealed.

One other major concern is that lawbreakers who have paid their debt to society will face hiring and housing discrimination. Protections against such discrimination are already in place, but others could be added. For instance, employers cannot, as a general rule, legally maintain a policy of refusing to hire people merely because they are ex-cons, whether the employer gets this information from a police blotter or from a computer. Internet databases should be held accountable for the information they provide. If they rely on public records, then they should be required to keep up with the changes in these records. They should also provide mechanisms for filing complaints if the online data are erroneous, and they should make proper corrections in a timely fashion, the way those who keep tabs on credit records are expected to do.

These are a few examples of measures that provide obscurity equivalents in the digital age. Still, it is important to remember the importance of gossip fueled by public records. As a rule, people care deeply about the approval of others. In most communities, being arrested is a major source of humiliation, and people will go to great pains to avoid ending up in jail. In such cases, the social system does not work if the information is not publicly available. This holds true for the digitized world, where the need for a much wider-ranging "informal social communication," as sociologists call gossip, applies not merely to criminals, sexual predators, and disgraced physicians. It holds for people who trade on eBay, sell used books on Amazon, or distribute loans from e-banks. These people are also eager to maintain their reputations—not just locally but globally. Stripping cyberspace of measures to punish those who deceive and cheat will severely set back the utility of the internet for travel, trade, investment, and much more.

This need is served in part by user-generated feedback and ratings, which inform others who may do business via the internet—much like traditional community gossip would. The ability of people to obscure their past in the pre-internet days made it all too easy for charlatans, quacks, and criminal offenders to hurt more people by simply switching locations. The new, digitized transparency is one major means of facilitating deals between people who do not know each other. With enough effort, its undesirable side effects can be curbed, and people can still gain a second chance. It may also be useful to provide people with greater control over their online presence more broadly, although difficult to implement in a balanced way.

The European Union's evolving privacy legislation is making a major move in this direction. Since 2014, the European Union's data protection rules have explicitly incorporated the "right to be forgotten." According to Jeffrey Rosen, this legislation has its intellectual roots "in French law, which recognizes *le droit à l'oubli*—or the 'right of oblivion'—allowing a convicted criminal who has served his time and been rehabilitated to object to the publication of the facts of his conviction and incarceration" (Rosen 2012, p. 88). At the time of its announcement, commentators disputed the implications of this ruling. Where the EU Justice Commissioner Viviane Reding (2012) asserted that this right to be forgotten was merely a limited right for people "to withdraw their consent to the processing of the personal data they have given out themselves," Jeffrey Rosen (2012, p. 88) warned that it represented "the biggest threat to free speech on the Internet in the coming decade." On the other hand, John Hendel (2012) asserted that the right "shouldn't worry proponents of free speech," but only those "companies whose profits rely on mined, invasive data abuses."

The practical implications of this law began to emerge in 2014, when the European Court of Justice, the highest appeals court in matters of EU-wide law, ruled on a case in which a Spanish citizen demanded that a Spanish newspaper remove an outdated story relating to his previous indebtedness, as well as that Google remove the relevant search results (Toobin 2014). The EU court upheld the Spanish Data Protection Agency's decision, which allowed the newspaper to leave the story posted, but forced Google to take down links to the story from the results of searches *that related to the citizen's name* (as opposed to *all* searches). More broadly, the EU court reaffirmed the broader "right to be forgotten," interpreted as the individual right to ask "search engines to remove links with personal information about them" that is "inaccurate, inadequate, irrelevant, or excessive"–but only under "certain conditions." The court stated this right was "not absolute," but rather "to be balanced against other fundamental rights, such as the freedom of expression and of the media" based on a "case-by-case assessment." According to the European Commission (n.d.), "The right to be forgotten is certainly not about making prominent people less prominent or making criminals less criminal."

At this point, it is too early to say what effect the EU's "right to be forgotten" will have on the balance among privacy, free speech, and security. While the decision clearly affirms that a person may remove material that he or she posted directly, it remains to be seen to what extent the right will apply to material the person posted that then has been copied by others, or to material that was created by others but

relates to the person and which that person finds offensive. Given the vagueness and subjectivity of terms such as "inadequate, irrelevant, or excessive," it is plausible that the third type of information applies as well, with negative implications for free speech and even public safety. For example, Croatian pianist Dejan Lazic requested in October 2014 that *The Washington Post* remove a negative review of one of his performances, which "has marred the first page of his Google results for years" (Dewey 2014). Caitlin Dewey, a *Post* reporter, wrote:

> Leaving aside the fact that Lazic's request is misdirected, under the ruling—it applies to search engines, not publishers, and only within the E.U.—its implications are kind of terrifying. We ought to live in a world, Lazic argues, where everyone—not only artists and performers but also politicians and public officials—should be able to edit the record according to their personal opinions and tastes. (Dewey 2014)

But, as Kieron O'Hara et al. point out, "[i]n the judgment, 'forgetting' does not involve deletion, and so a right to be forgotten is distinct from a right to erasure" (O'Hara et al. 2016, p. 7).

