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Social Networks & Political Uprisings

Nima Astyani

"The future is now! Soon every American home will integrate their television, phone and computer. You'll be able to visit the Louvre on one channel, or what female wrestling on another. You can do your shopping at home, or play Mortal Kombat with a friend in Vietnam. There's no end to the possibilities!"[1] The world has become a lot smaller. Facebook has over eight-hundred million users[2]. Facebook, and other social media like Twitter, have made it possible for people all across the world to meet, greet, and talk to each other. What happens when a group, tribe, country, or region that is typically shut off from the rest of the world gets access to these hundreds of millions of people?

Allowing people who are oppressed to see they are oppressed, by seeing the rest of the world as freer than they, helped lead to what we know today to be the Arab Spring. This uprising was sparked by Mohamed Bouazizi, a fruit vendor, pouring paint thinner on himself and setting himself ablaze in front of the local governor's office[3] because his fruit was confiscated, he was beaten, and his he may not have realized what kind of impact his actions would hold, especially today. Bouazizi's actions spread across the Middle East where other took notice and also engaged in

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[1] The Cable Guy, 1996.
[2] "Facebook F8: Redesigning and Hitting 800 Million Users." LA Times. September 22, 2011.
[3] The New York Times, "*How a Single Match Can Ignite a Revolution*." Robert F. Worth, January 21, 2011.

rebellion against what they felt were tyrannical dictators, to those that went so far as to follow suit and also burn themselves as a show of protest[4].

Bouazizi may have been the progenitor of the Arab Spring, but was he the reason the world became attached this movement? Worth points out

> "…Facebook, YouTube, Twitter and cellphones made it easy for human rights advocates to get out the news and for people to spread and discuss their outrage about Mr. Said's death in a country where freedom of speech and the right to assemble were limited and the government monitored newspapers and state television.[5]"

The revolution in Egypt started world-wide involvement through social media[6]. Few people doubt the influence social media has had in this pivotal point in Middle Eastern History. Some say that the revolutions were sparked by Social Media, not just complimented and assisted by them

> I want to meet Mark Zuckerberg one day and thank him [...] I'm talking on behalf of Egypt. [...] This revolution started online. This revolution started on Facebook. This revolution started [...] in June 2010 when hundreds of thousands of Egyptians started collaborating content. We would post a video on Facebook that would be shared by 60,000 people on their walls within a few hours. I've always said that if you want to liberate a society just give them the Internet. [...][7]

These words explain how "media coverage" took place when there was a stifling effect on the usual media and news coverage of events. Was Egypt the only one?

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[4] Id.
[5] Id.
[6] Id.
[7] www.thehuffingtonpost.com, "*Egypt's Facebook Revolution: Wael Ghonim Thanks The Social Network.*" Catharine Smith, February 11, 2011.

In Syria, Facebook was used to organize protests, or as they called it, a "Day of Rage."[8] Although Facebook is banned, many Syrians have found ways to join, which lead to more than 2,500 people joining and taking part in this movement[9].

"#qaddafi is at war with #Libya as we speak, helicopters, troops, thugs, security & foreign mercenaries all against unarmed protesters #Feb17"[10]. This was one of the premier "tweets"[11] during the Libyan uprising. The Libyan government aimed to control the information flow and content, going so far as to tell CNN on February 16 "There is nothing serious here. These are just young people fighting each other."[12] At the same time, those using social media to call for revolution, assemblage, and unity against the regime were being arrested.[13] The Libyan "Day of Anger" reached nearly 10,000 via social media organization.[14]

Was the Libyan government powerless against Twitter and Facebook? Without looking at what we know today to be the end result, it helps to look at the layout of the land at that time. The Libyan government actually had more ability and control over the flow and sources of information than Egypt did[15]. Also, the rest of the country may be in the dark as to what is occurring and relying on information

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[8] www.thehuffingtonpost.com, "*Facebook and Twitter Used By Syrians to Incite Protests.*" Elizabeth A. Kennedy, February 1, 2011.
[9] Id.
[10] www.digitaltrends.com, *"Libya Inspired by Egyptian Revolution, Uses Social Media in Midst of Protests,"* Molly McHugh, February 17, 2011.
[11] The term used when making a post on www.twitter.com
[12] www.digitaltrends.com, *"Libya Inspired by Egyptian Revolution, Uses Social Media in Midst of Protests,"* Molly McHugh, February 17, 2011.
[13] Id.
[14] Id.
[15] Id.

passed through the main forms of media[16]. However, real images of what was happening, such as pictures of the wounded were only available through Twitter and through Facebook[17]. Even those who in the United States would likely not use these technologies (usually the senior demographic is less tech-savvy), in these revolutions, they are the very people utilizing social media to get the message across[18]. Men in their sixties and seventies are using smartphones to video-record, photograph, and textually give the world the images they would not otherwise receive[19]. It has also given a voice to the minority of these countries[20]; those who would be, otherwise; voiceless.

