ADELAIDE INSTITUTE

PO Box 3300
Adelaide 5067
Australia
Mob: 61+401692057
Email: info@adelaideinstitute.org
Web: http://www.adelaideinstitute.org

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Locked in a war of words to define free speech

Gay Alcorn, Columnist, March 29, 2014
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Activist Pat Eatock speaks to media after the Federal Court found in 2011 that columnist Andrew Bolt had breached the Racial Discrimination Act. *Photo: Justin McManus*

Fredrick Toben always insisted he wasn't a Holocaust denier because you couldn't deny something that never happened. The German-born Australian says there was never any systematic German program to kill Jewish people, denies the existence of gas chambers at Auschwitz and claims that Jews exaggerated the numbers murdered during World War II, sometimes for financial gain.

When Australia passed racial hatred laws in 1995, the Executive Council of Australian Jewry decided to take Toben on, led by its then director Jeremy Jones and the solicitor in the case, Peter Wertheim. Their first complaint was in 1996. It took until 2002 for it to get to the Federal Court, which found that Toben's views weren't part of academic debate about the Holocaust, but were designed to ''smear'' Jews.

Toben refused to remove the material, citing freedom of speech. In 2009, he was sentenced to three months' jail for contempt of court.

Wertheim is the executive director of the council, which has used racial hatred laws aggressively to fight serious examples of anti-Semitism - cases have been conciliated though the Australian Human Rights Commission and several have found their way to the Federal Court.

The influential national Jewish group and every major ethnic organisation in the land will not let these laws go without a fight.

The government, which this week released proposed amendments designed to end the ''chill factor upon freedom of speech'', as Attorney-General George Brandis put it, suddenly seems nervous about championing the free speech of people such as Toben.

The draft laws ''would always capture the concept of Holocaust denial'', Brandis insisted, saying it would amount to racial vilification, a proposed new provision. But Wertheim, as well as human rights lawyers, the libertarian Institute of Public Affairs, which campaigned to scrap racial hatred laws, and the Race Discrimination

Commissioner, Tim Soutphommasane, are in agreement that people like Toben are likely to have free rein if the proposals become law, because the exemptions to vilification are so broad.

Illustration: Matt Davidson

''I just don't think that the Attorney's reading of his own exposure draft is accurate,'' says Wertheim, who was involved in two consultation meetings with Brandis about the changes. ''Just about every instance of Holocaust denial that has ever been challenged has been sought to be excused on the basis that it's simply engaging in public discussion of an academic matter. I have no doubt that the prospect of succeeding in such a case under the proposed new legislation would be very much smaller than under the existing legislation.''

Critics of the government's proposals say they are shocked at how far they wind back the right of vulnerable groups to seek redress for serious hate speech. They say Australia's laws have worked with little controversy for almost 20 years and that the changes are a ''contrivance'', as Human Rights Commission president Gillian Triggs put it, to deal with conservative outrage about one case.

Columnist Andrew Bolt was found to have breached race hate laws in 2011 through articles - full of inaccuracies - questioning whether prominent fair-skinned Aboriginal people were claiming to be indigenous to receive benefits available only to Aborigines.

The government made no secret before the election that it found the Federal Court's decision amounted to censorship of political opinion, and pledged to scrap the racial hate laws in their current form.

Amid the emotion and politics in this debate, there is a serious question about where to strike the balance between free speech in a democracy and protection against racial abuse in a multicultural society. Michael Gawenda, former editor-in-chief of *The Age* and now a fellow at the Centre for Advancing Journalism at the University of Melbourne, believes the government has ''botched'' the handling of this. But he questions whether the current laws, which prohibit ''insulting'' and ''offending'' people on racial grounds are, in some circumstances, too broad, and even whether we need racial vilification laws.

***Herald Sun* columnist Andrew Bolt, who in 2011 was found to have breached section 18C.**

''There are already laws against racial violence,'' Gawenda says.

''There are certain things that you can't do, you can't intimidate people in terms of abusing them, you can't assault them, you can't advocate violence against groups or individuals.

''There is an argument to say that racial vilification laws are a slippery slope and you do end up with laws against insulting or offending people.

''In the end, I believe good argument beats bad argument. You take on racists by exposing them, not by banning them. And I don't think any editor is under any obligation to publish their shit.''

Politically, the government is finding the nuance beyond it. It might have been right in the abstract, but for Brandis to say that ''people do have a right to be bigots, you know'' while trying to convince people that his draft would strengthen protection against racial hatred is hard to pull off.

The backlash may mean changes to Brandis' ''draft exposure'' amendments, with a flood of submissions expected by the end of April. Fairfax reported this week

that the resistance was not just external, with objection in cabinet to Brandis' proposals.
Some in the broader party are expressing doubts publicly, including NSW Premier Barry O'Farrell and Victorian Multicultural Affairs Minister Matthew Guy. Senator Brandis is now sounding more conciliatory, indicating he is ''open to other suggestions''.
At the centre of debate is section 18C of the Racial Discrimination Act, which makes it unlawful to do an act publicly that is likely to ''offend, insult, humiliate or intimidate'' on the basis of race or ethnic origin. You can do all those things but still be protected if your action was done reasonably and in good faith, and if it's an artistic, academic or scientific work, or part of a debate in the public interest. It's a civil, not a criminal, provision - there are no convictions for breaching the act, and remedies are often apologies or small payments.
The courts have interpreted the law to mean that a ''mere slight'' is not unlawful - it needs to be serious racial abuse. The laws were controversial from the beginning, with then opposition leader John Howard opposing them.
The government's changes would get rid of ''offend, insult and humiliate'', which the government says amounts to ''hurt feelings'', which shouldn't be outlawed in a rowdy democracy. It keeps ''intimidate'', but defines it narrowly as causing fear of physical harm, with no mention of psychological harm. It introduces a provision against vilification, defined as inciting hatred.
The key is that the emphasis switches from the impact racial hatred has on its victims to whether it causes fear or incites racial hatred in others. Even if you do intimidate or vilify someone on the basis of race, there is a broad exemption for anything ''communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter''. The requirement to be reasonable and in good faith are gone. Prime Minister Tony Abbott told *The Conversation* that the proposals would produce ''a stronger prohibition on real racism, while maintaining freedom of speech in ordinary public discussion''.
Soutphommasane, whose job is to oversee the laws, begs to differ. ''This would involve a very dramatic change to the law … it severely weakens the protections that exist against racial vilification and may have the effect of encouraging a minority of the population that they can racially abuse and harass someone with impunity.''
His boss, Gillian Triggs, believes the exemptions are so broad that ''it is difficult to see any circumstances in public that these protections would apply''.

Holocaust denier Fredrick Toben was found to have breached the Racial Discrimination Act.

There would not be another Andrew Bolt case. Judge Mordecai Bromberg found that Bolt couldn't rely on the free speech exemption because he did not act reasonably and in good faith, and that his articles contained ''gross inaccuracies''. Even if it was found that his articles caused others to be fearful or incited racial hatred, they would be exempt because they were part of public debate.
Critics are bewildered as to why these changes are a priority. The vast majority of complaints to the Human Rights Commission are settled through mediation, with only about 3 per cent reaching court. Academics Luke McNamara and Kate Gelber have recently completed research on the impact of hate speech laws on public discourse in Australia. Of 3788 vilification cases lodged nationally under federal and state laws between 1989 and 2010, just 68 (or 1.8 per cent) were referred to a tribunal or court. Of these, just 37 (54 per cent) were successful.
''Our headline conclusions was that the claim that there is a diminution of free expression in our society [because of the laws] is not supported,'' said Professor McNamara. ''The claim that these laws are a magical solution to racism isn't really supported, either. Most people who experience racism are never going to invoke these laws but take comfort from their existence.''
The director of the Castan Centre for Human Rights Law at Monash University, Professor Sarah Joseph, was uncomfortable that under the existing law ''offend'' and ''insult'' could restrict free speech.

''There is no human right to be free from offence and insults, even on the basis of one's race,'' she said.
But the government went much further. The definition of intimidation was now too narrow, Joseph said. And the shift in the standard to be applied when deciding if something is intimidating or vilifying becomes that of a reasonable member of the general community rather than a member of the targeted group. That misunderstood how severely some people could be impacted.
''But the biggest problem is the exemption which seems to remove all statements made in public debate,'' she said. ''There's no requirement for reasonableness or good faith. It's an extremely broad exemption.''
Joseph believes that only racial abuse such as neighbourhood disputes - where a neighbour hurls racial insults at another over a fence, for instance - might be caught. Anything to do with public debate, unless it incites hatred in another or intimidates to the point of causing fear of physical harm, would not be unlawful. Virtually nothing that appeared in the media, including blogs, was likely to fall foul of the law.
Peter Wertheim understands the free speech arguments, but says what is most upsetting about anti-Semitism is not that somebody writes that the Holocaust never happened. It's the smear, the insinuation about what Jews are like, the dehumanising of individuals. There's a role for the law in that, he says.
''To be the object of racism is to be depersonalised, to be made an abstraction. I think people who have not been the objects of racism often don't understand that. I don't think the government understands it either.''

