**Advocacy, Autonomy, and Liability: Scanlon's Theory of Expression and Curley v. NAMBLA**

In 2000, the American Civil Liberties Union found itself defending one of the most controversial organizations in the United States, the North American Man/Boy love Association (NAMBLA). The parents of Jeffrey Curley, a ten year old boy who was abducted and murdered by two adult men, filed a wrongful death suit claiming that those men were influenced by NAMBLA'S website, which essentially advocated for the legalization of adult-minor sexual relationships. The plaintiffs argued that the site's ideological content, its advocacy for "man-boy love," and certain writings that depicted adult-child sexual relationships contributed to the mindset that enabled the murder. The ACLU responded that even if NAMBLA advocated illegal acts, "speech is not deprived of First Amendment protection simply because it advocates an unlawful act." This case raises questions at the intersection of tort liability, constitutional law, and political philosophy. Therefore, this case raises a wide array of questions. Should advocacy of illegal acts remain protected speech? Can an organization be held liable for crimes committed by individuals who read its materials? Are websites different from other forms of expression? Moreover, how does a liberal democracy navigate the tension between abhorrent speech and the protection of autonomy?

This paper therefore, intends to formulate an argument which draws upon Thomas Scanlon's theory of freedom of expression, in order to defend that the ACLU's argument is fundamentally correct. It aims to defend that the advocacy of illegal conduct, without more, does not justify state suppression or civil liability. Scanlon's defense of expression is rooted in the moral relationship between autonomous citizens and a legitimate state, and not in the social value of speech. A state violates that relationship when it restricts speech based on the fear that citizens will be persuaded by it. However, Scanlon, also understands and recognizes limits within his notion. He recognizes that when expression functions not as advocacy but as a tool

for committing a wrongful act, such as direct incitement, operational guidance, or conspiracy, it loses protection. Hence, on the basis of this framework, NAMBLA could only be held liable if its website crossed that line. Additionally to support this argument further, the case, American Booksellers Association v Hudnut further strengthens the conclusion that the government cannot suppress speech merely because its content is offensive, harmful, or ideologically dangerous. Even though the case of Curley v NAMBLA is morally deplorable, it did not meet the threshold of causation or intent necessary to justify liability. Due to these reasons. Both Scanlon's philosophical framework and the constitutional doctrine support the protection of advocacy, even when that advocacy concerns illegal acts.

**Scanlon's Millian Principle and Audience Autonomy**

Philosopher Thomas M Scanlon offers a powerful moral framework for why even offensive or dangerous advocacy deserves protection. Scanlon's Millian Principle, named after John Stuart Mill, posits that certain harms, even if they occur "but for" an act of expression, cannot be used to justify the restriction of speech without undermining political legitimacy. In his essay Scanlon states that governments cannot restrict expression "simply because it may lead others to acts which the government regards as harmful" (Scanlon 214). In particular, Scanlon identifies two kinds of harm that the government may not count in favor of censorship. These are first of all harms caused by an individual coming to hold false beliefs due to speech, and harms caused by unlawful acts that an individual performs because speech led them to believe those acts were worth doing. In other terms, if an individual reads or hears advocacy and then, of their own volition, commits a harmful act, the mere influence of the speech is not a valid reason to suppress speech. The key, for Scanlon, is that individuals should remain responsible for forming their own beliefs. If speech is censored by the state on the grounds that citizens may adopt dangerous ideas, it treats citizens not as autonomous agents but as passive objects who require a shield from persuasive arguments. Thus, the mere fact that NAMBLA advocates

sexual relationships between minors and adults, which is also illegal in all states, cannot justify suppressing its speech. Scanlon's principle directly covers the Curley v. NAMBLA scenario. Specifically, in the sense that even if the murderers were influenced or encouraged by NAMBLA's materials, that resultant harm "cannot be taken as part of a justification for legal restrictions" on NAMBLA's speech. To punish NAMBLA for inspiring someone's criminal act would violate this principle

The moral foundation of Scanlon's view lies in respect for individual autonomy. Scanlon argues that citizens in a free society must be treated as autonomous, rational agents capable of evaluating arguments and making up their own minds about how to act. To ban speech on the paternalistic assumption that it will cause listeners to do wrong is to deny the audience's capacity for independent thought and judgement. An "autonomous person cannot accept without independent consideration the judgement of others as to what he should believe or what he should do". If the state suppresses certain advocacy simply to prevent people from being swayed by it , the state is effectively deciding for citizens what ideas are too dangerous for them to consider. This for Scanlon, is an affront to autonomy, which treats adults as children who are unable to be trusted to hear arguments and reason for themselves. Hence, even advocacy of immoral or illegal acts must be permitted so that listeners retain the responsibility and freedom to judge the message themselves.

