

Anonymous Speech and Freedom of Expression

Public discourse as the bonding agent, enabling democratic society, evidently is in need of men and women who speak their minds freely without taking refuge behind a veil of obscurity. If we believe civic courage, as Louis Brandeis famously put it in *Whitney v. California*, 'to be the secret of liberty',¹ it takes that courage to stand behind one's convictions, in particular when the majority of the community holds different views and even though repercussions are to be expected. Democratic Society cannot exist without the likes of Emile Zola, openly shouting out their 'J'Accuse' at public grievances and abuses of power.

Still: The willingness of its citizens to stand up and to stand out, may be a necessary precondition of any society to be called democratic; it certainly is not a sufficient one. History proves best to what great extent anonymity in public discourse and democratic structures are interrelated and identifies 'anonymous pamphleteering not [as] a pernicious, fraudulent practice, but [as] an honorable tradition of advocacy and of dissent'.² Yet, while this honorable tradition has reached its climax in the information age, it is far from certain whether and to which extent free speech clauses protect anonymous expression on- and off-line. My contribution intends to address this topic from a comparative perspective, including – while not limited to – the First Amendment to the US Constitution, the Canadian Charter of Rights and Freedoms and the ECHR.

¹ Brandeis (concurring), *Whitney v. California*, 274 U.S. 357 (1927) 375.

² *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) 357.