

# Human Rights Exam Preparation

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## Paragraph 1: Free speech rights

Discourse on 'free speech' is usually dealing with two separate (but related) moral/political ideas:

1. **Free speech as a principle of law and government**

Says that there must be special barriers in place (such as constitutional law) to make it harder for governments to legally regulate important communicative behaviour (eg. Art, journalism, political dissent)

2. **Free speech as a moral/political value in its own right**

Says that individuals and social institutions alike should promote the free and open expression of opinions, without prejudices as to content, and in a way that embraces diversity, unorthodoxy and challenges to our own views. Opposes silencing tactics irrespective of whether they come from governments or private individuals.

Human rights aren't meant to favour the values of a particular religious, cultural or political worldview- they're meant to set constraints that followers of all reasonable worldviews can accept as a basis for building a common life.

Because of this human rights theory doesn't insist on the idea of free speech as a moral/political value in its own right. That idea belongs to a particular kind of liberal worldview that some other reasonable worldviews (some religious viewpoints) don't accept.

But HR theory DOES insist on free speech as a principle of law and government.

- USA: constitutional guarantee of free speech, viewed by the Supreme Court as a categorical right that trumps other government aims/constitutional values
- Canada: free speech guaranteed by Canadian Charter of Rights and Freedoms, but interpreted in a way that other values (like respect and non-discrimination) are not necessarily outweighed or overridden by a right to free speech
- Australia: no explicit free speech guarantees in our constitution

However since the early 1990s courts have ruled that "political speech" is specifically protected against regulation under our constitution. Why?

The Constitution establishes a representative democratic government system, which *implies* freedom of (political speech) as one of its essential conditions.

## HISTORICAL PERSPECTIVE

- Examples of scientific censorship: with historical hindsight we can see that most censorship of science has been driven by dogma and/or megalomania
- Examples of artistic censorship: with historical hindsight we can see that most censorship of art, literature and film has been driven by overblown fears about the corrupting dangers that they posed, or by mere offence and dislike
- Examples of political censorship: with the benefit of historical hindsight, we can see that most censorship of anti-government dissent and journalism has been driven by megalomania, to little or no actual social benefit

**The unifying theme:** governments (of all persuasions) have recurrently shown irrationality, dogmatism, short-sightedness, megalomania, incompetence and vanity in regulating communication- we must impede their censorious urges.

## PHILOSOPHICAL PERSPECTIVE

- The epistemic argument for free speech: censorship impedes the spread of truth and knowledge
- The democratic argument: censorship damages democracy
- The expressive argument: it's inherently good for people to be able to express their thoughts and feelings- censorship quashes this good
- The tolerance argument: censorship by government promotes a general social ethos of intolerance to the detriment of all society

**The unifying theme:** censorship works against all sorts of important social and personal goods, therefore we need to have special barriers which make it harder for governments to engage in censorship of various kinds.

## The limits and dangers of free speech principles

Does this mean that governments should never use the law to regulate, control or obstruct people's communicative power?