The final country to discuss in regards to the Arab Spring is Iran. A prefatory note: The media uses the term "Arab Spring." Iran is not an Arabic country, but is comprised of Persians. Therefore, I will simply refer to this particular time as the "Iranian Revolt."[21] During the time of President Mahmoud Ahmadinejad's reelection in 2009, the Iranian people began supporting candidates outside of the incumbent[22]. The people were challenging state media control and restrictions as well[23]. The Iranian news was not covering such events as a peaceful march through Tehran in opposition to the current regime, and in support of the leading opposition

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[16] www.guardian.co.uk, *"The Truth About Twitter, Facebook and the Uprisings in the Arab World,"* Peter Beaumont, February 24, 2011.
[17] Id.
[18] Id.
[19] Id.
[20] Id.
[21] This will be my own name for it. I have not found any reference to this anywhere else, but if there is, it is simply by coincidence.
[22] The New York Times, "*Social Networks Spread Defiance*." Brad Stone and Noam Cohen, June 15, 2009.
[23] Id.

candidate, Mir Hussein Moussavi[24]. On Twitter, users were tweeting with the term #IranElection[25]. This allowed users to search all tweets on this subject[26]. Again, echoing the people's declaration of having no voice in the state media, one particular tweet stated "we have no national press coverage in Iran, everyone should help spread Moussavi's message. One Person = One Broadcaster. #IranElection."[27] Links were also being posted to pictures of the rally[28].

Iran set up filters to many of these pages and denied access, but there were some small cracks that the opposition was able to still post on the internet through.[29] Twitter was the best method to keep posting, despite these filters, because there were so many methods to post, ie: phone, web, apps, etc…[30] In fact, just before the elections, Iran dropped the proverbial hammer and on Facebook and Twitter.[31] The incumbent, President Ahmadinejad, received most of the coverage of state-run media up to the time the election took place[32].

Some consider the most compelling images and videos of the death of a young woman, Neda Agha-Sultan[33]. These images are horrific cell phone videos of a young woman lying in a street of Tehran dead with her eyes open and blood running from.

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[24] Id.
[25] Id.
[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] www.bloomberg.com, *"Iran Blocks Facebook, Twitter Sites Before Elections."* Ali Sheikholeslami, May 23, 2009.
[32] Id.
[33] The New York Times, "*In a Death Seen Around the World, a Symbol of Iranian Protests*." Nazila Fathi, June 22, 2009.

People are screaming around her while two men try to resuscitate her. Blood pours from her mouth and nose as her eyes are wide open.[34] Whether intentional or not, Neda became a martyr for a country seeking hope. Especially in a country that is seen to be oppressive to women, this sparked a second wave of resistance from the women of the country[35]. She became the poster-child and logo for tweets and Facebook postings showing solidarity with the uprising in Iran. Any information regarding Neda was minimal because those that knew her were afraid to speak up as all correspondence was monitored[36]. The most said about her was from her fiancé, who contributed to a Wikipedia entry about her.[37] [38]

Of course, such scenes of violence, unrest, and oppression can only be found in areas such as the Middle East, right?

> As riots continue throughout London, British police have threatened to bring charges against those who use social media to incite looting and violence.[39]

The British riots and protests erupted in response to the fatal shooting of Mark Duggan in London[40]. Thousands of people organized through social media to protest, which ultimately led to looting, riots, and arson[41]. Outside of the United States, other forms of social media are just as popular as Facebook and Twitter, and

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[34] http://www.youtube.com/watch?v=d90bwM4No_M&feature=related
[35] The New York Times, "*In a Death Seen Around the World, a Symbol of Iranian Protests*." Nazila Fathi, June 22, 2009.
[36] Id.
[37] Id.
[38] http://en.wikipedia.org/wiki/Death_of_Neda_Agha-Soltan
[39] www.abcnews.go.com, *"London Riots: Blame Twitter – or BlackBerry Messenger?"* Mark Schone, August 8, 2011.
[40] Id.
[41] Id.

have been used for similar purposes. In London, particular social medium was different and much harder to monitor was BlackBerry Messenger[42]. "Blackberrys cost less than smartphones and BBM[43] is both essentially cost-free and invisible to police."[44] (As a quick tangent, BlackBerry Messenger is similar to online chatting services like Facebook chat, or GChat, or AOL Instant Messenger, except that it is found only on BlackBerry devices and can only be received by BlackBerry devices[45].)

BlackBerry Messenger was the leading method of organization, especially among teenager and young adults, and for telling people the riots were starting[46]. Sometimes tweets were sent about BBMs[47].

Research in Motion, the company that manufactures BlackBerry[48], stated after the riots, that they would be cooperating and assisting with law enforcement officials in London[49].

Arrests were made on the basis of a British law that provides:,

> 127 Improper use of public electronic communications network (1) A person is guilty of an offence if he— (a) sends by means of a public electronic communications network a message or other matter that is grossly

[42] Id.
[43] BBM is the abbreviation for BlackBerry Messenger.
[44] www.abcnews.go.com, *"London Riots: Blame Twitter – or BlackBerry Messenger?"* Mark Schone, August 8, 2011.
[45] As a BlackBerry user myself, it may seem intuitive, but it does bear explanation.
[46] www.abcnews.go.com, *"London Riots: Blame Twitter – or BlackBerry Messenger?"* Mark Schone, August 8, 2011.
[47] Id.
[48] Id.
[49] Id.

> offensive or of an indecent, obscene or menacing character; or (b) causes any such message or matter to be so sent. (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he— (a) sends by means of a public electronic communications network, a message that he knows to be false, (b) causes such a message to be sent; or (c) persistently makes use of a public electronic communications network. (3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.[50]

Section (1) (a) applies to persons making inciting statements about rioting. Only individuals who actually make the statements are subject to arrest.[51]

The London riots look like an isolated incident based on the killing of a young man, but it may actually have been the culmination of a few events, which created the perfect storm. "Britain's economic outlook is bleak, youths are out of school and unemployed, police ranks have been depleted by summer vacations, and social media sites – coupled with dramatic video of the rioting – have bolstered a mob mentality and spread disobedience."[52] Of course, alcohol-fueled rioting and rampaging also helped play a part in this as well[53].

