

Aberystwyth Internet Jurisdiction Symposium

*Speech without borders – speech
without limits?*

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Does the transnationality of the internet require constitutional re-thinking and re-balancing of existing values, in particular freedom of expression versus other human rights?

1. What are the values underlying free speech?
 - a) Why is speech protected, and
 - b) how is speech protected?
2. How do courts consider conflicting interests?
3. Do we need re-thinking and re-balancing of existing speech values and conflicting values?

1.a) Why is speech protected?

- Because of the individual or the social interest of free speech?
- Is freedom of speech an end in itself or merely a means to an end?
- Does the interest of the speaker alone or the effects of speech on society in general determine the moral value of speech?

Consequentialist theories

Explain freedom of expression because of its instrumental value for society, not because of its intrinsic one:

- emphasise the social interest of freedom of expression rather than the individual's interest;
- regard freedom of expression as a means to an end rather than an end in itself; and
- focus on the effects of speech on society in general, rather than on the interest of the speaker alone.

Examples: arg. from democracy, arg. from truth

Deontological theories

Based on liberal individualism – emphasis on individual/private autonomy, individual self-determination:

- regard freedom of expression not as a means to an end, but an end in itself
- the value of freedom of expression lies not in its consequences; rather, it has an intrinsic value as an essential feature of a person's individual autonomy

Examples: arg. from self-fulfilment and self-realisation

1.b) How is speech protected?

- ‘Objectivist approach’: protects speech not *because* it contributes to a democratic society or to finding the truth. Rather, speech is protected only *if* and *insofar* as it contributes to finding the truth or the ‘best ideas’ for society in general.
- ‘Sceptical approach’/‘suspicion of government’: there is no objective knowledge; one can never be certain that the truth or the ‘best idea’ have been found – ‘marketplace of ideas’

2. How do courts consider conflicting interests?

- US: Presumption that if communication is categorised as ‘speech’, then it receives strong protection.
- ECHR: Freedom of expression is of equal value to human rights of others. Furthermore, freedom of expression may have to be balanced against public order interests.

Examples:

- ‘Hate speech’
- Denial of clearly established historical facts
- Threats to public order interests, especially incitement to lawless action

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Thank you very much for your attention!

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