

# Essay on proseminar in public law

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The internet has become a sore spot for many after it has been continuously romanticized as a corner to practice freedom of speech. Many libertarians as well as communitarians have been amazed and bothered by the alluring and unstoppable combination of law barriers and the sophisticated technology that has become of the internet today. This very alluring combination ensures that millions and millions are drawn to the internet every day.

Lawmakers have just the same furthered, the ‘monstrosity’ by fighting for, and passing the of the Communication Decency act that allows the providers of the internet services to allow all sorts of unregulated activity without being held liable or responsible for it, all in the mighty name of acquiring ‘freedom of speech’. However, what has not been realized by many supporters of the trend is that internet use that is unregulated is a breeding ground for many societal evils, for example, offensive conduct (Levmore and Nussbaum 81- 87).

The *Offensive Internet: Speech, Privacy, & Reputation*, is a book by Levmore and Nussbaum that addresses the same issues. It begins its focus on the numerous abuses and violations that have been committed or enabled by the internet trends like anonymity, lack of oversight, and freedom from liability or responsibility. These two authors use this book to make a connection between discrimination and harassment of the targeted individuals, with the absence of legal oversight that is governing most internet sites. The authors argue that the current misuse of the internet has stemmed from technological, legal and social choices, and in so doing question the simplistic notion held by many that mobocracy and speech that is abusive, are consequences of new technology that are inevitable today.

The book offers its audience numerous examples of the kinds of harassments and insults originating from most internet forums and chat rooms, and also gives an account of a number of the hateful and vile speech that is currently being bred by the combination of technology and law (Levmore and Nussbaum 81- 87).

The purpose of this paper therefore is to look at the emerging concerns of many contributors of this book, revolving around the trends that the internet is breeding. In addition to this, the paper is also going to introduce a few rationales for protecting speech as given by Leiter.

### **Leiter's Rationales for Protecting Speech**

The purposes of protecting speech, is to disable the society, and especially the government, from interfering with, and thus from damaging the meaning of speech; so as to interfere with the intentions of the speech, which is to communicate ideas and opinions (Levmore and Nussbaum 202). Leiter makes references to three particular approaches or rationales that can be used protect speech, and there in be used to decide or determine whether a certain speech has the probability of causing harm to its audience.

Determining this can be very essential especially when it comes to regulating speech. Leiter observes that the question and the issues surrounding ' free speech' in cyberspace, actually hides much more matters that it really reveals.

He quotes Solove on his observation on the regulation of the internet in regards to speech, that we are experiencing a serious conflict between free speech and privacy currently (Levmore and Nussbaum 172). This conflict as he points out is of two very important values in the society that are essential

for the self development of the society, its autonomy, democracy and freedom. It is therefore, very clear after reading this text that a line has to exist between these two values; a line that will distinguish between what is regarded as free speech and people's privacy. This line should be established because it has become apparent that most cyber- cesspools, do not implicate such values, except when a victim is involved. These internet providers claim that arguing that some content on the search engines is offensive, and thus should be removed from the sites, is a violation of their rights because it undermines their right to freedom of speech. Because of this conflict therefore, it has become apparent that regulation of speech on these cyber- cesspools needs to be established; regulation that will distinguish between what is free speech from what is harmful and offensive speech.

Leiter offers three standard rationales or approaches that have been offered and widely been associated with protecting and permitting speech. These include individual autonomy, the discovery of truth, and the democratic self governance. In an effort to explain these three rationales, Leiter points out some things he treats as assumptions. For example, he assumes that the 'Harm Principle' by Mill, acts as a limitation or challenge to the liberty of the affected individuals, and that some levels of harm can be much more important than some values of speech. Leiter also assumes that harms can come in different forms like psychological harm, as well as certain types of harms recognized by the law like tortuous harm and harm to privacy and reputation interests. His focus, in explaining these rationales is mainly on the kind of speech that is harmful to dignitaries and the kind of speech that

causes spillover effects. Speech on cyber cesspools is the kind of speech that is in a virtual world. According to the author, this world is very different from the actual world in that the speech in the virtual world has more potential to cause more harm because it has a great ability to reach and spread to large number of people, unlike the speech found in real world (Levmore and Nussbaum 163- 169).

Leiter uses Mill's arguments that discovering the truth, or believing in the right manner in the truth, can contribute significantly to overall utility, and that ' a market place of ideas' that are not regulated can largely contribute to discovering the truth, in trying to explain his rationale on discovering the truth. There are three claims or arguments about the truth that are central to this issue. One is that an individual should never feel justified to argue or assume that they are never wrong, or that they are infallible. This claim, as Mill puts it, leaves an opening for dissident opinions which also have the likelihood to be true. Second claim is that though our beliefs might be sometimes correct or true, we are sometimes obligated to a wide range of different beliefs, which might also be holding other parts of the truth. The third claim about truth is that we must be able to confront other opinions that might not be true, even though our beliefs are the truth, and even though we are holding these beliefs for the right reasons (Levmore and Nussbaum 163- 169).

