

Did BART Break First Amendment Rights?

Written by Viara Zaprianova
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On August 11, 2011, BART blocked the cell-phone reception of its commuters in San Francisco's Civic Center Station, supposedly to prevent a civil protest to take place.

Today, the so called hacker group 'Anonymous' and protestors tried to bring down BART's website and organized a peaceful protest at the Civic Center at 5pm which was gagged by the SF and BART police forces, but continued on the street of San Francisco.

Critics of the actions undertaken by BART have been compared to those undertaken by the criminal and anti democratic actions of Hosni Mubarak, who ordered the country's communications to shut down in a desperate attempt to uphold his totalitarian regime.

The recent riots in London, UK have raised many questions regarding freedom of speech and of peaceful assembly of demonstrators who want to exercise their innate political and civil rights.

In Great Britain Facebook and twitter users have been arrested under the pretext that their activities were inciting the rioting and looting that took place in the country. Social media suddenly has been re-categorized from being a facilitator of democratic movements, like the ones which took place in the Arab Revolutions, to an evil, and even dangerous movement that has to be stopped by the western governments, that are facing with severe economic and political problems and apparently manifesting their failure to rule.

This short article wants to put an emphasis on the American Constitution, the First Amendment and the Bill of Rights. If the U.S. of America is willing to become the leader in the so called International Community regarding democratic governance, embracing civil rights and liberties, we need to know what our Constitutional fathers had in mind while writing our social contract and what is necessary to be done to further those rights, ideas and accommodate them to our

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new world.

The U.S. Constitution prohibits content based and viewpoint restrictions on speech, especially while it is imposed or promoted by the Federal or a State Government or a governmental agency.

In our case, BART is a California government agency and subject to the First Amendment provisions.

BART defended itself earlier that it was attempting to promote public safety by suppressing the protest over the shooting of a man by a transit police officer, argued to be unlawful and prohibited by its rules, by shutting down cell-phone reception. The government agency claimed that it has the right to control technology on its premises.

As constitutionally protected speech this demonstration (a peaceful political activity) took place at a public forum – a railroad station, which according to a California Supreme Court decision from 1967 cannot be banned by the city government, respectively its governmental agencies to be a political public forum. BART argues that it cut off cell-phone reception only to prevent prohibited activity and as the BART's statement of Friday reads, "A civil disturbance during commute times at busy downtown SF could lead to platform overcrowding and unsafe conditions for BART customers, employees and demonstrators", so they had to temporarily interrupt the services at the select stations to ensure safety.

As our Constitutional Law professors will tell us free speech can be limited if it is content-neutral, meaning, it does not prohibit the topic of the message that is sent by the protestors or the ideology behind it; if the government action is not unconstitutionally vague and overbroad. It can be said that BART's actions are limiting speech only at certain locations, time and place and the city does not prohibit the freedom of assembly and demonstration in other public forum locations.

Nevertheless, the problem here is not the very location of this peaceful civil uprising, but rather the manner used by the government to maintain public order at the BART's locations, that being the interruption of communication services. This act is obviously preventing people to talk about a certain subject, this being characterized as a subject matter restriction, content-based, vague

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and overbreadth as a government methodology limiting every single passenger's right to use his/her cell phones for the purpose of a peaceful assembly or political speech, guaranteed by the First Amendment or just for any other purpose related to this very citizen right to use the services of his/her communication provider.

We have observed recently a tendency to limit freedom of expression – the right to share opinions, given to security measures taken by the Government, supposedly in favor of our safety and commonwealth, but it seems that we do enjoy restrictions on our freedoms that go far beyond Constitutional limitations or innate human and civil rights.

Today, our channels of communication are very different from the ones we used 10 or 20 years ago. Everyone's cell phone with a Twitter feed or news application is a digital printing press and the main issue is how we will enter the new age, with fear, censorship or with acceptance, tolerance and furthering social consciousness and free will.