HOW OLD CASES WOULD FARE UNDER THE NEW LAW

THE LAW NOW

Under the Racial Discrimination Act, it is unlawful to do something that is reasonably likely to ''offend, insult, humiliate or intimidate'' someone because of their race or ethnic origin (Section 18C). There is a free speech exemption if you have acted reasonably and in good faith and if it is an artistic, academic or scientific work or about a matter of public interest. (Section 18D)
Critics say the law is too broad, particularly the words ''offend'' and ''insult'', and has the potential to restrict free speech on contentious issues.

THE PROPOSED NEW LAW

The government's ''exposure draft'' would get rid of ''offend, insult and humiliate'' but ''intimidate'' would stay, defined as causing fear of physical harm. A new provision would outlaw racial vilification, defined as inciting hatred. The need to act reasonably and in good faith is gone, with the free speech exemption applying to ''public discussion of any political, social, cultural, religious, artistic, academic or scientific matter''.
Critics say the amendments go too far and would fail to protect vulnerable groups from racial hatred, particularly given the broad exemption for racial abuse if it was done as part of public discussion.

THE IMPLICATIONS

The director of the Castan Centre for Human Rights Law, Professor Sarah Joseph, assesses how the following three cases would fare under the new draft laws.

EATOCK v BOLT 2011

Herald Sun columnist Andrew Bolt was found to have breached section 18C in two articles suggesting prominent fair-skinned Aborigines had falsely identified as indigenous to claim benefits available only to Aboriginal people. The judge ruled Bolt could not rely on the exemption for a matter of public interest because he had not acted reasonably or in good faith, and his articles contained gross inaccuracies.
Professor Sarah Joseph: Bolt would not have lost the case. His articles were found to have been likely to intimidate, but intimidation has been narrowed to mean ''cause fear of physical harm'' and it is unlikely that the articles would make someone fear physical harm. It is also unlikely they would be found to vilify fair-skinned Aboriginal people, as it would be hard to establish they would cause third parties to hate that group. In any case, the defence for anything written as part of public discussion is so broad it seems to ''save'' almost any column written in the mainstream media, and probably any blog.

CAMPBELL v KIRSTENFELDT 2008

In what started as a neighbourhood dispute in a town outside Perth, Mervyn Kirstenfeldt was found to have breached section 18C by repeatedly calling his neighbour Kaye Campbell, an Aboriginal woman, names such as ''Gin'', ''nigger'', ''coon'' ''lying black mole c---'' and telling her to go ''back to the scrub where you belong''. The abuse was often made in the presence of Campbell's family and friends.
Joseph: This could be perceived as intimidating or vilifying. The repetition could make an ordinary person fear physical harm. The abuse could be interpreted as vilifying, though it is unlikely Campbell's friends and family would be turned against her. The public discussion defence would not apply, as the abuse is not in the context of political or social commentary. Such ''neighbourhood'' abuse would still be against the law.

JONES v TOBEN 2002

In the first case to do with racial abuse on the internet, Holocaust denier Fredrick Toben was found to have breached the act and was ordered to remove offensive material from the web. Toben expressed doubt that the Holocaust ever happened, said it was unlikely there were gas chambers at Auschwitz, and claimed Jewish people, for reasons including financial gain, had exaggerated the numbers of Jews killed.
He was found to have lacked good faith because of his ''deliberately provocative and inflammatory'' language.
Joseph: Toben would likely not be found in breach of the new law. It is unlikely his speech intimidates so as to make people afraid for their physical, as opposed to psychological, wellbeing. It could however be interpreted as vilification. Holocaust denial indicates that the Jews have concocted the Holocaust for self-serving purposes, a classic anti-Semitic idea that has historically provoked hatred against Jewish people.
However, Toben would likely be saved by the exemption, as he could claim his website was published as part of political, social, cultural, or academic discussion.
There is no requirement the discussion be reasonable or be conducted in good faith.
http://www.smh.com.au/national/locked-in-a-war-of-words-to-define-free-speech-20140328-35oi1.html

Why Australia's race discrimination laws need changing

As the Jewish son of a Holocaust survivor, I am sensitive to the fears inherent in amending this law. But as a lawyer I believe the act sets the bar of offence much too low

Mark Cohen, **theguardian.com**
Thursday 27 March 2014 17.37 AEST

Being Jewish, and by reason that my father is a Holocaust survivor, I have reason to be wary about racial vilification dressed up as debate. I do not, however, think this is a licence to be thin-skinned about such matters.

I have always been concerned about the potential for the current provisions of part IIA of the Racial Discrimination Act – prohibition of offensive behaviour based on racial hatred – to restrict debate or even satire, lest someone merely be offended or insulted.

I do not say in doctrinal fashion that this part of the act must go, as many appear to suggest in the current debate. I do think, however, that some careful amendments to it are warranted.

It is not just section 18C of the act, which bans actions "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate others because of the race, colour or national or ethnic origin", that requires amendment.

Section 18B could make an article about Vladimir Putin's escapades in Crimea potentially liable, since it states that if race or ethnic origin is an element – not necessarily the dominant one – of the offence, it can be prosecuted under the Act. Should angry Russians resident in Australia be able to make a claim given some of the recent Australian commentary about what has occurred in the Ukraine? I think this sets the bar too low.

Section 18C(1)(a) contains the contentious words which create the cause of action under the Act, being that: it is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person, or a group of people. This mixes together a number of dissimilar subjective tests that combine into another threshold which is set too low.

First, the concept of offence and insult seems to me to be quite removed from what is needed to humiliate or intimidate someone. Moreover, what might offend one person might not offend another, but the notion of a group reaction is sufficient to found liability. That provision quite literally gives legal effect as a measure of offence, insult, humiliation or intimidation, to something as ephemeral as a Twitter storm. There is in that mix a broad spectrum, from the easily offended to the hard to intimidate. How is a reasonable likelihood of insult across a group like Twitter to be measured?

Thirdly, the vicarious liabililty provisions under section 18E, which makes an employer liable for the actions of his or her employee, strike me as a very heavy burden. Vicarious liability came about with negligence committed in and about the ordinary course of a company's business activities, such as where a truck driver runs over and kills a pedestrian while making deliveries. How, therefore, is the making of racially offensive or insulting comments part of the usual working day?

Julia Gillard (centre) visits the Jewish Holocaust Centre in Melbourne in 2012. Photograph: Stuart McEvoy/AAP

I have real difficulty in seeing why it should intrude, unless the employer is consciously promoting the employee's conduct. Nor can I think of an insurance policy that an employer could obtain to cover such a risk. That provision, in my view, should be limited solely to the circumstances where it can be shown that the employer was complicit.

In my view the act needs amendment that renders its focus toward a dominant purpose of humiliation and/or intimidation, and away from insult and/or offence – concepts better left to the realm of defamation.

Certainly the federal government's exposure draft released on Tuesday is not perfect. Yet, it seems to me that it addresses most of the concerns I have articulated. The exposure period of 30 days will reveal community reaction.

It has been suggested that the proposed amendments to the act will not be a barrier to such things as Holocaust denial if they become the law. In my view, they will provide adequate protection. It seems to me that for someone to assert that the killing by the Nazi regime of 11 million people in the Holocaust did not occur, or has been overstated, will clearly be incitement to hatred, by reason that it could not ever be reasonable participation in public discussion of any political, social, cultural, religious or academic matter.

Clearly these are difficult questions. They deserve nothing less than careful analysis and mature reflection.

http://www.theguardian.com/commentisfree/2014/mar/27/racial-discrimination-act-bolt-laws

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Victoria wary of 18C changes

March 28, 2014 by J-Wire Staff

Victoria's Minister for Multicultural Affairs and Citizenship Matthew Guy today confirmed the Victorian Coalition Government's enduring support for the state's multicultural diversity, in light of proposed Federal Government amendments to the Racial Discrimination Act.

Matthew Guy

On Tuesday 25 March 2014, the Federal Government released its exposure draft proposing changes to the Racial Discrimination Act 1975, to address what it regards as an unnecessary limitation on free speech.

The proposed changes would seek to repeal Section 18C of the Act, which makes it unlawful to publicly act in a way that is reasonably likely to "offend, insult, humiliate or intimidate" others on the basis of their race, colour, national or ethnic origin.

Minister Guy said he shared the concerns expressed within many of Victoria's multicultural and multifaith communities about the amendments proposed in the draft.

"Freedom of speech is a cornerstone of our democratic society, and must be defended. However, we must also ensure that this does not come at the expense of protections against acts of discrimination, hatred and vilification. The right balance needs to be met to safeguard the rights of all members of our society," Mr Guy said.

Mr Guy said that successive Victorian Governments have demonstrated bipartisan support for the state's cultural, linguistic and religious diversity, and for promoting social cohesion and harmony across the community.

"We recognise that our cultural and religious diversity is one of our greatest strengths, and that all governments share an obligation to protect and encourage social cohesion," Mr Guy said.

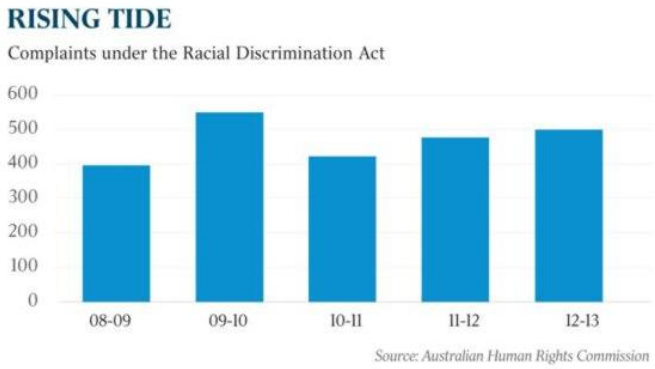
Mr Guy said that the potential for changes to Commonwealth legislation to impact or override state legislation meant the proposed amendments were "of utmost importance to Victoria."