Scanlon connects the principle of autonomy explicitly to the issue of advocating law-breaking. In a society of autonomous individuals, the government "may not prohibit speech for the reason that it advocates the violation of the law." If a law, such as the age of consent is in place, citizens must still be free to argue against it or even urge others to disobey it in principle; otherwise the state would be foreclosing dissent and debate. Indeed, part of autonomy is that each person must have the chance to hear numerous viewpoints, even harmful or wrong ones, and make up their own mind. For Scanlon, then, the advocacy of even unlawful conduct holds a special protected status. This is that it cannot be banned simply because it might persuade

someone to commit an unlawful act. The audience's moral independence is paramount. Applying this to NAMBLA, and however heinous "man-boy love" advocacy may be, the decision to commit a crime after reading such propaganda lies with the individual wrongdoer, not the speaker. To hold NAMBLA liable would be to assert that adults cannot be allowed to hear pro-pedophilia arguments because they might be "too persuasive". This is therefore, a more that treats potential listeners as lacking agency. Scanlon's theory gives a moral bright line to a great sense. This entails that expression is categorically distinct from the ensuing actions of its audience, so long as that expression does not itself cross into coercion or direct participation. Respect for persons as rational ends requires that we tolerate advocacy, trusting people, however wrongly, to choose their own actions. The philosophical stakes of punishing mere advocacy are hence very high. In engaging so violates the fundamental principle that free individuals must be allowed to assess and act on ideas for themselves, even at the risk that some will misuse that freedom.

**When Expression Becomes Action: Scanlon's Limits and Their Application to NAMBLA**

Scanlon's Millian Principle is broad but not absolute. He recognizes that some speech can be regulated or punished, namely when expression functions not as mere persuasion or opinion but as an integral part of a wrongful act. The line is crossed when speech is used "as part of the conduct which the government legitimately prohibits," rather than as advocacy or ideas about conduct (Scanlon 216). In simpler terms, expression loses its special protection when it stops proposing a viewpoint and starts participating in the crime itself. Classic examples include speech that directly incites imminent lawless action, conspiratorial, or specific operational instructions that facilitate a criminal enterprise. In such cases, the value of the speech lies in its utility to commit a harm, rather than just in its truth or persuasive force. Therefore, the normal free speech rationale no longer applies. Scanlon agrees that the state has a legitimate right to restrict or punish speech used in this manner. For instance, a person

who orders or explicitly aids and abets a murder through words is not shielded by the First Amendment. Similarly, content that amounts to a step-by-step instruction manual for crime might be treated as unprotected.

Therefore, when this framework is applied to NAMBLA, a key question emerges, around the basis of whether or not the website provided specific operational guidance that facilitated abuse? Was the line from abstract advocacy crossed to crime facilitation or incitement? If NAMBLA's materials included instructions on grooming children, evading law enforcement, or obtaining access to minors, then the website or speech could be considered part of a harmful enterprise and unlawful conduct. In accordance with the view of Scanlon and the US law, this type of communication is not mere advocacy but assistance in wrongful conduct. In such a case, to hold NAMBLA liable or restrict its speech could be justified.

However, the available evidence in the Curley case did not establish that NAMBLA's website contained operational instructions or explicit incitement to commit crimes such as enabling sexual assault. On a lot of accounts, the site's content was ideological and advocacy-oriented, not instructional. Essentially there was insufficient evidence linking the website's content to the murder or showing that its materials directly incited or facilitated the perpetrators' actions and the specific murder of Jeffrey Curley. Without such evidence, the plaintiffs' claim rested on the theory of ideological inspirations. This was the idea that through the advocacy for adult-minor sexual relationships, the organization encouraged unlawful acts. However, as Scanlon emphasizes, harms caused by persuasion cannot justify restricting speech. Unless advocacy crosses the line into directed facilitation, it remains within the protected domain. Thus, under Scanlon's theory, NAMBLA could theoretically be held liable, but only if the speech served as a tool of wrongful action, not if it simply advocated a reprehensible position. The Curley plaintiffs failed to demonstrate the former.

**Are Websites Different? Medium-Neutrality and the First Amendment**

A noteworthy aspect of Curley v. NAMBLA was the argument suggested by the plaintiffs that the internet's immediacy and accessibility make it a peculiarly dangerous medium, potentially warranting different free-speech treatment. The plaintiffs implied that a website advocating criminal conduct is more actionable than a book or a pamphlet, because online content can spread quickly and entice vulnerable or unstable individuals in ways traditional media might not. Therefore speech on a website should not receive the same protection as speech in print. However, both Scanlon's theory and modern First Amendment jurisprudence are fundamentally medium neutral when it comes to the protection of advocacy. Essentially what matters is the nature of the expression, whether it is advocacy or direct participation in crime, not the channel through which it is delivered. Communication on a website is entitled to the same presumptive protection as communication in print, on the street, or over the radio. The supreme court underscored this point in cases such as Reno v. ACLU (1997), making clear that online speech receives full First Amendment safeguards, regardless of the internet being a new medium. The government cannot justify censoring an idea merely because that idea travels through the internet or reaches a broad audience with ease.

