

# The Psychology of Speech Regulation

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## **Abstract:**

Often censorship, including self-censorship, is determined by ideas about what society finds acceptable. But how realistic are our perceptions of community standards? Do we underestimate what society will tolerate, while overestimating the media's ability to influence audiences?

This paper seeks to answer those questions in the context of defamation law, arguably the most significant legal restriction on free speech in many countries. It reports the principal findings of Australia's *National Defamation Research Project*, one of the largest empirical research undertakings concerning the law, social attitudes and perceptions of media effects. Drawing on surveys of over 4,000 randomly selected Australians, as well as focus group discussions involving various sections of the community, plus interviews with judges and lawyers, it concludes that the common law reflects certain widespread misperceptions about what people think and how they interpret the media. The resulting tendency is for media defendants to be unfairly disadvantaged in defamation law, which in turn silences speech.

Although primarily concerned with defamation law, the paper raises broader issues in terms of how perceptions and misperceptions of community values, as well as tests of reasonableness, operate in the context of speech regulation. Every day journalists, judges, lawyers and censors around the world make decisions that shape what we see and hear via the media. If we are to take free speech seriously, should the law better understand the psychology behind those decisions, thus helping to ensure that information and ideas are not unnecessarily suppressed?

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