"The Victorian Government remains unambiguously opposed to any form of discrimination based on an individual's race, faith, gender, or for any other reason. We will be making a submission to the Commonwealth Government regarding Victoria's position on the proposed amendments to the Racial Discrimination Act 1975," Mr Guy said.

http://www.jwire.com.au/news/victoria-wary-of-18c-changes/41557

18C not stopping racism, says law expert James Allan

STEFANIE BALOGH AND PATRICIA KARVELAS, THE AUSTRALIAN, MARCH 28, 2014 12:00AM



Racial Discrimination Act complaints.
Source: The Australian

THE section of Australia's racial discrimination laws at the centre of a heated debate over bigotry and freedom of speech has done nothing to curb racism, a leading law professor says, as Bob Hawke appeals for Labor's original protections to remain untouched.

Amid unease among some Liberals at Attorney-General George Brandis's push to scrap provisions in section 18C of the Racial Discrimination Act, and the breadth of exemptions on new racial-vilification rules, University of Queensland Garrick professor of law James Allan said the changes were already enough of a compromise.

"The idea that this little law is going to do anything is garbage, to be totally honest," Professor Allan said.

A senior government source said it was unlikely that Senator Brandis's exposure draft on the changes would remain intact, with more protections likely to be adopted during the consultation process. "This is not the end of it," the source said.

Mr Hawke came out yesterday against the laws, the former prime minister telling The Australian: "There is no case for weakening the law."

And Communications Minister Malcolm Turnbull, whose Wentworth electorate in Sydney's east has a large Jewish presence, revealed that he had expressed strong views in cabinet over the government's moves.

Mr Turnbull said he disputed the argument there should not be any limitations on free speech, warning that history had proven "hate speech" was dangerous.

"I think because I'm a member of the cabinet, and I do have some strong views about it, I think it's probably better that I don't canvass views on specific drafting issues generally publicly," Mr Turnbull said.

"But I am very, very strongly of the view that hate — you know, people who peddle racial hatred — seriously undermine the stability and the harmony of our country."

Senator Brandis, who denied he had been forced to water down his proposed amendments, has released draft changes to the Racial Discrimination Act that scrap Section 18C. The provision makes it unlawful to offend, insult, humiliate or intimidate other people or groups of people because of their race, colour or national or ethnic origin.

The government would replace section 18C with provisions making it unlawful to vilify or intimidate others on similar grounds, but there are broad exemptions.
Professor Allan said section 18C was achieving nothing. He said that while he didn't believe racism had risen in Australia, if it had "then the idea that 18C is doing anything is palpably ridiculous".
"They want to say we are a seething cesspool of racism and yet this little civil liability provision that gets the odd Bolt case once in a while is going to fix it — it's palpable nonsense," Professor Allan said.
The government pledged at the election to repeal section 18C "in its current form" after it was used against News Corp Australia columnist Andrew Bolt in 2011.
Professor Allan said there were no hate speech laws in the US and it was a destination of choice for minority groups around the world.
"I tend to be quite sympathetic to the arguments the Jewish lobby makes here, but on this one they're just bonkers and they know they are wrong too because they know life is good in the US," he said.
Professor Allan said that "in the long run, letting people rip is the best protection for minority groups".
He added that by silencing people, "it doesn't get rid of the problem, it drives it underground, it turns them into martyrs, it's very short-term thinking". The Executive Council of Australian Jewry's annual report on anti-Semitism last year listed 657 reports of racist violence directed at individuals or Jewish facilities in the year to September.
The figure marked a 21 per cent increase on the previous year.
But the council's executive director Peter Wertheim strongly rejected that the rise in anti-Semitic behaviour demonstrated section 18C was failing to stem racist attacks.
"I think that is drawing a very long bow," Mr Wertheim said.
"If the murder rate goes up do we scrap murder laws?"
Australian Human Rights Commission figures show the number of complaints received under the Racial Discrimination Act has risen during the past three years.
In 2010-11 there were 422 complaints made about racist behaviour under the act.
That figure rose to 477 the following year, and to 500 last year.
While almost 30 per cent of complaints of racism to the commission related to the provision of goods and services, 27 per cent related to racial hatred.
Mr Wertheim said that, in the same period when racist attacks rose, 18C was used effectively to have "large volume of grossly racist material" removed from websites such as Facebook.
"The current law has worked well since 1995," he said.
"Many hundreds of cases have been successfully conciliated in the Federal Court."
Indigenous man Wesley Aird, a former member of John Howard's indigenous advisory council, said he supported free speech, arguing legislation would never stop racism.
"I am in favour of free speech and firmly of the view that no amount of legislation can stop idiots saying stupid things," Mr Aird said.

Additional reporting: Sharri Markson, Lauren Wilson, Christian Kerr

http://www.theaustralian.com.au/business/legal-affairs/c-not-stopping-racism-says-law-expert-james-allan/story-e6frg97x-1226866974817

Don't soften bias laws, big states warn Abbott

JOHN FERGUSON, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

THE two most powerful conservative states have rejected the push by federal Attorney-General George Brandis to overhaul racial discrimination laws and his claim Australians have a right to bigotry.
Victoria and NSW yesterday fired shots across the bow of the Abbott government as ethnic outrage over the plan intensified and both governments prepare to fight elections in the next year.
And both states directly challenged Senator Brandis's claim that people had a right to be bigots.
Victorian Multicultural Minister Matthew Guy will write to the federal government warning against introducing any changes that would undermine state race and religious vilification laws.
Mr Guy said Victoria would not accept any reforms that watered down legal protections for people on the grounds of race or religion.
"The Victorian government feels very strongly about this issue — we have for many years," Mr Guy said.
"We are concerned that any federal laws will have implications for what is the current situation in Victoria, and under no circumstances do we want to water down laws that exist in Victoria."
Mr Guy said there was no place for bigotry in his state, and openly questioned Senator Brandis's claim that people had a right to be bigots. "I think the choice of words may have been somewhat unwise," he said.
"Freedom of speech is a cornerstone of our democratic society, and must be defended. However, we must also ensure this does not come at the expense of protections against acts of discrimination, hatred and vilification. The right balance needs to be met to safeguard the rights of all members of our society."
NSW Premier Barry O'Farrell warned Abbott government MPs against watering down the legal restrictions against racial and religious intolerance.
"There is no place for inciting hatred within our Australian society," he said.
"In commendably seeking to protect freedom of speech, we must not lower our defences against racial and religious intolerance."
Mr O'Farrell appeared to refer to Senator Brandis's claim that people had a right to be bigoted.
"Bigotry should never be sanctioned, whether intentionally or unintentionally," he said.
"No government, no organisation, no citizen can afford to be less than vigilant in condemning bigotry,

intolerance and hatred. Frankly, our way of life depends on that vigilance."

The decision by the two biggest states to publicly attack Canberra on the threatened change to the Racial Discrimination Act underscores the extent of the concerns being raised by Coalition MPs across the country.

Racial and religious vilification is unlawful in Victoria under the Racial and Religious Tolerance Act 2001 passed under the Bracks Labor government.

ADDITIONAL REPORTING: AAP

http://www.theaustralian.com.au/nationalaffairs/statepolitics/dontsoftenbiaslawsbigstateswarnabbott/storye6frgczx1226867015844

Jews 'favoured while other minorities unprotected'

RACHEL BAXENDALE, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

A WESTERN Sydney imam believes the Abbott government's proposed repeal of section 18C of the Racial Discrimination Act will create a situation that favours Jews and discriminates against indigenous Australians and other minority groups.

Afroz Ali, the president of the al-Ghazzali Centre for Islamic Sciences and Human Development and founding member of the Australian Religious Response to Climate Change, warned on his Facebook page yesterday that Tony Abbott and Attorney-General George Brandis were trying to "have their racist ways to protect prejudiced sophists like Andrew Bolt and such ilk of hate-speech spreaders".

He cautioned that if 18C was repealed, it would become "illegal to make any hate speech against Jews, but fully legal to make hate speech against the indigenous people of Australia, for example, and get away with it as an excuse of 'freedom of speech' ".

Imam Afroz advised: "Do not forget such bigoted racist policies these individuals are sinking Australia back into, and make sure you vote them out of parliament at the very next election, if not sooner."

Imam Afroz told The Australian yesterday that he believed international laws and declarations against anti-Semitism would have the effect of "disproportionately protecting the Jewish people of Australia" under the appeal of 18C, while other groups would not have the same protection.

Executive Council of Australian Jewry executive director Peter Wertheim said the repeal of 18C would broaden the scope for hate speech against all communities.

"It would also facilitate the importation into Australia of the racism and bigotry that fuels many overseas conflicts," he said.

http://www.theaustralian.com.au/national-affairs/jews-favoured-while-other-minorities-unprotected/story-fn59niix-1226866852852

Turnbull warns cabinet of 'hate speech' danger

SHARRI MARKSON, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

COMMUNICATIONS Minister Malcolm Turnbull has expressed very strong and detailed views in cabinet on proposed changes to the Racial Discrimination Act.

Mr Turnbull disputed the argument that there should be no limitations on free speech, saying history had proven that "hate speech" was dangerous.