The irony of the different social media outlets being used to spread the message of violence was that it also helped saved people from the violence as well[54]. "…the social networks also have provided refuge for fearful residents and shop owners

[50] UK ST 2003 c. 21 Pt 2 C. 1 S. 127
[51] This will be important later.
[52] www.thehuffingtonpost.com, "*Facebook, Twitter Used to Spread London's Riots.*" Paisley Dodds and Raphael G. Satter, July 9, 2011.
[53] Id.
[54] Id.

who say police efforts have been feeble and slow. Twitter is helping to pinpoint areas of violence, organize community cleanup groups and alert people of alternative routes they can use."[55]

But surely the incidents like these in the western countries are far and few in between, legendary, and ephemeral such that this phenomenon could only occur once. "The Greek riots are a classic case of iRevolutions in the making, i.e., individuals and networks (hyper) empowered by linking technologies like Facebook, Twitter and SMS."[56] The reasoning for the riots is also astounding;

> The riots were sparked after a 15-year old student "died from a gunshot wound in his heart, inflicted by a policeman following an altercation between a police patrol and a small group of youths in Athens" (1). Thousands of young people took to the streets after quickly spreading the news via Facebook, Twitter and SMS.[57]

This is very similar to the occurrence from London. Though the shooting itself sparked the riots, there is belief it was simply the straw that broke the camel's back;

> …the latest upheaval comes on top of anger directed towards the government over a series of financial scandals. While demonstrators rampaged outside, a parliamentary committee was hearing evidence this week about an illegal exchange of land by Vatopedi monastery on Mount Athos. Senior cabinet ministers are alleged to have swindled taxpayers out of an

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[55] Id.
[56] www.irevolution.net, "*Greek Riots, Facebook, Twitter and SMS.*" Patrick Phillippe Meier, December 18, 2008.
[57] Id.

> estimated 100m euros… while lining their own pockets.[58]

Of course, this would not be the last time Greece would show up in the news for violence and unrest;

> Swarms of violent groups overtook a general protest against austerity measures in the city center on Wednesday, lashing out at the government and security forces and hurling gasoline bombs that, according to the police, set fire to a bank building and killed three workers.[59]

These latest protests seem to piggy-back off of the same reasons from almost two years prior, and with latest austerity measures, they do not seem to be slowing down anytime soon.

"It worked in Cairo's Tahrir Square. Now, taking their cue from social-media fueled uprisings in places like Egypt and Iran, a band of online activists hopes it will work on Wall Street."[60] The air and movements of the Arab Spring/Iranian Revolution and the Europe riots has spread to the United States. Occupy Wall Street[61] has swept the US like a wild-fire. September 17, 2011 marked the first occupation on Wall Street[62]. How did it come about, though?

> Kalle Lasn, co-founder of the counterculture magazine AdBusters, has taken to Twitter and other websites to help organize a campaign encouraging tens of thousands of Americans to hold a nonviolent sit-in

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[58] www.economist.com, *"Anarchy in Athens: Riots in Greece Put Pressure on the Government of Costas Karamanlis,"* December 9, 2008.
[59] The New York Times, "*Three Reported Killed in Greek Protests*." Dan Bilefsky, May 5, 2010.
[60] www.cnn.com, *"Wall Street Protesters Inspired by Arab Spring Movement*," Michael Saba, September 17, 2011.
[61] Also known as "OWS"
[62] www.cnn.com, *"Wall Street Protesters Inspired by Arab Spring Movement*," Michael Saba, September 17, 2011.

> Saturday in Lower Manhattan, the heart of the U.S. financial district… Each of these revolutions began differently, but they all were organized and fueled by tech-savvy social media users, particularly on Facebook and Twitter. Lasn now wants to use the Internet for a protest in the United States.[63]

The message started simply with a tweet to have a sit-in at the New York Stock Exchange, similar to the demonstration at Tahrir Square in Cairo, Egypt[64]. The message increased in size when notable hacktivist group Anonymous joined the message and urged participation[65]. This movement took a different direction than the Middle Eastern movements; other parts of the country and the world became involved[66]. There were planned protests taking place under the same banner in Japan, Israel, Canada and a lot of European nations[67]. The social rallying cry has been quite extensive with progressive movements and blogs working together by sharing photos and streaming videos in their blogs of the occurrence of Occupy Wall Street[68].

In the Middle Eastern countries, the people were fighting for such things we take for granted like democracy and basic human rights[69]. "In Tunisia and in Egypt, the Internet was used to organize surprising numbers of people to get out into the

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[63] Id.
[64] Id.
[65] Id.
[66] Id.
[67] Id.
[68] www.politico.com, "*Occupy Wall Street Uses Arab Spring Model*," Tim Mak, October 3, 2011.
[69] The New York Times, "*How a Single Match Can Ignite a Revolution*." Robert F. Worth, January 21, 2011.

streets and start a radical, democratic movement for regime change."[70] The Occupy movements are similar in wanting to invoke change, but for different purposes, as Michael Saba, news correspondent for CNN, stated,

> 'Of course, the situation here in America and many European countries is quite different. We're not living under a torturous dictatorship, for one… Nonetheless, there's a feeling that the global financial system, the heart of which is in the U.S., in New York, that this system is somehow having its way with us... 'There's a feeling that we need a revolution in the way that our economy is run, the way that Washington is run.'[71]

