

Chapter 6

The Role of Law in Adolescent Online Social Communication and Behavior

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ABSTRACT

What in the world is a chapter on law doing in a book on psychology, behavior and affect (that's af'ekt, not a fekt')? Well, the analogy of a game comes to mind. The psychologist may ask such questions as, why do the players do what they do? How do they feel about the activity? How do they interact with other players? Certainly these questions are important. But at the same time the players have to play by the rules. And that's where the law comes in.

INTRODUCTION

Some 2,300 years ago the philosopher Aristotle said, "The law is reason free from passion." At the philosophical level Aristotle's statement is certainly true: attorneys, and teachers, must deal with the law as it exists, not as they would like it to be.

But the law is not an abstraction found only in case law, statutes and administrative rules. At its most fundamental level the law deals with people, and that means the law must be responsive to both reason and passion. Although Aristotle's statement

about the law quoted above is well known, less well known, but certainly as relevant, is what he said earlier: "Whereas the law is passionless, passion must ever sway the heart of man." That is why, for example, a person who commits a crime in the "heat of passion" is less culpable than one who carefully and meticulously plans and executes a crime.

Thus both the lawyer and the teacher or school administrator must ask such questions as: How should a particular law be applied? What are the trends in the law? How has the law changed? For our purposes the question becomes, What is the triple connection between the law, the adolescent and electronic social networking?

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A Mythology of Freedom

The First Amendment to the United States Constitution states, “Congress shall make no law...abridging the freedom of speech, or of the press....” On the surface those words are clear and unambiguous. However, in actual application the U.S. Supreme Court has never taken those words literally. There are hundreds of laws and regulations that infringe on free speech and free press. Whether those laws *should* be in place is a question for ethicists. How to deal with those restrictions and limitations is a question for both attorneys and those who are directly affected by the law.

This then leads to the question, should a given law be applied differently to different groups? Again, we turn to the U.S. Supreme Court for an answer, and that answer is an ambiguous, “maybe yes, maybe no.” In general we can say that the application of a given law based on race, religion, gender and national origin is unconstitutional. But what about age? Here the law is just as clear, but the application is more difficult: of course we apply the law differently depending on the age of the person involved. In both criminal and tort law, courts generally follow what is known as the “Rule of Sevens” (*Cardwell v. Bechtol*, 1987): under the age of 7, a child is generally considered to have “no capacity”; between 7 and 14 there is a rebuttable presumption of no capacity; between 14 and 21, a rebuttable presumption of capacity; over 21, capacity. Thus an adolescent is considered to understand the consequences of what he or she is doing, although this capacity may be challenged by the opposing side.

Location is Everything

Although it is sometimes said the Internet (and by extension, a social network) is simultaneously both everywhere and nowhere, the fact is the Internet is accessed from a real (as opposed to a virtual) somewhere. There is an intersection of the virtual

and real worlds. And it is at that intersection that the law is in a state of flux.

Ever since the invention of the telegraph (and perhaps, even before), the law has had difficulty keeping up with technology. In the late 1800s, movies sprang upon the public before states and cities imposed regulations and censorship boards (Vivian, 2008, p. 139). The development of broadcasting was impeded because there was no regulation (Vivian, 2008, pp. 151-152). Indeed, it was the broadcasters themselves who asked the federal government to impose regulations. And the Internet? Well, some people have compared the Internet to the wild, wild West where lawlessness and individualism run rampant (Dempsey, 2007, p. 75; Schwartz, 2008, p. 29).

Nevertheless there is a body of law dealing with adolescents and media. Here the central question is often, “Where did the child’s action take place?” In a curriculum-related activity? In an open school laboratory? At a school-related off-campus activity? At an off-campus location unrelated to any school activity?

All of these moving parts make for some interesting Boolean logic constructions and Venn diagrams. There is the “Law and the Adolescent” circle. The “First Amendment” circle. The “Internet” circle. The “social networking” circle. But isn’t social networking part of the Internet? Isn’t the First Amendment part of the law? Does Internet regulation include regulation of social networks? Does the First Amendment trump any attempts to regulate Internet behavior?

So Where are We?

Because of these questions, and a myriad of others, this chapter will proceed along three fronts: (1) Schools, adolescents and messages, (2) Schools, adolescents and the Internet, and (3) Case law involving adolescent social networking sites including FaceBook, YouTube and Second Life.

That is why it is important to have a chapter on law in a book dealing primarily with emotions,

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