Indicating that he had voiced his concerns in cabinet, Mr Turnbull said while it would not be in the best interests of the government if he spoke publicly about the draft exposure bill released this week, there were "legitimate" community concerns about weakening of protections in section 18D of the act.

"I am very, very strongly of the view that hate, you know — people who peddle racial hatred — seriously undermine the stability and the harmony of our country," the minister said.

"I have very strong and very detailed views but I think it's better that I deal with them in the confines of my cabinet colleagues.

"It's certainly better for me, better for the government, too."

Mr Turnbull, whose Sydney electorate of Wentworth has a prominent Jewish constituency, said there were "legitimate" concerns about the removal of the term "good faith" from section 18D.

That section currently states that a performance, exhibition, artistic work, statement, publication, discussion or debate must be (a) in good faith and (b) done for a genuine academic, artistic or scientific purpose.

The federal government released a draft bill this week that outlines changes to the Racial Discrimination Act, including a repeal of section 18C, which makes it unlawful for someone to act in a matter likely to offend, insult, humiliate or intimidate someone based on their race or on their ethnicity.

Mr Turnbull said Australia already had a strong free-speech culture and changes to further promote free speech should not undermine racial harmony.

"You don't have to look very far, whether around the world today or in history, to see where hate speech can get you," he said.

"We've got to get the balance right and free speech is very, very important, and I'm a great defender of free speech, but we've got to always ensure that free speech operates in an environment where it's not undermining that harmony.

"A lot of people say there should be no limitations on free speech but the fact is there are: we've got defamation laws, we've got contempt laws.

"We do have a very strong free-speech culture. That's probably about as much as I should say at this juncture."

When asked about Attorney-General George Brandis's comments that everyone had a right to be a bigot, Mr Turnbull said that there should be no tolerance for people who were racist.

http://www.theaustralian.com.au/national-affairs/turnbullwarnscabinetofhatespeechdanger/story-fn59niix-1226866842684#

Community as judge and jury

OPINION, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

THIS newspaper believes the vast majority of Australians are good and decent people who find racism to be morally repugnant. We do not believe there is underlying racist sentiment in the community waiting for laws to be lifted so it can be freely expressed without legal sanction.

The president of the Australian Human Rights Commission, Gillian Triggs, argues the proposed changes to the Racial Discrimination Act would mean "it's fair game" for anyone to say pretty much "whatever" they like, as she told the ABC's *Lateline*. In*The Australian* today, Professor Triggs writes that the changes "will positively permit racial vilification and intimidation in all public discussions". Yet the proposed requirements for determining racial abuse will be a new community standard. The expectations of civil behaviour will be judged by the view of the everyday man or woman on the street. It will be less of a debating opportunity for lawyers. Meanwhile, other laws such as defamation will still apply.

Some Australians experience racism. But we do not believe this is widespread. We are, after all, a nation of immigrants. Almost half of us are born overseas or have a parent who was. Nor do we believe these proposed laws will encourage racism.

Professor Triggs points to the threat of protected racism on public transport and at the factory canteen. But anyone catching a train or bus, or lunching at a factory canteen, would find very few incidents of racism. If the community is to be the judge of tolerance and freedom of speech, then these changes are a positive step.

http://www.theaustralian.com.au/opinion/editorials/community-as-judge-and-jury/story-e6frg71x-1226866775205

Auschwitz: why I can't back Brandis on free speech

GRAHAM RICHARDSON, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

Illustration: Sturt Krygsman *Source:* Supplied

IT has always been my belief that Australia would be better served by electing to its parliament people who incur a reduction in salary by becoming an MP or a senator, rather than elect those for whom a parliamentarian's salary is an amount they could never earn or aspire to in the course of their working lives.

This belief has been well and truly vindicated by the performance of current Attorney-General George Brandis and the immediate past attorney-general, Mark Dreyfus.

These two gentlemen were big-time barristers who would easily command seven-figure incomes in their former incarnations. They share great intellects and are both warm, decent human beings. The fact they are on opposite sides of the political divide tends to demonstrate that another of my long-held and cherished beliefs is also correct: Most of the people elected to our parliaments are relatively bright and people often wonder how it is that intelligent people can argue so heatedly over so many issues.

The reason is quite simple. Most of the issues confronted in our democracy are 50-50 propositions or near to it. Off the top of my head I can argue cogently for more foreign investment or for less. I can put forward a strong case for bailing out failing businesses to protect jobs and then rip into that argument and convince you that industry assistance as we know it is simply throwing taxpayers' money down the drain in an exercise doomed to failure. Such is the nature of politics.

There is a classic example of this phenomenon capturing much comment and being debated right now. I refer to the furore over free speech.

I understand where Brandis is coming from. He is the classic small-l Liberal. It is a shame that in the rough and tumble of today's politics, the Labor Party has felt the need to play the race card against him. When John Howard was cosying up to Pauline Hanson in 1998, Brandis took the courageous course of opposing the plan to give Hanson preferences in the Senate race. At the time, he was a member of the Liberal Party's state executive in Queensland and he led the minority in a vain attempt to point out the dangers of associating his party with Hanson, whose platform was so crudely racist.

The Attorney-General is a real believer in the ideal of free speech. Like me, he believes that in a democracy you have a right to be an idiot, a right to be offensive and, as he somewhat unfortunately said in the Senate, "people do have a right to be bigots".

That remark has set off a loud explosion of criticism that at times has been as vicious as the language his opponents seek to be able to prohibit from others. Community groups are up in arms and even a latter-day convert to the Liberals, indigenous leader Warren Mundine, and Australian of the Year Adam Goodes have joined the chorus.

The Prime Minister must have expected this. When you seek to challenge the existing order on such a sensitive issue as this, you know the wrath of God will be unleashed against you.

Many observers, including some senior cabinet ministers, see this reform as a reaction to the court verdict against Andrew Bolt. I have never quite understood why the Bolt case ever got as far as a courtroom.

During the past couple of decades, most of the problems associated with allegations of racism received only moderate media interest and disappeared into the labyrinthine corridors of the Human Rights Commission, never to be heard of again. It is hard to believe that we should not be allowed to offend or humiliate another person by our words.

I have lost count of the number of times I have seen and heard people being humiliated in the media and in the houses of our parliament. In a robust democracy, the right to offend is a must.

That having been said, there have been and continue to be examples of racism in everyday life. I have friends who, when seeking to praise an individual, will say: "He's a white man, that one."

I can remember a Labor Senate candidate in the 1960s being rebuked for saying he wanted to save the working class "from the moneylenders and the Jews". I wince when I hear the word "retard" to describe someone who has done something silly to the ears and eyes of the beholder.

Anyone who believes racism and bigotry are anything but alive and well doesn't live in the real Australia. You can't legislate to make citizens decent and sensible but you can limit their excesses, as section 18C of the Racial Discrimination Act no doubt seeks to do. Dreyfus and his Labor colleagues argue that the abolition of 18C will open the door to and encourage bigotry. They may well be right.

They may also argue that the legislation has operated for many years while rarely attracting any public interest. This argument boils down to "if it ain't broke, don't fix it". I am far from convinced by this argument and I really want to come down on Brandis's side.

There is one issue that prevents me from so doing: one of the people I admire most in the world is an Auschwitz survivor. This woman suffered indignities, cruelty and deprivation that have been well documented.

She witnessed the death of close relatives and friends and of thousands and thousands of people she didn't know. If any change in the law were to allow the likes of our own home-grown Holocaust denier Frederick Tobin or that evil Englishman David Irving, or indeed that nasty piece of work who was the past president of Iran, Mahmoud Ahmadinejad, to peddle their bile in our country, then I cannot sign up to it.

No ideal of free speech should ever be allowed to make a mockery of the degradation and despair of my friend or the friends and relatives of the millions who died in the Nazi concentration camps. For me, the pursuit of the worthy ideal of free speech should never be used to allow this kind of evil to pass anyone's lips.

My suspicion is that Brandis is losing the argument in voter land. The cacophony of voices raised against him is as loud as it is formidable. With NSW Premier Barry O'Farrell speaking so forcefully against him and an unnamed cabinet minister suggesting that Brandis "has really drunk the right-wing Kool-Aid", the necessity for substantial changes to be made to his plans is growing. The Abbott cabinet has not leaked until this issue raised its truly ugly head.

Getting the balance right between the ideal and the practical is a task that is beyond mere mortals. The English language is the real culprit. It's too rich, vast and colourful to be limited, and too open to abuse to be left untrammelled.

Graham Richardson hosts Richo on Sky News.

http://www.theaustralian.com.au/opinion/columnists/auschwitz-why-i-cant-back-brandis-on-free-speech/story-fnfenwor-1226866716996

Race law changes seriously undermine protections

GILLIAN TRIGGS, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

THE government's proposed amendments to the Racial Discrimination Act take with one hand and take even more with the other. The present protections against racial hatred have been significantly reduced and the surviving ban on "racial vilification" and "intimidation" will not apply if the act takes place as part of public discussion.

While public comment has focused on the removal of the words "offend, insult and humiliate" from the current section 18C, debate has missed the less obvious but more significant and retrograde changes in the exposure draft.

The most significant is the treatment of the exemptions in existing section 18D.