Kalle Lasn's[72] commentary about dictatorship in the Middle Eastern revolutions was predicated, in part, to the attempted stifling of information via internet shutdowns[73]. The stifling of such speech could be likened to a First Amendment violation in the United States, so we would never see any act like the shut-down of information flow occur here,

> …Bay Area Rapid Transit officials' decision to cut off underground cellphone service for a few hours at several stations Thursday. Commuters at stations from downtown to near the city's main airport were affected as BART officials sought to tactically thwart a planned protest over the recent fatal shooting of a 45-year-old man by transit police.[74]

So, what is the difference when the United States commits the same act as a Middle Eastern government seeking to stifle speech? "An illegal, Orwellian violation of free-

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[70] www.cnn.com, *"Wall Street Protesters Inspired by Arab Spring Movement*," Michael Saba, September 17, 2011.
[71] Id.
[72] The organizer of Occupy Wall Street
[73] Id.
[74] www.thehuffingtonpost.com, "*BART Cell Phone Shutdown: Safety Issue Or Free Speech Violation?.*" Terry Collins, August 15, 2011.

speech rights? Or just a smart tactic to protect train passengers from rowdy would-be demonstrators during a busy evening commute?"[75] This question poses an interesting point, but do the two ideas of violation of free-speech and a smart tactic aimed at protection have to be mutually exclusive? Even with the best of intentions to protect the populace, can the government commit such an act?

There are nuances to consider, including under what conditions, if any, an agency like BART can act to deny the public access to a form of communication -- and essentially decide that a perceived threat to public safety trumps free speech. "These situations are largely new ones, of course. A couple of decades ago, during the fax-machine and pay-phone era, the notion of people organizing mass gatherings in real time on wireless devices would have been fantasy."[76] Do the laws constructed so many years ago apply to these new situations? Did our founders anticipate these advances in technology and make our Constitution applicable in all circumstances? The BART system officials stated this was not a decision based on the speech[77], and further stated "…the cellphone disruptions were legal as the agency owns the property and infrastructure."[78] Furthermore, they [the representatives for the BART system] felt no intrusion on rights because ""BART had operated for 35 years without cellphone service and no one ever

[75] Id.
[76] Id.
[77] Id.
[78] Id.

suggested back then that a lack of it made it difficult to report emergencies and we had the same infrastructure in place."[79]

Unfortunately for the BART officials, others found a great comparison between the acts they committed and the stifling efforts of the regimes in the Middle East "BART officials are showing themselves to be of a mind with the former president of Egypt, Hosni Mubarak," the Electronic Frontier Foundation said on its website. Echoing that comparison, vigorous weekend discussion on Twitter was labeled with the hashtag "muBARTek."[80]

Can systems be shut down in the anticipation of a crime happening? Some in the legal field have opined that it cannot

> Aaron Caplan, a professor at Loyola Law School in Los Angeles who specializes in free-speech issues, was equally critical, saying BART clearly violated the rights of demonstrators and other passengers.
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> "We can arrest and prosecute people for the crimes they commit," he said. "You are not allowed to shut down people's cellphones and prevent them from speaking because you think they might commit a crime in the future."
>
> Michael Risher, the American Civil Liberty Union's Northern California staff attorney, echoed the sentiment in a blog: "The government shouldn't be in the business of cutting off the free flow of information. Shutting down access to mobile phones is the wrong response to political

[79] Id.
[80] Id.

> protests, whether it's halfway around the world or right here in San Francisco."[81]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances[82]. When we talk about what the BART administrators did, it helps to see what people are claiming they violated. What can the government do when it feels threatened? What can the United States government do if protests and uprisings were to take place in the United States, similar to those in the Middle East? Is the BART shutdown a precursor to what can be done?

Just because a government actor does not like a certain speech, he or she cannot allow personal bias to limit it. In Collin, the Ku Klux Klan had planned for a rally in the city of Skokie, IL. The city set up numerous restrictions on the Klan rally, and the Court found the following in the regards to those restrictions:

> (1) ordinance prohibiting dissemination of materials which would promote hatred toward persons on basis of their heritage was unconstitutional; (2) permit for proposed march could not be denied on basis of anticipated violations of ordinance prohibiting the dissemination of materials which promote hatred toward persons on basis of their heritage; (3) ordinance prohibiting members of political party from assembling while wearing military-style uniform was unconstitutional, and (4) ordinance requiring certain persons seeking to parade or assemble in village to obtain liability insurance in the amount of at least $300,000 and property damage insurance in the amount of

[81] Id.
[82] USCS Const. Amend. 1

> at least $50,000 could not be constitutionally applied to prohibit proposed demonstration.[83]

However, the Court was unwilling to make this a blanket rule, "First Amendment activities, however, do not escape all restraint or regulation. 'Reasonable regulations of the time, place, and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted by the First Amendment.' (citing to: Young v. American Mini Theatres, Inc., 427 U.S. 50, 63 n.18, 96 S.Ct. 2440, 2448, 49 L.Ed.2d 310 (1976))."[84]

Reasonable regulation has included such things as preventing traffic build-up or prohibiting interference with nearby activities.[85] The Occupy Wall Street protesters found themselves in such a predicament when some were refusing to use the pedestrian walkway of the Brooklyn Bridge, and instead opting to engage police on the vehicular route leading to arrests.[86]

Recently, Penn State has been in the news over great controversy and scandal. Joe Paterno, who had coached in Penn State for about 61 years, recently was terminated from his position due to the abuse allegations.[87] The students of Penn State are literally taking to social media, then moved out to the streets and rallied in support of the ousted legend by turning over news vans and light poles, which has led to students being sent away and

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[83] Collin v. Smith, 578 F.2d 1197 (7th Cir. 1978)
[84] Id. at 1212
[85] Id.
[86] www.guardian.co.uk, *"Occupy Wall Street – The Story of the Brooklyn Bridge 'Trap'*," Matt Wells, October 21, 2011.
[87] www.cnn.com, "*Penn State grapples with conflict over coach's firing, horrific allegations,"* November 10, 2011.

sometimes arrested by police.[88] This would likely be a clear indication where First Amendment rights should be trumped by the destruction and chaos that ensued as that is not protected.

