

ARTHUR S. HAYES, SYMPATHY FOR THE CYBERBULLY: HOW THE CRUSADE TO CRACK DOWN ON HOSTILE AND OFFENSIVE ONLINE SPEECH ABUSES FREE EXPRESSION (2017).

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Reviewed by Brendan Dalton

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Cyberbully's: They have Constitutional Rights too

“Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to: the condition that disappears, submerges or deteriorates and becomes more visible.”¹

The First Amendment right of freedom of speech is often regarded by legal scholars as the most important clause in the Bill of Rights. In *Sympathy for the Cyberbully: How the Crusade to Crack Down on Hostile and Offensive Online Speech Abuses Free Expression*, author Arthur S. Hayes opposes enacting criminal statutes and school sanctions against those who use the internet to bully, abuse, and offend other people.² Hayes examines laws and cases from across the U.S. and Canada and argues that legislators have passed laws that criminalize free speech in ways that would be unconstitutional if applied to offline speech.³ This is done under

¹ See ARTHUR S. HAYES, SYMPATHY FOR THE CYBERBULLY: HOW THE CRUSADE TO CRACK DOWN ON HOSTILE AND OFFENSIVE ONLINE SPEECH ABUSES FREE EXPRESSION 1 (2017).

² See HAYES, *supra* note 1, at xvi

³ See HAYES, *supra* note 1, at 185

the guise of protecting individuals from embarrassment, emotional distress, and exploitation online.⁴

Arthur S. Hayes is an attorney and Associate Professor of Communications & Media Studies at Fordham University.⁵ He has a variety of research interests including First Amendment doctrine and theory, the intersection of mass media law and mass media technologies, ethnic media ownership, and journalism ethics.⁶ He has also written two other books titled *Mass Media Law: The Printing Press to the Internet* (Peter Lang, 2013) and *Press Critics Are the Fifth Estate: Media Watchdogs in America* (2008).⁷

Hayes' book mainly focuses on First Amendment protections in the realm of online communications, public school sanctions, and state and provincial statutes regarding cyber-harassment, cyber-stalking, teen sexting, and revenge porn. Throughout the book he examines what events in society caused these statutes to be enacted across the U.S. and Canada and discusses actual cases that have been litigated to illustrate that the U.S. and Canadian Supreme Courts would likely determine that most of these statutes violate free speech protections.⁸

Hayes breaks down his book into seven chapters. Chapter One introduces the reader to the term "moral panic" used by sociologists to characterize the overreaction of societal changes by the news media, influential opinion makers, and advocates which leads to a sudden change to the status quo.⁹ Hayes uses the moral panic theory framework to study news coverage of cyber-bullying incidents, particularly the news coverage of Katelyn Roman and Gaudalupe Shaw, two middle school aged children from Florida.¹⁰ Chapter Two illustrates the current state of First

⁴ See HAYES, supra note 1, at 185

⁵ Arthur S. Hayes, Biography, https://www.fordham.edu/info/20771/cms_faculty_and_staff/4890/arthur_s_hayes/1

⁶ See *Id.*

⁷ See *Id.*

⁸ See HAYES, supra note 1, at 4

⁹ See *Id.*

¹⁰ See HAYES, supra note 1, at 6

Amendment free speech doctrines while providing examples of cyberbullying laws across the U.S. that courts have struck down as unconstitutional.¹¹ In Chapter Three, Hayes discusses the stories of two different teens living in New York and North Carolina who were charged with violating their respective states' cyberbullying laws.¹² The teens avoided prosecution after the New York Court of Appeals and North Carolina Supreme Court each respectively ruled that the statutes were unconstitutionally overbroad and vague.¹³ Chapter Four examines New Jersey's anti-bullying Bill of Rights Act and claims that the New Jersey statute, along with other similarly worded ones across the country, would likely be struck down by the U.S. Supreme Court as unconstitutional.¹⁴

In Chapter Five, Hayes admonishes what he believes is the most dangerous part of the anti-cyberbullying movement, using cyber-harassment and cyber-stalking laws to prosecute people who mock or parody public figures.¹⁵ Next, in Chapter Six, Hayes introduces the reader to the problem of non-consensual adult sexting or "revenge porn" and how it is likely that the wording of most of the revenge porn statutes that have been enacted across the country would be found to violate the Due Process Clause of the U.S. Constitution.¹⁶ Chapter Seven provides an account of the introduction of Canada's first cyber-bullying statute, Nova Scotia's Cyber-Safety Act, in 2013 and how the Supreme Court of Canada struck it down as unconstitutional two years later.¹⁷