Under existing law, it is not unlawful to insult or intimidate another person on the basis of race, colour, or national or ethnic origin if you have acted "reasonably and in good faith" in respect of an artistic work or if you make a statement for any genuine purpose in the public interest.
Additionally, an exemption applies if a report on a matter of public interest is "fair and accurate" or is "fair comment" on a matter of public interest by the writer who is expressing a "genuine belief".
In the past nearly 20 years since they were introduced, these exemptions have provided a balanced restraint on the section 18 C prohibitions on racial hatred and have been used by the courts to dismiss several cases.
Crucially, section 18D is one of the few legislative protections for freedom of speech that exist under Australian law.
The Attorney-General introduced the exposure draft by referring to the successful civil case against Andrew Bolt under section 18C. Bolt was unable to convince the Federal Court that any of these free speech exemptions applied to him. In short, his comments were found to be inaccurate and not made in good faith. Notably, no appeal was made to challenge the court's findings.
In what appears to be a contrivance to ensure that a Bolt-type case is no longer possible, the draft proposes to delete the exemptions in section 18D.
It is now proposed that the prohibitions of vilification and intimidation will not apply if the behaviour arises in "the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter".
This astonishingly broad exemption will positively permit racial vilification and intimidation in virtually all public discussions. Indeed, it is hard to think of examples of racial vilification or intimidation in public that will not be exempted by these changes.
Will, for example, racial vilification on public transport, at football matches or the factory canteen be protected because this is a "social", "cultural" or "religious" matter?
Under the proposed changes, intimidation is confined to fear of physical harm. The Australian Human Rights Commission is in a unique position to know that the hundreds of inquiries or complaints we receive each year alleging racial abuse, typically on the internet, are not about a fear of physical violence. If psychological and social impacts are excluded from the prohibition, few cases will be covered by the legislation.
It is unwise to disregard the experiences of racial abuse regularly complained of by minority and community groups in Australia. If there is an evil to be addressed by legislation, it should send the strong message that Australia rejects racial hatred in our successful multicultural society.
The commission saw a 59 per cent spike in racial hatred complaints last year, and a 5 per cent rise in general race-based complaints.
Not only will the Attorney-General's proposals reduce Australians' access to the commission to conciliate their experiences of racial abuse, they also reduce the educative role of the commission in achieving systematic change, especially in employment, to create a culture that rejects racial abuse. It is wise of the Attorney-General to produce his reforms in the form of an exposure draft, subject to further consultation.
There is room to reach a compromise by finding the right balance between free speech and the right not to be subjected to racial abuse in public. One way of achieving this may be to ensure that any exemption from the prohibition on racial vilification applies only to communications that occur in good faith.
One thing is for sure: the debate about the appropriate balance between free speech and the right not to be subjected to racial abuse in public has raised community awareness of the issue.
The commission looks forward to continuing to facilitate this debate.
Gillian Triggs is the president of the Australian Human Rights Commission

http://www.theaustralian.com.au/opinion/race-lawchangesseriouslyundermineprotections/story-e6frg6zo-1226866727210

Race law changes would have seen Bolt case debated outside the court

JUSTIN QUILL, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

THE debate raging over the federal government's proposed amendments to the Racial Discrimination Act is an important one. Many in our community are commenting and expressing views on it — as they should. And many are doing so with reference to the 2011 Federal Court case in which Andrew Bolt was found in breach of the RDA. But few properly understand either the changes or the impact they might have on that case if they were in place at the time.
I acted for Andrew in that case and in my view it would clearly have been decided differently if the proposed RDA were in place. And for the record, I consider that a good thing. But even better than that, I think the real outcome is that the matter would never have seen the inside of the Federal Court.
There are three main changes proposed to the RDA. First, the test for a prohibited statement would become much higher. At present causing offence is enough to be in breach of the RDA.
Under the proposed changes, that test would be satisfied only if the race-based comment vilifies or intimidates another person. Vilify would be defined as inciting hatred against a person. Intimidation is defined to mean causing fear of physical harm.
So the bar moves from mere offence to inciting hatred or causing fear of physical harm. That's an enormous change. And in my view a welcome one.
The second major change is the standard by which that prohibition will be judged. Instead of judging the effect by reference to the views of the relevant racial group, the proposed law would provide that the standards of ordinary reasonable Australians is the appropriate standard.
Again, that's a serious change that will make a real difference to outcomes.
The third main change is to the "exemption" or the "defence". The proposed exemption would provide that the prohibition doesn't apply to any statement made as part of a public discussion on a political, cultural, social, religious, artistic or scientific issue.

So would these proposed changes have made a difference in the Andrew Bolt case? I think the answer is almost certainly yes.

Andrew's article referred to a number of Aboriginal people who, as the Federal Court described, have "fairer, rather than darker, skin". Contrary to what many people assert, Andrew's article did not question their right to claim to be Aboriginal. It did question whether, given some of their privileged positions or backgrounds, they required access to prizes or jobs reserved for Aborigines. No doubt the article was offensive to those named and probably to people who fell within that class of people.

So if those individuals are offended (as they were), and the standard by which offence must be judged is their view (which the Federal Court found to be the case), then it is no surprise the article was found to be in breach of the RDA. The defence in the act was found by the court not to protect Andrew's article because of the manner in which the articles were written. Under the proposed RDA, it certainly couldn't be said that those named (or people within the same class) were made to fear for their safety as a result of the article or that it incited hatred against them.

But let's assume for a moment that the court found Andrew's article did breach the proposed prohibition. It seems almost certain that the article would be covered by the exemption and therefore not be unlawful.

It seems beyond doubt that the article was Andrew's contribution to a public discussion on an issue that could be described as either a social, political, academic or cultural issue. As such, the exemption as presently proposed would seem to apply. So under the proposed changes, Andrew's article would not breach the prohibition but, even if it did, would be protected by the exemption to the prohibition. And for this reason, I believe the best result would have been achieved — the matter would not have gone to court.

Those named in Andrew's article and their supporters would no doubt have been publicly critical of the article. They would have fought Andrew's free speech with a powerful weapon — their own free speech. And in my view, that would be the best result of all.

Justin Quill is a media lawyer with Kelly Hazell Quill Lawyers.

Twitter — @justinquill

http://www.theaustralian.com.au/business/legal-affairs/race-law-changes-would-have-seen-bolt-case-debated-outside-the-court/story-e6frg97x-1226866782478

Proposed changes would dramatically weaken the Racial Discrimination Act

STEVEN LEWIS, THE AUSTRALIAN, MARCH 28, 2014 12:00AM

THE proposed changes to the Racial Discrimination Act announced by the Attorney-General George Brandis have far-reaching implications and will significantly weaken the existing protections against racial vilification.

For nearly 20 years, the anti-vilification provisions of the Racial Discrimination Act have provided a legislative shield against hate speech in our community.

The proposed amendments would mean that the targets of racial vilification will in future have very limited legal recourse.

The existing act, as interpreted by the courts in cases since 1995, has properly distinguished between free speech and racial vilification. A well-known example is the judgment against the notorious Holocaust denier Fredrick Toben.

The Federal Court found that material on his website suggested that Jewish people who believe that the Holocaust occurred are of limited intelligence and have exaggerated the number of Jews killed during World War II to profit from what he called the "Holocaust myth".

The landmark case in 2002 against Toben in the Federal Court was run by Stephen Rothman SC, now a judge of the Supreme Court of NSW, and Peter Wertheim, the current executive director of the Executive Council of Australian Jewry.

Toben refused to comply with court orders to remove voluminous material vilifying members of the Jewish community.

In 2007, I took over from Wertheim and commenced the contempt-of-court case against Toben. This culminated in a finding by judge Bruce Lander in 2009 following a three-day hearing that Toben's conduct was "wilful and contumacious".

Toben also withdrew an undertaking given to the court in 2007 that he would comply with the orders. The judge found that Toben's conduct "was one of publicly expressed deliberate and calculated disobedience to orders" of the court. Toben was sentenced to three months' imprisonment.

His appeal to a full bench of the Federal Court was unanimously dismissed and, late one August day in 2009, Toben was taken from the court to prison.

He was not incarcerated for his views, no matter how abhorrent they are. There are no criminal penalties under the Racial Discrimination Act. He was jailed because he refused to recognise the authority of the court.

Currently, section 18C of the act makes it unlawful for a person to do an act otherwise than in private that is reasonably likely to offend, insult, humiliate or intimidate another person or group of people because of their race, colour or national or ethnic origin.

The prohibition in section 18C is balanced by the free-speech exemptions in section 18D — one of the few codified guarantees of free speech in Australia.

These exemptions protect virtually anything said or done reasonably and in good faith and cover any genuine academic, scientific or artistic discourse, or any other purpose in the public interest. Published material is protected, if it is a fair and accurate report or comment of an event, or is an expression of a genuine belief held by the person making the comment.

Mere egregious slights or insults have been found by the courts not to fall foul of section 18C.

The strangely named Freedom of Speech (Repeal of S. 18C) Bill 2014 would repeal sections 18B, C, D and E and replace them with significantly weakened legal protections against racial vilification.

The government proposes to keep "intimidate" but remove the words "offend, insult and humiliate" and to replace them with "vilify". Both terms are defined for the purposes of the act. The new definition of vilify

bears no relationship to the ordinary dictionary definition of the word.

The Macquarie Dictionary defines "vilify" as "speak evil of, defame or traduce". Under the proposed amendment, vilify will mean "to incite hatred against a person or group".