The courts have found violating of First Amendment rights to mean stopping someone from assembling and protesting, outside of reasonable restrictions, the courts have found to be violation of First Amendment rights. Does the government have any other authority, though? Can it take preventative measures for what it feels might be a threat, similar to the BART scenario? According to the Supreme Court of the United States, the right to peaceable assemblage links to every other right contained within the First Amendment

> The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance. From the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen. "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." (citing to: *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed. 278 (1937)). People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may "assembl[e] for any lawful purpose," (citing to: *Hague v. CIO*, 307 U.S. 496, 519, 59 S.Ct. 954, 965, 83 L.Ed. 1423 (1939)) (opinion of Stone, J.). Subject to the traditional time, place, and manner restrictions, see, *e. g.*, *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); see also *Cox v. Louisiana*, 379 U.S. 559, 560-564, 85 S.Ct. 476, 478-480,

[88] Id.

> 13 L.Ed.2d 487 (1965), streets, sidewalks, and parks are places traditionally open, where First Amendment rights may be exercised, see *Hague v. CIO, supra*, at 515, 59 S.Ct., at 963 (opinion of Roberts, J.); a trial courtroom also is a public place where the people generally-and representatives of the media-have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.[89]

In Richmond, defendant was on trial for murder, and the defense counsel brought a motion to the court for the trial to be closed off from the public. The defense counsel in this case wanted to have a closed trial, and brought a motion before the court.[90] The court granted the motion, however appellants argued "…that the court had failed to consider any other, less drastic measures within its power to ensure a fair trial. Tr. of Sept. 11, 1978 Hearing on Motion to Vacate 11-12. Counsel for appellants argued that constitutional considerations mandated that before ordering closure, the court should first decide that the rights of the defendant could be protected in no other way."[91] In regards to the first amendment, the court stated "These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government."[92] In the end, the court held that "the right to attend criminal trials[17] is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of

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[89] Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 577-78, 100 S. Ct. 2814, 2827-28, 65 L. Ed. 2d 973 (1980)
[90] Id.
[91] Id. at 560
[92] Id. at 575

freedom of speech and 'of the press could be eviscerated.' (citing to: *Branzburg*, 408 U.S., at 681, 92 S.Ct., at 2656.)"[93]

It may seem innate, but like the Court said, if you deny people the right to assemble, you are denying them the right to be heard, and bring their grievances regarding the government forward. When Charles Hill was killed by BART Police and the people were assembling via Twitter and Facebook, they were going to the streets to protest their grievances with the BART Police.[94] Yet, as we saw during the BART cell phone fiasco; the BART officials claimed a few different arguments to allow their actions. One was that the BART system only recently had cell phone service, and for the previous 35 years did not.[95] The second was that the agency owns the infrastructure; therefore it was legal for them to make that decision.[96] It seems the one thing they are not saying is that the people cannot assemble, simply that they cannot use one form of communication medium to alert each other of the assembly, does this equate to denying the right to assemble and if it does, does this denial fall under the exception? Given how the court in Richmond mentioned, Constitution al rights should be protected at all costs and therefore all other avenues should be explored before turning to what many see as extreme measures, such as shutting off people's communication.

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[93] Id. at 580
[94] www.thehuffingtonpost.com, "*BART Cell Phone Shutdown: Safety Issue Or Free Speech Violation.*" Terry Collins, August 15, 2011
[95] Id.
[96] Id.

The decision was likened to the crackdown in the London riots[97], although no arrests were made by those making inflammatory comments. Does that make the situation better to prevent the situation and arrests versus London's method of arresting people from the onset? Of course, there are a slew of arguments that can be made for predictive crime-fighting, but that is a separate issue altogether. Preparing to prevent a crime and making arrests due to predicting a potential crime are two separate events.

> (a) Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot.
> (b) Incitement to riot is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.
> (c) Every person who incites any riot in the state prison or a county jail that results in serious bodily injury, shall be punished by either imprisonment in a county jail for not more than one year, or imprisonment in the state prison.
> (d) The existence of any fact that would bring a person under subdivision (c) shall be alleged in the complaint, information, or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by a plea of guilty or nolo contendere, or by trial by the court sitting without a jury.[98]

This California law is for understanding what it means to incite a riot and what the punishment is. Under section (a), the pertinent part that would apply would be "…or

[97] Id.
[98] Cal. Penal Code § 404.6 (a)

urges others to commit acts of force or violence, or the burning or destroying of property."[99] What does it take to urge others? One court held, "To persons of ordinary understanding, the urging of others to acts of force or violence or to burn or destroy property, as proscribed by section 404.6, is neither similar nor comparable to speech which merely stirs to anger, invites public dispute, or brings about a condition of unrest."[100] In this case, the defendant was convicted of violating Cal. Penal Code § 404.6, and on appeal challenged the constitutionality based on a lack of adequate warning of what constitutes an offense.[101] The court found about the statute that it "was not unconstitutional on ground of being vague or overly broad or as amounting to impermissible limitation on freedom of speech."[102] The Court found the statute to be clear in meaning