Therefore, for a type of speech to be justified or protected by this line of thought, it has to have some relation to our knowledge of it or the truth, and by discovering or finding out this type of truth must be a way for us to

maximize utility. With this kind of argument, one might wonder whether some of the supposed truths on the internet are the kinds of truths that enhance maximizing utility. However, as Leiter argues, utilitarians have different perspectives on the truth, and they frame the question differently from the way we might frame it in answering this question. The real question then would be whether some claims about an individual in the internet by an unknown person with motives that are unknown could possibly maximize utility.

This would seem very unreasonable, in an attempt to answer the question. However, Mill, one of the many references Leiter uses, argues that there is purpose of having a 'free market' of arguments and ideas, because there is not much to be said about the question's wrong side. Then there would be no reason to make room or to accept the expression of opinions on which there is no varying dimension that could add anything to the truth. Leiter argues that this point must be understood by anyone who wishes to understand and analyze the cyber- cesspools information meant for private individuals. He further points out that some speeches, that apparently cause dignitary harm, are very important and helpful when it comes to facilitating the discovery of what is the truth and what is not. Therefore, to come out as genuine utilitarians, we must be able to weigh and consider between the conflicting disutilities and utilities of different modes of regulating speech. To support this, Leiter makes two claims; one, dignitary harms became more harmful with the emergence of Google, and two, effects of spill over under regulation of tortuous harms, will have very little effect on democratic self governance and discovery of truth (Levmore and Nussbaum 163- 169).

In conclusion Leiter explains that there is no concrete reason that warrants the regulation of speech on cyber- cesspools about private people because such speech usually is devoid of any moral standing like the kind of free speech that should be regulated. He further argues that it is necessary to realize that spillover effects of speech from cyber- cesspools that are under regulation can be offset, numerous times, by all the other factors through which knowledge and truth is shared and through which opinions are expressed, found in both that internet as well as the other communication Medias.

While legal defenses have been established for defending private individuals against violation of legal processes, it should be noted that that such litigations against defamation that is in most cases meritless, have only one intend, and that is to suppress speech that is protected. Leiter notes that private people unlike people, who are public figures, are not likely to utilize these litigations on cyber- cesspools. As a result, speech on the internet concerning them is not likely to implicate truths or democratic values that maximize utility. The author thinks that cyberspace should be treated more restrictively only when it comes to dignitary harms, and less protectively in the case of tortuous harms. This as he argues, is because dignitary harms are much more harmful in the cyberspace than tortuous harms are. Leiter offers one advantage that would result from not regulating the content in the internet; this advantage is the value of allowing people to freely express themselves (Levmore and Nussbaum 163- 169).

## **Justification of the Protection of Leiter's Speech of Concern**

Though Leiter argues his rationale comprehensively for protecting speech, I do not agree with him. While everyone has a right to individual autonomy, a right to discover the truth, and the right to democratic self governance, it does not mean that they acquire a right to produce speech that can be harmful to another party in regards to their feelings, psychology, reputation and privacy. Leiter argues that regulation of speech will hurt an individual's autonomy or will to make informed decisions. However, what he does not realize is that such autonomy once given to individuals, especially those hiding behind the anonymous masks of most internet providers; it can be misused and used to hurt someone else when used wrongfully. For example, one can distribute information about some one else that is not true, information that can hurt the reputation of the victim significantly. The rationale of discovering of the truth can be used to argue that such information would not be so harmful because it helps the users to discover the truth about the victim. What we should ask ourselves is; doesn't the victim of such harmful speech have a right to privacy?

The fact that the internet avails a space for users to anonymously post any kind of information, about anyone, should be reason enough to create some rule and regulations to regulate this cyber-cesspool. This is because it allows people to be elusive and nameless and thus, unreliable, or irresponsible for all their acts. When online, people have the option to mask or hide their identity, and the host sites, further this by hiding and safeguarding their identity. The reason why the internet should have some level of regulation is



because the power which it has been afforded by the anonymity, affects speech in various ways.

One of these many effects has a lot to do with encouraging expression of speech that is most of the times detestable. This results from the belief that the identity of the expresser will not be revealed to anyone. And what ensues this is the feeling enabled by their anonymity to write, say, or act in a manner that otherwise would be thought to be offensive, legally dubious, or too provocative to express, say, act, or write in the real world. This effect has been manifested in numerous cases of hate speech found in the internet, cyber bullying, insults, and offensive material that has become a norm in the cyber- cesspools of today, things that can result to considerable harm to the victim. It is this possibility of such speech to cause harm to the target that justifies the need for some level of regulation in the internet for the sake of protecting the citizens for harm.

It therefore, seems necessary to me for at least some rules, or laws, or regulations to be established that can be used to govern and regulate the way people interact with each other on the cyber- cesspools. And also, it should be necessary for punitive actions to be taken against anyone indicated to have caused tangible harm to another person through internet speech. What is being suggested here is not to deter or block the internet services all together, but to establish some sort of regulation that ensures that individuals act accordingly, and that individuals are protected from harm originating from the internet.

## **Work cited**

Levmore, Saul, and Martha C. Nussbaum. *The Offensive Internet: Speech, Privacy, and Reputation*. Harvard University Press, 2010. Print.