This definition fails to address the effect of racial vilification on targeted individuals and groups and would require a complainant to prove instead that the wider community has been incited to hatred.

The definition reflects a confusion of the concepts of vilification and incitement. This is a much narrower provision than found in state racial vilification laws. With the exception of Western Australia and the Northern Territory, all states and the ACT prohibit inciting hatred towards, serious contempt for, or severe ridicule of a person or group.

Further, "intimidate", unlike its dictionary definition, will now be narrowly defined to mean causing fear of physical harm to a person or property and would exclude cases where racial targeting, short of a threat of physical harm, is used to undermine a person's relationship with fellow workers, neighbours, teammates and friends.

The notorious examples of racial abuse that have occurred at sporting events, such as the abuse directed at Adam Goodes, Ali Abass, Timana Tahu, Greg Inglis and Ben Barba fell short of incitement of others (and in some cases were not heard by anybody else) and the threat of physical harm. This kind of crude racist abuse would not be caught by the proposed new legislation.

The proposed amendments would mean that Toben would be free to publish his vile material with impunity. It would be impossible to establish that the abuser's words amounted to incitement of others or that they caused fear of physical harm.

The hate-speakers' trump card will be the free-speech exemptions to replace section 18D.

Statements which vilify or intimidate a person or group on the basis of race will be entirely permissible if they are made in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter. The exemption would apply even if there is no relationship between the vilifying or intimidatory statements and the matter being discussed. The statements would be permissible even if made unreasonably or in bad faith. It is hard see what would not be exempt.

Even Toben argued that his Holocaust denial was a part of a public discussion of an academic matter, namely the history of the Holocaust.

Free speech has never been unfettered. Defamation laws provide remedies for damage to reputation and hurt to feelings. Misleading and deceptive conduct is prohibited in trade or commerce. It is only the restrictions on hate speech which have attracted the Attorney-General's ire in the name of free speech or, as he puts it, "the right to be a bigot".

As noted by Race Discrimination Commissioner Tim Soutphommasane, racism can have the effect of silencing its targets. We all have a right to be protected against bigotry and hatred. The emasculated Racial Discrimination Act will not do this.

Steven Lewis is a principal at ACA Lawyers and has run a number of cases under section 18C of the Racial Discrimination Act

http://www.theaustralian.com.au/business/legalaffairs/proposed-changes-would-dramatically-weaken-the-racial-discrimination-act/storye6frg97x1226866724033

A free and vigorous debate would be the best avenue for Bolt's detractors

OPINION, THE AUSTRALIAN, MARCH 29, 2014 12:00AM

"IN a free and energetic society, giving offence is necessary," wrote David Marr in *The Sydney Morning Herald*.

"It's called being grown up. Its other name is freedom."

After a week of debate about the Racial Discrimination Act and proposed amendments to the so-called Andrew Bolt clause, these are refreshingly wise words from a leading left commentator.

We need to remember that we live in a land where two of Bolt's newspaper columns are banned from republication — they are the uncolumns.

In an ideal world perhaps all journalists would show solidarity by having their newspapers or websites defiantly republish the columns — a national act of civil disobedience in favour of free speech.

There is no such support. Indeed, the journalistic consensus seems antagonistic towards the Abbott government's moves to claw back the provisions used against Bolt.

Those words from Marr were written six years ago, not about the Bolt case but the offence caused by artworks such as Andres Serrano's *Piss Christ* . When it came to Bolt's conviction under the RDA's section 18C, Marr, like many journalists, exhibited only schadenfreude. "Freedom of speech is not at stake here," wrote Marr. "Bolt was wrong. Spectacularly wrong."

And so we come to realise that the "permanent oppositional, moral-political community" is actually quite submissive.

The progressives, or Green Left — so lovingly described in those terms by Robert Manne — have been less than oppositional when it comes to recent attacks on freedom of expression.

They seem to ration their liberalism depending on the perceived partisan leanings of the proponent or defendant. The acquiescence of the permanent oppositional moral-political community exists even though they count as their own large elements of the Canberra press gallery and journalists elsewhere. They give free speech short shrift.

When the Gillard government, in a fit of pique and paranoia, called an inquiry into the print media, then drafted legislation for de facto regulation of newspaper content, it won support, incredibly, from many journalists particularly at the ABC.

Even the journalists' union, the Media Entertainment and Arts Alliance, was mostly absent from the battlefield, supporting the inquiry and standing meekly by to see press freedom whittled away before speaking up when it was clear the package was doomed.

To see the importance of what is transpiring we need only consider these events another way around.

Think of the Abbott government introducing laws to regulate print media content.
And let us pretend laws against religious persecution are used to convict Marr over columns about Tony Abbott and the Catholic Church, so that he is forced to apologise and the offending columns are banned.
It is not hard to imagine the justifiable and thunderous outrage from the Left.
After all, many are already screaming like banshees at the very mention of holding the ABC to its existing charter.
Left or right, centrist or apathetic, we all have an interest in resisting insidious encroachments on free speech.
It is true Labor's media regulation has been seen off, for now, and that section 18C has been in place for decades. But where the Left and many journalists have been derelict is in not being innervated by the Bolt case.
Instead of rushing to trumpet our own tolerance by condemning Bolt's harshness, those of us interested in the free exchange of ideas should condemn Judge Mordy Bromberg's decision and/or the laws under which it was given.
You don't have to agree with the confronting columnist to defend his right to share his views.
As it happens, Bolt's columns were appeals against race-based preferment and the temptation to parade one aspect of our ethnic make-up over any other.
The columns highlighted an extremely significant issue about whether grants and positions for indigenous Australians are going to those suffering discrimination or disadvantage or whether, at least sometimes, they go to those simply able to demonstrate a connection.
Kerryn Pholi, who worked in but then rejected positions reserved for Aborigines, has written at length on this from a personal perspective in *Quadrant*.
"I felt hurt (by the Bolt columns) because the truth hurts," she says, "and my comforting rationalisations about myself and my place in the world were already painfully dissolving."
Bolt stridently questioned the legitimacy of urbanised, mixed-race people identifying as predominantly Aboriginal and claiming awards and grants allocated for indigenous people.
"The resulting court case and decision seemed to rest on how the injured parties felt," observes Pholi, "whether they felt themselves to be Aboriginal and had always felt that way, and whether they felt upset and offended by Bolt's writing, and whether other fair-skinned Aboriginal people and other such 'vulnerable' Aboriginal people would be likely to feel the same way."
This gets to the nub of the issue and the rationale behind the government's proposed changes.
Bromberg based his findings not only on what Bolt wrote but on what he didn't write. He defended Bolt's right to make his point but condemned the manner and tone in which he made it.
And he ruled on the likely extent of insult, offence and humiliation among a specific group of people.
This ill-defined and subjective power in the hands of the judiciary is far too broad and can only have a chilling effect on free speech.
There are two ways a more free society could have dealt with Bolt's challenging and provocative columns.
First, to the extent they raised important issues and people disagreed, then his views should have been contested in a vigorous and free debate.
And to the extent individuals believed their reputations were attacked and damaged, the longstanding protections of defamation law were available.
The 18C amendments are necessary to ensure we see no more columns banned.
http://www.theaustralian.com.au/opinion/columnists/a-free-and-vigorous-debate-would-be-the-best-avenue-for-bolts-detractors/story-fn8qlm5e-1226867968162

No respect for most basic right

Gabriel Sassoon, THE AUSTRALIAN, MARCH 29, 2014 12:00AM

Gabriel Sassoon, in Tel Aviv, is dismayed by Section 18C's censorious approach to hate speech. Picture: Assaf Shilo/Israel Sun *Source:* Supplied

THE measure of a society's commitment to free speech is the extent to which it protects offensive, unpopular speech. Free speech is hard: it has any meaning only if it protects the most virulent and

Disturbingly, it has become more and more clear that many Australians wish to protect only speech that we find innocuous.

Watching the section 18C debate unfold from out here in the Australian diaspora has been troubling.

Having spent some years in the US, where I helped set up a human rights organisation focusing on some of the most repressive closed societies, the absence of a serious constitutional and cultural commitment to free speech in Australia seems especially glaring.

No American state or federal legislature would have dared enact a provision like 18C. Its noble public policy goals are clearly outweighed by the fundamental right to free speech and, anyway, its terms are overbroad and its exemptions are limited.

But if they had enacted it, 18C would have been invalidated as unconstitutional by the courts under the First Amendment to the American Bill of Rights.

The debate in Australia has proven that we don't have the same tradition of respect for freedom of speech as Americans do. They have long recognised, correctly in my view, that free speech is the pre-eminent human right. As Robert Bernstein, founder of Human Rights Watch and my old boss in New York, once told me: free speech is the right from which all others flow. It is the right that guarantees all the others.

It is for this reason that we must tolerate the expression of even the most odious of views. Truly free and unfiltered open discourse is the lifeblood of democracy.

I have heard talk of rights such as "freedom from racist abuse", and similar such formulations. Those who make such claims misunderstand freedom of speech.

Free speech is a meaningless concept if it protects only inoffensive, popular views.

In a free society, we are free to express views that will offend other people. Yes, there are narrow limits to free speech, principally around speech which rises to the level of incitement to, or threats of, violence.

But there is no right not to be offended. For instance, as a Jewish Australian, in exchange for being a citizen of a country which permits me to say virtually anything, I accept that nasty, vicious things might be said about my community. I accept that ignorant bigots will use anti-Semitic stereotypes and deny the Holocaust.