> It provides for punishment of every person who 'urges others' to commit acts of force or violence or to burn or destroy property. 'Urge' is a word of common and ordinary usage, and the point at which the proscribed urging occurs will depend in each instance on the point at which the speaker utters the words or indulges in other conduct urging that the violent or forcible acts or the burning or destruction be done.[103]

A case like Davis needs perspective. This was also a time of unrest as the Civil Rights Act passed only four years prior, and was right in the heart of the Vietnam War. In People v. Ascher, the defendant, a protester of the Vietnam War, took to the streets

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[99] Id.
[100] People v. Davis, 68 Cal. 2d 481, 485, 439 P.2d 651, 653 (1968)
[101] Id.
[102] Id. at 439
[103] Id. At 485

outside of Radio City Music Hall, called for others, and about one hundred people joined him in the middle of the street.[104]

> The police on duty at the intersection were shoved aside. The traffic couldn't get through, couldn't move; the operators of the vehicles were blowing shorns, shouting at the crowd to step aside. Pedestrians stood back, made no attempt to cross. There were approximately over 1,000 people on the corner; it was very noisy. The 100 remained in the center of the roadway until police, arms outstretched, moved into the crowd and pushed them back. Vehicular traffic began to move. Moments later, defendant walked into the street and shouted through the bull horn, 'Come out again.' The scene was repeated and also a third time when defendant again used the bull horn to exhort the crowd to 'Come on out.' After the third episode, defendant, an 18-year old college student, was arrested and charged with violating s 240.08 of the Penal Law—Inciting to Riot.[105]

The defendant argued that the law was unconstitutional and that he was not inciting a riot and the court found that constitutional First Amendment rights were not impeded by this statute, as free speech is not absolute.[106] The court finds the statute explaining the conduct it condemns being broad, but carefully chosen. "It clearly defines the number of people, 10, who must be urged to action."[107] There is much curiosity behind these arrests during a highly political and divisive time.

A call to violence seems to fit the proper description of incitement, so does this permit BART to act as they did?

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[104] People v. Ascher, 57 Misc. 2d 249, 250, 291 N.Y.S.2d 648, 649 (Crim. Ct. 1968)
[105] Id. at 649-650.
[106] Id. at 650.
[107] Id. at 651.

Maybe it is possible to punish people for their actions. If those looking to protest the BART Transit System were posting ideas to burn the system down, cause damage, harm people, or create other forms of havoc, it would make sense that those who made the violative postings be punished. The commensurate punishment for this crime is "… punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment."[108]

The issue for law enforcement and the courts should be about if the language and rhetoric used rises to the level of inciting a riot. After Brutus killed Caesar, Mark Antony addresses the people of Rome that began with the famous "Friends, Romans, countrymen, lend me your ears…"[109] He then proceeds to praise Brutus as a man of honor who killed Caesar for the betterment of his people, and in the same breath praises Caesar as the most honorable and generous person he has known.[110] Mark Antony appears to be praising both sides, the his friend Caesar, and the men who killed him, but he is in fact slyly riling the crowd but showing all that Caesar has done and even in death continues to do, which invokes the spark for the mob to go out and kill Caesar's killers.[111] The people screamed out "Revenge! About! Seek! Burn! Fire! Kill! Slay!"[112] Who is at fault here? The intention of Mark Antony to incite a riot was very subtle, but the language itself was not inflammatory. So there is, to some degree, a great subjectivity of what would fall under this statute. If this were today, and the people of Rome took to Twitter and Facebook calling for death and revenge, those individuals who inspired the

[108] Cal. Penal Code § 404.6 (b)
[109] Julius Caesar, William Shakespeare. Act Three, Scene two, page 70.
[110] Id.
[111] Id.
[112] Id. at 196

action would fall under the California statute and should be charged. What about the rest of the people, though? Those who are silent cannot be grouped into the same category as those who made the comments. Given the wide-spread nature of Social Media, it might be easy to apply a different standard to those who use it. Should there be a different standard? In the case of the BART System or Occupy Wall Street, is there a greater chance of danger because of the further reach people have today?

First amendment rights should not be, and are not, different in the context of Social Media and works online. For example, someone cannot simply go on a Social Media site and defame the character of another person without the same consequences as someone making the comments in any other context outside of Social Media,

> The First Amendment and state constitutional free-speech provisions often come into play in these types of defamation suits. Several of the most prominent cases regarding user liability for material posted on social networking sites have dealt with students suffering criminal charges or adverse consequences at their schools as a result of allegedly defamatory, threatening or indecent messages posted on social networking sites.[113]

So does this explain the preemptive arrests made in London and justify taking preemptive action against a whole group of people in San Francisco for rioting rhetoric espoused on Twitter?

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[113] www.findlaw.com, "*Understand the Legal Issues for Social Networking Sites and Their Users*," Kevin Fayle, September 18, 2007.