It is also important to note that the first line of decision for balancing privacy and other values in such cases is not the EU court system, but Google. It is a company that has lobbied for free speech and limited regulation in the United States. Some scholars have pointed out that this is less than ideal as a long-term system, especially given the lack of transparency that private companies tend to exercise (O'Hara 2015, p. 77).

Since 2014, Google has faced ever more stringent demands from France to remove content from all Google search domains, regardless of location (Hern 2015). According to a company spokesperson, Google "disagree[s] with the idea that a national data protection authority can assert global authority to control the content that people can access around the world" (Hern 2015). There is concern that yielding to such a requirement could be the start of a slippery slope. As Kent Walker, general counsel for Google, said: "We comply with the laws of the countries in which we operate. But if French law applies globally, how long will it be until other countries—perhaps less open and democratic—start demanding that their laws regulating information likewise have global reach?" (Hern 2016). France's data protection authority (CNIL) maintains that "in order to be effective, delisting must be carried out on all extensions of the search engine" (Hern 2016).

Luciano Floridi, professor at Oxford University and member of Google's Advisory Council on the Right to be Forgotten believes that delinking at a European level strikes a "fair balance," although for practical purposes he favors delinking at a national level, as "[m]ost users never leave their local search engines" (Floridi 2015, p. 26). O'Hara, writing before the Google Spain judgment, was also of the opinion that applying the law to European Google domains, but not Google.com, was a "reasonable balance" (O'Hara 2015, p. 75). He noted that "getting to Google.com is an obstacle; it's not much of an obstacle, but it weeds out a large number of speculative searches, without hindering a serious, interested inquiry. And that's okay…" (O'Hara 2015, pp. 75–76).

In March 2016, Google announced that it was changing its approach to delisting URLs under the EU's right to be forgotten, "as a result of specific discussions that [they] had with EU data protection regulators in recent months" (Fleischer 2016). Previously, if Google approved a delisting request, it removed the URL from all European versions of Google's search engine (e.g. google.co.uk, google.fr). Now, however, it would also remove it from any Google search domain for a search originating in the country the delisting request came from. Peter Fleischer, Global Privacy Counsel for Google explains what this means:

> So for example, let's say we delist a URL as a result of a request from John Smith in the United Kingdom. Users in the UK would not see the URL in search results for queries containing [John Smith] when searching on any Google Search domain, including google.com. Users outside of the UK could see the URL in search results when they search for [John Smith] on any non-European Google Search domain. (Fleischer 2016)

This is something Google initially refused to do when pressed by a working group of European data regulators in 2014 (Toobin 2014).

The EU mandate poses a "real, if manageable" (Toobin 2014) burden for Google, which by 2017 received more than 700,000 takedown requests and has evaluated over two million URLs; of these URLs, Google removed roughly 43% (Google Transparency Report 2017). Google accepted a request "to remove five-year-old stories about exoneration in a child porn case," but refused a "request from a public official to remove a news article about child pornography accusations," as well as "to remove a 2013 link to a report of an acquittal in a criminal case, on the ground [*sic*] that it was very recent." As long as Google takes such a careful approach to takedown requests, one may expect the "right to be forgotten" to pose relatively little danger to public safety or free speech—however, as Jeffrey Toobin points out, the proliferation of such laws may lead search companies "to tailor their search results in order to offend the fewest countries" as the costs of compliance (or risks of noncompliance) increase the burden on them.

As for the risk to public safety, under its current practice, Google has asserted that it will "also weigh whether or not there's a public interest in the information remaining in our search results—for example, if it relates to financial scams, professional malpractice, criminal convictions or your public conduct as a government official (elected or unelected) [… whether] it relate[s] to a criminal charge that resulted in a later conviction or was dismissed" (Kravets 2014).

Paul Bernal has advocated a qualified right to be forgotten, with five categories of cases where an individual would not be able to delete information about them. These include "paternalistic reasons," "communitarian reasons," "administrative or economic reasons," "archival reasons," and "security reasons" (Kravets 2014). As the EU faces more cases, where these lines are drawn will be tested and, hopefully as a result, clarified.

Until then, what this newly minted EU right to be forgotten entails remains opaque. What, however, is clear is that it provides a key example of a hedged right rather than a generic one. Whether one would hedge differently is less important than realizing from the outset that a generic right fails the liberal communitarian

test, because of the great harm to the common good—while the hedged one can be recalibrated to meet the test and to take into account changing historical conditions and new technological developments.

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