The correct response to such racial and ethnic abuse is ridicule, not censorship. For two reasons. Firstly, because it is fundamentally wrong to censor speech in a free society. Secondly, because it doesn't work.

The Europeans have a long tradition of banning hate speech, but racism, anti-Semitism and anti-Muslim abuse are at fever pitch on the Continent. French Jews have been leaving the country in ever-increasing numbers. For all France's paternalistic hate-speech laws, its Jews live under threat and so do other minorities.

It is in Europe, with its "protections" against hate speech, that Holocaust denial and anti-Semitism run rampant, and it is in Europe that minorities are embattled and politically disengaged.

I understand why my friends in the Australian Jewish communal leadership, who have made much use of section 18C, take a different view. I respect their view and the views of other ethnic community leaderships. I am nevertheless dismayed by 18C's simplistic, censorious, illiberal approach to hate speech. We sell ourselves short when we resort to banning speech that we find offensive.

For all the good intent of supporters of 18C, the provision doesn't show the deferential respect for free speech rights that liberalism demands. Attorney-General George Brandis, for all the derision that's been directed at him by my friends on the Left, is correct: Australians have a right to express any view they choose to. They have the right to be bigots if they so choose. And we have the right to ridicule them mercilessly. That is the essence of free speech.

As a proud ALP member, it is disappointing to me that this debate is unfolding along party lines. I agree with almost none of what the government stands for, but it is right on this issue.

What Andrew Bolt said in his articles was hurtful and wrong. Most of it would have been unlawful under defamation law.

But if he wishes to make ignorant comments about "fair-skinned" Aborigines, or if some hate group wishes to deny the Holocaust, I disapprove of what they say, but I will defend to the death their right to say it. That is their right in a democratic society.

Gabriel Sassoon is foreign communications adviser to the Knesset Deputy Speaker and the Israeli Labor Party, based in Tel Aviv. He is former public affairs director for Advancing Human Rights and a member of the ALP. The views expressed are his alone.

http://www.theaustralian.com.au/nationalaffairs/opinion/no-respect-for-most-basic-right/storye6frgd0x-1226868145287

Act failing to stop black-on-black racism, says Wesley Aird

PATRICIA KARVELAS AND JOHN FERGUSON, THE AUSTRALIAN, MARCH 29, 2014 12:00AM

A FORMER member of John Howard's indigenous advisory council, Wesley Aird, says the current anti-racial vilification regime has done nothing to stop racism within the Aboriginal community.

Throwing his support behind the push to scrap section 18C of the Racial Discrimination Act, Mr Aird said yesterday the amendments proposed by Attorney-General George Brandis were needed to bring the act into alignment with the "expectations of mainstream Australian society".

"No act of parliament can ever be the panacea to all our ills," Mr Aird said.

"We know Aboriginal leaders don't all agree on every topic, but Australia is not the sort of country that should put up with two sets or standards of freedom of speech - one for black and one for white. It's hypocritical and simply not good enough for Aboriginal people to claim to be just victims of race hate while at the same time abusing or bullying each other over a difference of opinion.

Former Howard indigenous council member Wesley Aird at his home in Brisbane yesterday. 'Black, white or brindle, vilification should not be tolerated'. Picture: Jack Tran *Source:* News Corp Australia

"Black, white or brindle, vilification should not be tolerated and the Racial Discrimination Act is plainly not doing its job if elements of the Aboriginal community are free to abuse other Aboriginal people, knowing full well they can get away with it."

NSW Premier Barry O'Farrell has raised his concerns about the amendments with Senator Brandis and sought legal advice.

Speaking to the Israeli-Australian Chamber of Commerce on Thursday night, Mr O'Farrell said Australia had people who had become internationally notorious as Holocaust deniers. "Anything which allows them to get through the legal hoops without them being touched I will vigorously oppose," he said.

While the federal Coalition is moving to water down federal anti-vilification law, NSW is set to increase the severity of a law that could send people to jail for serious racial vilification.

Victorian Premier Denis Napthine yesterday distanced himself from Mr Brandis's comment that bigots should be allowed to be bigots. Declaring that "Melbourne is the multicultural capital of the world", Dr Napthine said there were economic as well as social advantages in marketing Victoria.

"We want to promote multiculturalism, there is no place for bigotry.

"There is no place for racial vilification, no place for bullying on the basis of race, faith or ethnicity."

Victoria is examining whether any federal law will affect state-based anti-vilification legislation and will submit to the commonwealth that any changes should not affect state law.

Senator Brandis, who has denied he had been forced to water down his proposed amendments, has released draft changes to the Racial Discrimination Act that scrap Section 18C.

The provision makes it unlawful to offend, insult, humiliate or intimidate other people or groups of people because of their race, colour or national or ethnic origin.

The government would replace Section 18C with provisions making it unlawful to vilify or intimidate others on similar grounds, but there are broad exemptions.

Bill Shorten yesterday seized on comments made by Communications Minister Malcolm Turnbull in The Australian that he was concerned about protecting people from racism to argue there was a split in the government.

"We're already seeing the dysfunctionality of the Abbott cabinet with leaks from at least four ministers," the Opposition Leader said.

"You've got Malcolm Turnbull with his opaque comments that he couldn't possibly say what he thinks because that would be unhelpful. I say to Malcolm that just keeping silent on these matters doesn't help anyone, actually."

University of Melbourne law professor Mark McMillan, one of the nine claimants against News Corp Australia columnist Andrew Bolt in the case that sparked the Coalition promise to scrap Section 18c, yesterday said he had not recovered.

"We got death threats, whether they were serious or not, I was accused of being a pedophile, and these were not just responses of Andrew Bolt," Mr McMillan told NITV. "They were responses to the understanding of what Andrew Bolt presented and therein lies the hurt, and I still find it very difficult to move on."

Additional reporting: Mark Coultan

http://www.theaustralian.com.au/national-affairs/act-failing-to-stop-blackonblack-racism-says-wesley-aird/story-fn59niix-1226868211673

Abbott trying to turn back the tide

PETER VAN ONSELEN, THE AUSTRALIAN, MARCH 29, 2014 12:00AM

Abbott has been defined above all by his social conservatism. Picture: Sturt Krygsman *Source:* News Corp Australia

SOME people are offended by Tony Abbott's decision to reintroduce knighthoods and dames. Not me; I just find it antiquated and irrelevant to a modern Australia (much as John Howard does). It is also noteworthy that the Prime Minister didn't even bother to run the idea past his partyroom or the cabinet, despite the partyroom having met just hours before the announcement was made.

It doesn't say much for good processes, does it?

For anyone who wondered, however, when the real Tony Abbott might arise to take his place as Prime Minister, this symbolic move was surely it, coupled with the release of draft plans to replace section 18C of the Racial Discrimination Act.

For years now Abbott has risked becoming his own version of Kevin Rudd, and the loss of identity has certainly been a feature of his six months in the prime ministership. That ended this week. Rudd never knew what he really stood for; neither did Julia Gillard, for that matter. Digging in on certain issues — in the case of Gillard, with respect to the carbon tax — doesn't necessarily get us any closer to knowing what a leader truly believes in.

Don't forget it was Gillard who talked Rudd out of sticking with the emissions trading scheme in the lead-up to the 2010 election. Equally, Rudd, after declaring climate change "the greatest moral challenge of our time", was willing to be led down the path of deferring the ETS implementation in late 2009. Like this pair, Abbott was a weathervane on climate change, before seeing the political fortunes attached to targeting the ETS (and then the carbon tax) as "a great big new tax".

Never forget that Abbott, when Malcolm Turnbull was leader, wrote an opinion piece for this newspaper encouraging his colleagues to pass the ETS, before seeing the value in shifting positions. In an interview with Sky News, Abbott described a carbon tax as the simplest and best way to address climate change, before painting Gillard as a liar for back-flipping on the issue.

While we're at it, it's worth noting that most of the Liberals in cabinet and all of Abbott's close lieutenants voted for Turnbull in the leadership showdown and argued in favour of the ETS when the issue was fracturing the party. The exceptions in cabinet now — Mathias Cormann, Kevin Andrews and Andrew Robb — weren't in cabinet back then. The only person who was is Eric Abetz and, for his loyalty, he has been cast adrift by Abbott, as George Brandis continues to stalk for the Senate leadership (using the 18C debate for that very purpose, but we'll come back to that).

Whatever anyone thinks about the issues with which Abbott defined himself in opposition, or the approaches he has taken since assuming the prime ministership, few are what you may call bedrocks of personal conviction.

Unlike Howard, who saw his first budget as PM and the move to introduce industrial relations changes and the GST as the fruits of a lifetime of political positioning, the Abbott agenda so far doesn't sit neatly with what drives the man.

That's not to say he disagrees with following through on ending the age of entitlement, adjusting the way healthcare is carried out in this country or looking into more efficient ways of delivering welfare. (This last policy area was where Abbott started his ministerial career under Howard.) But these issues don't define Abbott.

Historically, Abbott has been defined by his support for the culture wars (hence his moves against the ABC), his belief in traditions (hence this week's change in titles), his loyalty to friends (hence his follow-through on 18C in honour of Andrew Bolt, despite the staggering show of disloyalty Abbott displayed a few years ago to Peter Reith when he ran for the party presidency). And, finally, Abbott has been defined above all by his social conservatism.

