



CART BEFORE THE HORSE? INTERNET EXCEPTIONALISM IS REALLY ABOUT DIGITAL SPEECH

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This paper poses (modestly) that we would seem to be asking the wrong questions about law's relevance to online speech. Whereas US Appellate Justice Frank Easterbrook in the 1990s used the misplaced metaphor of the horse to dismiss the need for a discrete Internet law, Harvard's Mark Tushnet ponders twenty years later the binary dilemma between Internet exceptionalism (an "Internet Law unto itself") and the application of standard First Amendment doctrine "with appropriate tweaks". Time and innovation have redefined Easterbrook's summary assessment and Tushnet admits dissatisfaction with his own thesis even before his paper concludes. Why not, then, consider the ontological nature of digital speech itself, its differences and communicative vicissitudes that might remove it from judicial scrutiny altogether or at minimum create a second tier of social good? Across the Atlantic and in relation to the latter suggestion, Andrej Savin writes of the progressive personalization of online speech in his consideration of EU Internet law, a perspective that mirrors judicial efforts to focus on the offending words themselves and their effect on human dignity and personality. This paper re-assesses the Internet exceptionalism debate through a US-European comparative explication of digital speech, in consultation with such various disciplines as linguistics, the philosophy of information, and human-computer interaction.

Sample References:

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