In January of 2010, Robin Hood airport in England was shut down due to snow.[114] Due to this snow, Paul Chambers, who was supposed to fly on this day, tweeted the following, "Robin Hood airport is closed. You've got a week and a bit to get your shit together, otherwise I'm blowing the airport sky high!!"[115] Paul Chambers claims to be joking, and those who know him interpreted the same, but that tweet led the police to his home and arrested, and subsequent conviction as of the time this article was written, as well as his failing on appeal.[116]

> In her appellate ruling, Judge Jacqueline Davis found that Chambers's tweet contained menace and that he should have known it could be taken seriously. *The Guardian* quotes Judge Davis as saying, "[The tweet was] menacing in its content and obviously so. It could not be more clear. Any ordinary person reading this would see it in that way and be alarmed.[117]

Aptly, the author of this article states, "The line between free speech and yelling 'fire' in a crowded theater is becoming less and less clear in the age of both anti-terrorism laws, and the public and global nature of social networking."[118]

Do the Social Media sites hold any liability in any of these actions? Is it possible to take them to task for allowing some of these messages for being distributed and maybe even shut the sites down? Websites have been brought to court and have had actions taken against them before, even the Supreme Court of the United States has heard cases on similar subjects,

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[114] www.mashable.com, "*Man Who Joked About Bombing Airport via Twitter Convicted*." Christina Warren, November 11, 2010.
[115] Id.
[116] Id.
[117] Id.
[118] Id.

> The question is under what circumstances the distributor of a product capable of both lawful and unlawful use is liable for acts of copyright infringement by third parties using the product. We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.[119]

When Justice Souter gave this opinion, he was talking about a service that allowed the illegal downloads of movies though a file transfer service.[120] One thing not mentioned in this opinion is if that applies to other acts. In fact, most cases dealing with actions against websites have to do with copyright infringement, and most of these actions are done through the judicial branch. However, lately there have been a slew of website shutdowns and seizures by federal government agencies, "Blog TorrentFreak ran a list of more than 130 domains it said were seized by the Department of Justice and the Department of Homeland Security's Immigrations and Customs Enforcement division as part of 'Operation in Our Sites.' TorrentFreak called the move the largest such round of seizures to date."[121] The websites were replaced by the following message,

> This domain name has been seized by ICE – Homeland Security Investigations, pursuant to a seizure warrant issued by a United States Distrcit Court under the authority of 18 U.S.C. §§ 981 and 2323.[122]

These website shutdowns have been justified under the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which allows the government to

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[119] Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 918-19, 125 S. Ct. 2764, 2770, 162 L. Ed. 2d 781 (2005)
[120] Id.
[121] www.cnet.com, "*U.S. executes another round of Web site takedowns*," Edward Moyer, November 26, 2011.
[122] Id.

government to "grab 'property' used in the commission of certain crimes--without ever having to get a conviction for the crime itself."[123] There is concern with this act, and new acts like the Stop Online Piracy Act, which many say is far broader and overreaching than the PRO-IP Act, may go too far, "Critics worry that, among other things, the government is being given the power to quash dissension on Web sites merely by claiming that certain sites foster copyright infringement."[124]

Some states have enacted specific statutes for criminal activity on websites as well,

> Upon consideration of an application, the court may enter an order, including an ex parte order as requested, advising the Attorney General or a district attorney that the items constitute probable cause evidence of a violation of section 6312 (relating to sexual abuse of children) and that such items shall be removed or disabled from the Internet service provider's service. The court may include such other information in the order as the court deems relevant and necessary.[125]

Though it may seem that a website posting child pornography is a far cry from a website dedicated to inciting riots, the rule should be the same: If the primary purpose of that site is to be one that furthers criminal acts, it should be shut down, however; there should be exceptions to the rule as well. In the Southern District of New York, Viacom brought suit against YouTube for copyright infringement, but under the Digital Millennium Copyright Act, was found not liable.[126]

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[123] Id.
[124] Id.
[125] 18 Pa. Cons. Stat. Ann. § 7627 (West)
[126] Viacom Int'l Inc. v. Youtube Inc., 253 F.R.D. 256 (S.D.N.Y. 2008)

Under the Digital Millennium Copyright Act (DMCA), websites that host things like videos can be protected from liability under the safe harbor section through a number of protective methods.[127]

> Fact that internet video-sharing website hosted an entire category of content--music--that was subject to copyright protection did not establish that website had actual knowledge of infringement, as required to prove website was not entitled to coverage under safe harbor provision of Digital Millennium Copyright Act (DMCA). UMG Recordings, Inc. v. Veoh Networks Inc., C.D.Cal.2009, 665 F.Supp.2d 1099, 93 U.S.P.Q.2d 1010.[128]

With these laws, if a site is dedicated to creating riots and havoc that are contrary to laws about inciting riots, then those websites should be taken over by federal agencies and eventually removed. However, if there are people simply posting on a website like Facebook or Twitter, then the website should take steps to protect themselves with a flagging system but only the individuals should be responsible. In fact, this very idea has been mentioned in the Senate, "Joseph Lieberman, the independent senator from Connecticut, sent a letter to Google CEO Larry Page this week expressing his opinion that Google-owned blogging platform Blogger should provide a button that would let readers of Blogger-powered blogs flag "terrorist content," according to a report."[129] So, Facebook and Twitter could enact a surveillance method, and in return be granted safe harbor from being shut-down themselves. I will go so far as to say that allowing these

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[127] 17 U.S.C.A. § 512 (West)
[128] Id.

[129] www.cnet.com, "*Sen. Joe Lieberman: Google's Blogger needs 'terrorist' button*," Edward Moyer, November 24, 2011.

posts on sites like this to be found helps crime enforcement by making someone committing a criminal act more prevalent.

