

Legal Regulation & Education: Doing the Right Thing?

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The views expressed represent mine alone

Considering the capacity of social media to foster communication, engagement, and debate, the enthusiastic adoption of such tools by many in academia is unsurprising. It is argued that the percolation of academic debate through the various fora of social media has significant pedagogical benefit. The provision of a “third space”, hovering at a point between the lecture theatre and academic journals, encourages law students to step beyond their course notes and engage in critical assessment and debate.

When blogging or posting online, it is common for academics to note that they are communicating in a personal capacity. The Twitter accounts of many academics are headlined with a clarifying statement along the lines of, “the views expressed on this medium are mine alone”. This practice is a sensible and low cost measure to take in response to the blurred boundaries between the personal and the professional in the world of Twitter, Tumblr, and “blawgs”.

In spite of the proliferation of such disclaimers, they will provide little comfort to an engaged academic who has observed recent developments regarding the question of academic freedom and social media. The actions of a North American governing body, the Kansas Board of Regents, are particularly noteworthy. In December 2013, the board, which has governing power over six universities, granted discretion to the individual institutions to discipline or terminate any faculty who uses social media “improperly”. The new policy defines the improper use of social media as including any use that is “contrary to the best interests of the university”. Such an ambiguous definition has the clear potential to chill open academic debate when controversial social or political issues are under discussion. Open debate is a crucial aspect of legal education and the undue restriction of that freedom could stem the beneficial flow of ideas between the student and the academic world.

Of course, the principle of academic freedom does not sanction interference with the rights of others. Academic freedom does not guarantee academics an unchecked entitlement to propagate defamatory statements or incite hatred. Accordingly, limitations are necessary. These limitations should be designed to prevent the abuse of academic freedom without unduly hindering the unique opportunity for academic engagement offered by social media. This paper considers the approach of a number of jurisdictions (including the United States, the United Kingdom, and Ireland) in order to determine how best to regulate for the protection of academic freedom in the online context. This analysis is carried out with reference to the concept of academic freedom and the related right of freedom of expression. This paper adopts a “law in context” approach. Particular attention is paid to the technological environment and how this may influence the appropriate understanding of academic freedom in the digital age.