Scanlon's approach reinforces this consistency across media. If the expression in question is advocacy, it retains its character as an expression regardless of format. A citizen's autonomy to hear and evaluate arguments should not depend on whether those arguments appear on a web forum or in a hardcover book. Therefore, if NAMBLA's writings are protected as abstract advocacy on paper, they do not lose protection when posted on a website. Expression does not transform into unprotected action simply by virtue or going online. Certainly, the internet can also be used for unprotected speech acts, like actual criminal conspiracies carried out in chat rooms, or true threats sent through email, but absent those circumstances, the medium itself is irrelevant to the First Amendment analysis. Therefore, the only online nature of NAMBLA's advocacy does not alter Scanlon's analysis or the first amendment's protection.

**Hudnut and the Impermissibility of Regulating Ideologically Harmful Speech**

The 1985 case American Booksellers Association v. Hudnut offers powerful legal precedent reinforcing Scanlon's conclusion that speech cannot be suppressed merely for its dangerous or harmful ideas. In Hudnut, the Seventh Circuit struck down a statute that defined pornography as a civil rights violation on the theory that it subordinated women and contributed to gender inequality. Proponents of the law, inspired by Catharine Mackinnon and Andrea Dworkin;s theories, argued that such pornography caused social harm. Specifically, it entrenches attitudes of misogyny and contributes to discrimination and violence against women. These are serious harms, much like the Curleys argued that NAMBLA's advocacy contributed to sexual crimes against boys. Nonetheless, judge Frank Easterbrook, writing for the court in Hudnut, declared that the government may not restrict expression based on "the message it conveys" or because it causes harmful attitudes (Hudnut 1104). The government cannot declare certain ideas off-limits simply because they are dangerous or socially corrosive.
The first amendment prohibits viewpoint discrimination, even when the viewpoint is morally abhorrent.

Hudnut therefore acts as a reinforcement of Scanlon's Millian argument. They both stand against the idea that speech can be restricted because it may influence harmful behavior. It is explicitly stated in Hudnut that the First Amendment protects speech "regardless of the truth, popularity, or morality of its content" (1105). If the government could suppress ideas because they contribute to a social environment that leads to crime, many forms of political, religious, or artistic expression would become vulnerable.

**Should Advocacy of Illegal Acts Ever Lose Protection?**

However, the opposing viewpoint still stands. This illustrates that NAMBLA's promotion of sexual contact with children is so uniquely harmful that they should be outlawed regardless of Scanlon's framework or traditional doctrine. This perspective essentially says that some ideas are too dangerous to be allowed a platform. It is important to examine and ultimately reject this position, because it misconstrues how rights function in a liberal democracy.

Legality at any given time cannot be the measure of what speech may be advocated. If advocating illegal acts were categorically unprotected, society could never challenge unjust laws or argue for social change. What is "illegal" is not fixed for all time; public deliberation over the merits of laws is a driving force for progress. As Scanlon would point out, citizens must be free to question and criticize the law itself, even to the point of arguing that unjust laws be broken or repealed. Indeed, much of civil disobedience and resistance movements involve people advocating violation of laws they deem immoral. For instance, one could consider the advocacy of hiding fugitive slaves, or the encouragement of people to use outlawed contraceptives prior to Griswold v. Connecticut. To give the state the power to silence anyone who says "this law should be disobeyed" is to give the state the power to entrench the status quo and stifle moral progress. Scanlon's theory underscores that a legitimate government must tolerate advocacy against its own laws; doing otherwise treats the government's authority as infallible.

**Why NAMBLA Cannot Be Held Liable Under Scanlon's Theory or Tort Law**

To hold NAMBLA liable in tort for the murder of Jeffrey Curley, the plaintiffs would need to show a causal connection between NAMBLA's speech and the wrongful act. However, their theory relies on ideological causation, which states that NAMBLA's advocacy influenced the perpetrators' mindset. Scanlon rejects this basis for restricting speech, and Hudnut rejects it as a basis for legal liability. Tort law similarly requires proximate causation, not merely that a publication contributed to a harmful worldview.

Under Scanlon's framework, liability is only justified when speech functions as part of the prohibited conduct itself, such as providing instructions or coordinating the act. This is because NAMBLA's website did not do this, its expression cannot be treated as part of the murder. The perpetrators' independent actions break the chain of causation. To hold NAMBLA liable would require abandoning both First Amendment doctrine and a Scanlon understanding of political legitimacy.

**Conclusion**

Curley v. NAMBLA highlights the difficult tension between our moral outrage toward abhorrent advocacy and our legal commitment to protecting expression. Yet both Scanlon's autonomy-based theory and First Amendment doctrine draw the same boundary, which is that speech may be condemned. However, it cannot be punished unless it directly participates in a wrongful act. NAMBLA's writings, however offensive, remained abstract advocacy, not incitement, or operational assistance. As Hudnut emphasizes, the state cannot suppress ideas because they are harmful or dangerous, and liability requires intentional, imminent incitement that was absent here. Holding NAMBLA responsible for the independent criminal decisions of its readers would collapse the distinction between persuasion and action, undermining autonomy and inviting broad censorship of unpopular viewpoints.

Bibliography

American Booksellers Association., Inc. v. Hudnut, 771 F. 2d 323 (7th Cir. 1985).

Scanlon, Thomas. “A Theory of Freedom of Expression.” Philosophy & Public Affairs, vol. 1, no. 2, 1972, pp. 204-226.