

Chapter 5

Social Media in the English Legal Context

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ABSTRACT

This chapter examines the development of social media in relation to its impact on the law, legal system, and legal profession of England and Wales, considering other jurisdictions such as the United States of America and Australia. The author analyses the convergence between the opposing forces of legal certainty and control on the one hand, and mass, unrestrained social media on the other. In particular, the author reviews the challenges presented by the use of social media in modern society: in particular, a sophisticated legal system across a range of jurisdictions. The effect of social media is considered alongside the individual responses in each scenario, their effectiveness, and then, finally, the intuitional responses of the legal profession, lawmakers, and the judiciary as a whole to the rise of social media.

INTRODUCTION

The Internet revolution and social media have had a profound effect on political, social and legal systems the world over. Nowhere is the effect more pronounced than in the developed world, where both access to the Internet and participation in social media is widespread (Dazeinfo, 2014). The wide-scale use and early adoption of social media in these societies, together with their more developed institutions, provides a vivid illustration of how society is changing through this medium.

That is not to say change is not as radical when compared to *developing* countries, especially those thrown into upheaval principally as a result of social media, such as Egypt, Tunisia or Syria. Phillip Howard, amongst others, has strongly argued that social digital media was one of the necessary conditions for the ‘Arab spring,’ overthrowing several authoritarian regimes (Howard & Hussain, 2013).

However, in developed societies, social media has transformed the course of ordinary life rather than act as a catalyst for exceptional events or revolution. Furthermore, while de-

veloping countries may have been rocked by uprisings, the fabric of wider society has remained intact. Take, for example, the resurgence of military rule in Egypt (Anderson, 2011).

Legal systems are an essential component of nation states, governing the interaction amongst citizens and between them and the state. The courts, which apply and interpret the laws laid down by political institutions, act as arbiters of state power, regulating the extent to which the state and individuals can act *lawfully*. Consequently, a legal system is central to the machinery of modern democratic society. It is, therefore, essential that such systems have legitimacy and are effective. An effective legal system is one that understands the social and technological conditions in which a law operates (Paul & Baron, 2007), is sufficiently resourced to apply the law and, of course, is one which is obeyed.

The English legal system is one of the world's most important legal systems. From a historical point of view, concentrating on the Western hemisphere, its influence has been as widespread as the Roman legal system, in the promotion and establishment of the Common Law system (Ferguson, 2002). The British Empire exported the Common Law system to over one quarter of the world's population. Long after the demise of the Empire, the legal systems of eighty countries are based on the Common Law to some extent (CIA, 2014).

The continued importance of the Common Law system is evident from its use in the world's richest economy, 49 of the 50 United States (Louisiana state, 2013) and its heavy influence within the world's biggest: the European Union (Yarrow & Decker, 2012). Today, the countries which use it in some form are as varied as India, Israel and Nicaragua.

Unlike codified legal systems, English law develops incrementally by the courts applying legal principles to new problems, or changing

established rules to suit new circumstances (Atiya, 1987, pp. 26, 164). The importance of the courts, judicial discretion and a large corpus of decisions made over hundreds of years, allows English courts to be more flexible and pragmatic compared to their European counterparts (*Ibid.*, pp. 7-17) It is for this reason that the English courts are the jurisdiction of choice for commercial disputes (Q. M. U., 2012). Although, the quality of legal services and judicial independence is a significant factor as well (The Independent, 23 November 2008). The UK government actively promotes England as a centre of litigation abroad and the legal sector is a powerful contributor to economic growth and the service sector (The Law Society, 2013).

THE CHALLENGES AND EFFECTS OF SOCIAL MEDIA

It is for these reasons that examining the effect of social media in the English legal system is instructive and, arguably, a credible prediction of how other legal systems will develop, especially given this legal system's leading role and global influence. This chapter will examine the legal issues caused by technological change in society, as a result of the law responding to a fast-moving socio-technological environment in a developed market economy possessing the largest legal market in the European Union. It will consider how the conduct of cases and the decision-making of courts have adapted on a practical level in response to these changes. Finally, this chapter examines the institutional response, through the courts, the legal profession, media, government and the legislature, to the effects of technological change.

While the Internet is commonly understood in discourse, social media is worth defining. Social media has been defined as 'Internet-based applications... that allow

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