About a year ago, closely corresponding to the time of the Egyptian uprising and Arab Spring, the Senate Committee on Homeland Security and Governmental Affairs approved a bill called the Protecting Cyberspace as a National Asset Act (PCNAA).[130]

> [T]he bill, sponsored by Sens. Joe Lieberman, Susan Collins, and Tom Carper, would give the president "emergency authority to shut down private sector or government networks in the event of a cyber-attack capable of causing massive damage or loss of life." The original bill granted the president the authority to "indefinitely" shut down networks, but an amendment to the PCNAA, approved yesterday, mandates that the president "get Congressional approval after controlling a network for 120 days.[131]

This bill would also bring about one other action

> [T]he bill would also see the creation of a new agency within the Department of Homeland Security, the National Center for Cybersecurity and Communications (NCCC). Any private company reliant on "the Internet, the telephone system, or any other component of the U.S. 'information infrastructure'" would be "subject to command" by the NCCC, and some would be required to engage in "information sharing" with the agency.[132]

This bill is laced with much irony. The fact that private institutions would turn over their control to the government, and that control would allow all transfer of data and information to be at the behest of the government seems very eerily similar to the governmental control during Arab Spring. Except, in the United States, if the companies

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[130] www.thehuffingtonpost.com, "*Internet 'Kill Switch' Approved By Senate Homeland Security Committee.*" Bianca Bosker, June 25, 2010. "
[131] Id.
[132] Id.

affected by this act disagreed with an action the government takes, the companies could use judicial recourse and challenge that action.

> But last month's rewrite that bans courts from reviewing executive branch decrees has given companies new reason to worry. "Judicial review is our main concern," said Steve DelBianco, director of the NetChoice coalition, which includes eBay, Oracle, Verisign, and Yahoo as members. "A designation of critical information infrastructure brings with it huge obligations for upgrades and compliance."
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> In some cases, DelBianco said, a company may have a "good-faith disagreement" with the government's ruling and would want to seek court review. "The country we're seeking to protect is a country that respects the right of any individual to have their day in court," he said. "Yet this bill would deny that day in court to the owner of infrastructure."[133]

It is important to understand which industries this bill will affect,

> Under the revised legislation, the definition of critical infrastructure has been tightened. DHS is only supposed to place a computer system (including a server, Web site, router, and so on) on the list if it meets three requirements. First, the disruption of the system could cause "severe economic consequences" or worse. Second, that the system "is a component of the national information infrastructure." Third, that the "national information infrastructure is essential to the reliable operation of the system."[134]

The senate did leave some measure of recourse for those companies, even if it is not in the court room, "A company that objects to being subject to the emergency regulations is permitted to appeal to DHS secretary Janet Napolitano. But her decision is final and courts are explicitly prohibited from reviewing it."[135]

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[133] news.cnet.com, "*Internet 'kill switch' bill will return*," Declan McCullagh, January 24, 2011.
[134] Id.
[135] Id.

This particular act may also be unnecessary, “the president already has "nearly unchecked authority" to control Internet companies. A 1934 law creating the Federal Communications Commission says that in wartime, or if a "state of public peril or disaster or other national emergency" exists, the president may "authorize the use or control of any...station or device."[136]

This act sets a dangerous precedent. It may also lead the way for other laws and acts that infringe and inhibit people’s allowed usage of the internet, as well as hurt ISP’s and companies that rely on the internet to do business. Other laws are coming down the pipeline that can have chilling effects on internet usage and commerce, as well as the general free-use of the internet, “A bill moving through Congress is intended, on its surface at least, to do something relatively simple: Crack down on the illegal pirating of movies, music and other copyrighted material.”[137]

There has been, as the title of the article suggests, backlash over this bill due to what some feel is an overreaching effect that will have a chilling effect on free speech and innovation.[138] The law’s intent is “… to help put a stop to foreign websites that illegally post, and sometimes sell, intellectual property from the United States. Federal law-enforcement agencies would be empowered to shut down those sites, and cut off advertising and online payments to them.”[139] The overarching effect of the act is in its vagueness, which opponents of the bill have pointed out,

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[136] Id.
[137] www.cnn.com, “*Anti-piracy bill meets Web-freedom backlash*,” Doug Gross, November 18, 2011.
[138] Id.
[139] Id.

> Some critics fear that enforcement of the act is ill-defined and could allow federal authorities to go after sites that don't set out to illegally broadcast or sell content.
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> For example, advocates say, YouTube has housed important content, like video of political unrest in places like Egypt and Iran where government crackdowns had otherwise blocked media access. But YouTube also is home, albeit against its will, to music videos, movie clips and other content posted without the intent of its creators.[140]

The message in the end seems clear. It seems the centralization and containment of power is what most governments are seeking these days. The irony of it all is rife, as the United States has continuously lambasted other countries for what has been deemed as violations against human rights, violations of free speech, totalitarianism, and government crackdowns. Though, it seems more and more that as people dislike and push against their governments, no matter where that government may be does not matter, the end result appears similar: Those who have their power threatened seem to dig in and take drastic measures to keep it. It seems in a time when money is scarce; power has become a hot commodity to become greedy over. "Someone reminded me I once said 'Greed is good.' Now it seems it's legal, because everyone is drinking the same Kool Aid."[141] One can only hope that Gordon Gecko is wrong in this respect, because if a country like the United States falls down a similar, if not the same path, as Egypt, Syria, and Iran, then who will speak out on behalf of the free people of our democracy?

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[140] Id.
[141] Wall Street: Money Never Sleep, 2010.