¹¹ See HAYES, *supra* note 1, at 46

¹² See HAYES, *supra* note 1, at 106-107

¹³ See *Id.*

¹⁴ See HAYES, *supra* note 1, at 127

¹⁵ See HAYES, *supra* note 1, at 168-169

¹⁶ See HAYES, *supra* note 1, at 198

¹⁷ See HAYES, *supra* note 1, at 236-237

Hayes believes that because of societal pressures legislators across the United States and Canada have enacted statutes that criminalizes online speech in ways that would be unconstitutional if applied to offline speech.¹⁸ This is done under the guise of protecting individuals from embarrassment, emotional distress, and exploitation online.¹⁹ Hayes also states that public schools should steer clear of cyberbullying that occurs off campus as this also infringes on the constitutional rights of students.²⁰ Hayes argument is strengthened by examples of state and federal courts having already struck down cyber-bullying laws due to the language of the statutes being overbroad and vague.²¹ Hayes claims that many other state's cyberbullying laws such as New Jersey's Anti-Bullying Rights Act have the same issue of its language being overly broad and vague.²² Hayes also uses news articles, law review articles, and sociological studies to provide context behind why there was pressure from anti-bullying advocacy groups to enact these types of statutes.²³

Hayes directs his argument towards teenagers and adults throughout the U.S. so that they may be educated on their constitutional rights while communicating online. This book is also directed towards local, state, and federal lawmakers across the U.S. in the hopes that they see the absurdity of attempting to draft statutes punishing online speech that would be able to pass constitutional muster. This book is structured in a way that each chapter clearly introduces and addresses a new form of online communication that has been criminalized by state legislators and the constitutional issues that these statutes cause. Within the chapters Hayes uses headings before delving into different topics such as "Free Speech Values" and

¹⁸ See HAYES, *supra* note 1, at 185

¹⁹ See HAYES, *supra* note 1, at 185

²⁰ See HAYES, *supra* note 1, at 54

²¹ See HAYES, *supra* note 1, at 49

²² See HAYES, *supra* note 1, at 139

²³ See HAYES, *supra* note 1, at 15-16

“Overcriminalization”, which makes it easy for the reader to follow along with what exactly is being discussed.²⁴ Hayes then finishes each chapter with a conclusion paragraph that succinctly gives an overview of the chapter while also re-stating his argument. The book may have been strengthened had he added another chapter at the end of the book that addressed the different types of online communications all together, but overall this book is very well organized and readable.

This book is an important contribution to the legal field because it advocates for the protection of the constitutional rights of a group of citizens that society would rather not defend, online bullies. Hayes admittedly takes an unpopular stance defending online bullies, but he does a good job throughout the book standing up for bullies’ constitutional rights while also expressing sympathy for the victims of bullying. Hayes’ unpopular argument may have been more appealing to readers had he spent more time discussing the alternatives to criminally punishing online bullies that he briefly mentions throughout the book, such as counseling, education, and civil penalties.²⁵ Overall, Hayes effectively lays out the reasons why online communication should be afforded the same constitutional protections as offline communication and does so in a tone that is both assertive and compassionate.

Arthur Hayes’ *Sympathy for the Cyberbully: How the Crusade to Crack Down on Hostile and Offensive Online Speech Abuses Free Expression* provides an excellent summary of the complex issues that lawmakers face when trying to draft constitutionally valid statutes dealing with online communication. Numerous cases in the United States of teen cyberbullying have made international news over the past decade and a half. As some of the details of the mean, vicious, and reprehensible things the bully’s were saying to the victim online comes to

²⁴ See HAYES, *supra* note 1, at 45-49

²⁵ See HAYES, *supra* note 1, at xvi

light it is hard to feel any sympathy for the bully. However, while a persons actions online may be deplorable that person still has free speech protections and Hayes does a fantastic job in his book explaining why this is. I would recommend this book to any person interested in law, technology, or media as this book illustrates how all of these fields can intersect to cause serious societal and constitutional issues.