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First Amendment uses of public space: Manipulation through design?

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that agendas and strategies for increasing diversity in EDRA, in research, in practice, in public policy etc. will be discussed and/or proposed.

FIRST AMENDMENT USES OF PUBLIC SPACE: MANIPULATION THROUGH DESIGN?

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ABSTRACT

The concept of the free exchange of ideas, as embodied in the First Amendment of the U.S. Constitution, underpins our notion of a government that works not by consensus or fiat, but by conflict between differing opinions and resolution by secret ballot. Part and parcel of that concept is that not only the vote but the information that leads to decisions in the country ought to be open to all and all should be able to express their opinions. In this way anyone may be able to influence their fellow citizens, regardless of the speaker’s resources and station in life.

Access to others is critical in order to influence fellow citizens, or “petition for redress of grievances” to the government. Technology and population growth in the country have drastically changed access to others, but the bottom line for those with the funds to reach out through the mass media is still where citizens move in public. Public thoroughfares and gathering places where masses of people pass by or through are the poor person’s podium, where his or her message can be presented to others in hopes of generating support. It is always those most marginal persons who, having limited resources, who make use of these spaces that have multiple purposes. As non-dedicated space it poses issues in terms of appropriate uses and allocation of uses among persons using limited space resources. It is these who, what, where, and why issues that rest most heavily upon the simple phrase of the First Amendment of the Constitution.

Until the 1930’s questions of First Amendment activity in public places seldom came before the U.S. Supreme Court. In the 1930’s it was evangelical groups whose activities became the focus of the initial cases of a groundswell of speech activity cases that came through the Federal Courts. The were followed by cases dealing with ethnic and racial friction in the late 30’s and 40’s, then a number inspired by the Civil Rights movement in the 1960’s, the Anti-War movement in the late 60’s and early 70’s, and so on until today.

The movement of the judicial decisions in these cases has been to line out the grounds for deciding the appropriate limits, if any, to the individual’s expression of his or her ideas and what constitutes protected activity under the First Amendment’s notion of expressive activity. If one were to define the course of legal doctrine it would have to be that of a slow movement towards clearer and more exhaustive grounds for making determinations in these situations. There is an excretive character to the law relying as it does upon precedent and tradition. When this pattern is combined with legal trends to avoid precedent unless necessary and to rule on the narrowest grounds possible in the question it is possible to understand the conservatively glacial and, at times, convoluted nature of legal doctrine.

One implication of this means for rendering intelligible and consistent of group decisions is that the process and concepts used in the decision-making process will always lag behind changes in the structure and ideas of the social system, along with the technologies that it will use to construct itself and its environment. The gap that occurs between the legal process and the society in which it exists provides opportunities for exploitation and administratively capricious decisions. It is at one of these gaps that our current society stands in reference to First Amendment activity.

A factor compounding this gap are conflicts in the legal community about how to treat the language of the Constitution. There are proponents of strict construction and original intent now on the Court, who are now amongst those on the Supreme Court, something distinctly at variance with what I would characterize as the historic context interpreters of the Constitution who have been on the bench for the past 40 or more years. These alternate approaches open the possibility of even wider gaps between the everyday reality of the social world, and legal doctrine. Taken even to a limited degree, an original intent approach to First Amendment activity would look at what the writers of the Constitution had in mind when writing the