Abbott detractors have always feared that he might re-engage on issues long ago fought and won (for example, abortion rights). That's unlikely, but you can bet there will be more debate about the possibility post the retrograde decision to bring back the titles Sir and Dame.

Where Abbott has been prepared to fight on social issues is in areas that remain contested: gay marriage, for example.

Realpolitick conservatives know that their best hope is to hold back the tide, not turn it around, which is why the restoration of knights and dames is so interesting.

Abbott is trying to turn around the tide, if only in this one symbolic policy area. It raises the questions: Why, and what might be next?

The why is easily answered: he loves the pomp and ceremony, as silly as that sounds. The same way former Speaker Peter Slipper did, when he used to walk into the chamber in his wig and robes. Two peas in a pod.

I've heard defenders of the move by Abbott to turn back the clock suggest that because the new titles fall under the banner of the Order of Australia, it is unfair to suggest these modern

knighthoods and dames are a throwback to a bygone era. The fact a knight's wife will be referred to as lady highlights that the new honour has more in common with the past than the Order of Australia system.

So what may be next? That's hard to know, but the debate over 18C will certainly continue in the meantime. While Abbott's interest in repealing section 18C is driven by his loyalty to Bolt (with a tinge of free speech focus thrown in), it also highlights his tin ear for the attitude of ethnic communities.

More interesting is what has motivated Brandis to pursue the change as strongly as he has. In short, the Attorney-General is running for the Senate leadership. It's a long-run campaign.

Brandis used to be seen as a moderate of note within the Liberal Party. But the combination of preselection in a newly merged Liberal National Party in Queensland and winning over a conservative-dominated Liberal Senate team to become leader one day have hardened Brandis's world view. The 18C debate is simply a vehicle for Brandis to win over one-time opponents in the Senate within his own party.

Aside from the perspective anyone might hold on titles and 18C, you have to question the political professionalism of raising these twin issues on Tuesday, the day Labor joined the Greens in the Senate to block the repeal of the mining tax. You'd hardly know that happened, given all the distractions. What professional political outfit distracts from Labor blocking the mining tax repeal with knighthoods and plans to make it legal to humiliate people based on their race on the eve of a WA Senate re-run election? A state where the mining tax is anything but popular?

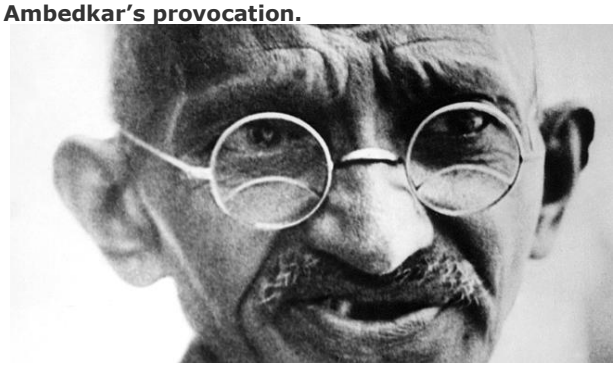
Peter van Onselen is a professor at the University of Western Australia.

http://www.theaustralian.com.au/opinion/columnists/abbott-trying-to-turn-back-the-tide/story-fn53lw5p-1226867879856

Arundhati Roy's preface to BR Ambedkar's Annihilation of Caste

ARUNDHATI ROY, THE AUSTRALIAN, MARCH 29, 2014 12:00AM

***Annihilation of Caste* is B.R. Ambedkar's most radical text. It is not an argument directed at Hindu fundamentalists or extremists, but at those who considered themselves moderate, those whom Ambedkar called "the best of Hindus" — and some academics call "left-wing Hindus". Ambedkar's point is that to believe in the Hindu shastras and to simultaneously think of oneself as liberal or moderate is a contradiction in terms. When the text of *Annihilation of Caste* was published, the man who is often called the "Greatest of Hindus" — Mahatma Gandhi — responded to Ambedkar's provocation.**



Mahatma Gandhi: 'There is no doubt that Gandhi was an extraordinary and fascinating man, but during India's struggle for freedom, did he really speak Truth to Power?' *Source:* AFP

BR Ambedkar's Annihilation of Caste. *Source:* Supplied

Their debate was not a new one. Both men were their generation's emissaries of a profound social, political and philosophical conflict that had begun long ago and has still by no means ended. Ambedkar, the Untouchable, was heir to the anticaste intellectual tradition that goes back to 200–100 BCE. Gandhi, a Vaishya, born into a Gujarati Bania family, was the latest in a long tradition of privileged-caste Hindu reformers and their organisations.

Putting the Ambedkar–Gandhi debate into context for those unfamiliar with its history and its protagonists will require detours into their very different political trajectories. For this was by no means just a theoretical debate between two men who held different opinions. Each represented very separate interest groups, and their battle unfolded in the heart of India's national movement. What they said and did continues to have an immense bearing on contemporary politics. Their differences were (and remain) irreconcilable. Both are deeply loved and often deified by their followers. It pleases neither constituency to have the other's story told, though the two are inextricably linked. Ambedkar was Gandhi's most formidable adversary. He challenged him not just politically or intellectually, but also morally. To have excised Ambedkar from Gandhi's story, which is the story we all grew up on, is a travesty. Equally, to ignore Gandhi while writing about Ambedkar is to do Ambedkar a disservice, because Gandhi loomed over Ambedkar's world in myriad and un-wonderful ways.

The Indian national movement, as we know, had a stellar cast. It has even been the subject of a Hollywood blockbuster that won eight Oscars. In India, we have made a pastime of holding opinion polls and publishing books and magazines in which our constellation of founding fathers (mothers don't make the cut) are arranged and rearranged in various hierarchies and formations. Mahatma Gandhi does have his bitter critics, but he still tops the charts. For others to even get a look-in, the Father of the Nation has to be segregated, put into a separate category: Who, after Mahatma Gandhi, is the greatest Indian?

Dr Ambedkar (who, incidentally, did not even have a walk-on part in Richard Attenborough's Gandhi, though the film was co-funded by the Indian government) almost always makes it into the final heat. He is chosen more for the part he played in drafting the Indian Constitution than for the politics and the passion that were at the core of his life and thinking. You definitely get the sense that his presence on the lists is the result of positive discrimination, a desire to be politically correct.

The fact is that neither Ambedkar nor Gandhi allows us to pin easy labels on them that say "pro-imperialist" or "anti-imperialist". Their conflict complicates and perhaps enriches our understanding of imperialism as well as the struggle against it.

History has been kind to Gandhi. He was deified by millions of people in his own lifetime. Gandhi's godliness has become a universal and, so it seems, an eternal phenomenon. It's not just that the metaphor has outstripped the man. It has entirely reinvented him. (Which is why a critique of Gandhi need not automatically be taken to be a critique of all Gandhians.) Gandhi has become all things to all people: Obama loves him and so does the Occupy Movement.

Anarchists love him and so does the Establishment. Narendra Modi loves him and so does Rahul Gandhi. The poor love him and so do the rich.
He is the Saint of the Status Quo.
Gandhi's life and his writing — 48,000 pages bound into 98 volumes of collected works — have been disaggregated and carried off, event by event, sentence by sentence, until no coherent narrative remains, if indeed there ever was one. The trouble is that Gandhi actually said everything and its opposite. To cherry pickers, he offers such a bewildering variety of cherries that you have to wonder if there was something the matter with the tree.
For example, there's his well-known description of an arcadian paradise in "The Pyramid vs. the Oceanic Circle", written in 1946:
Independence begins at the bottom. Thus every village will be a republic or panchayat having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world… In this structure composed of innumerable villages there will be ever-widening, never-ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose centre will be the individual always ready to perish for the village… Therefore the outermost circumference will not wield power to crush the inner circle but will give strength to all within and derive its own strength from it.
Then there is his endorsement of the caste system in 1921 in Navajivan. It is translated from Gujarati by Ambedkar (who suggested more than once that Gandhi "deceived" people, and that his writings in English and Gujarati could be productively compared):
Caste is another name for control. Caste puts a limit on enjoyment. Caste does not allow a person to transgress caste limits in pursuit of his enjoyment. That is the meaning of such caste restrictions as inter-dining and inter-marriage… These being my views I am opposed to all those who are out to destroy the Caste System.
Is this not the very antithesis of "ever-widening and never ascending circles"?
It's true that these statements were made twenty-five years apart. Does that mean that Gandhi reformed? That he changed his views on caste? He did, at a glacial pace. From believing in the caste system in all its minutiae, he moved to saying that the four thousand separate castes should 'fuse' themselves into the four varnas (what Ambedkar called the "parent" of the caste system). Towards the end of Gandhi's life (when his views were just views and did not run the risk of translating into political action), he said that he no longer objected to inter-dining and intermarriage between castes. Sometimes he said that though he believed in the varna system, a person's varna ought to be decided by their worth and not their birth (which was also the Arya Samaj position). Ambedkar pointed out the absurdity of this idea: "How are you going to compel people who have achieved a higher status based on their birth, without reference to their worth, to vacate that status? How are you going to compel people to recognise the status due to a man in accordance to his worth who is occupying a lower status based on his birth?" He went on to ask what would happen to women, whether their status would be decided upon their own worth or their husbands' worth.
Gandhi never decisively and categorically renounced his belief in chaturvarna, the system of four varnas. Still, why not eschew the negative and concentrate instead on what was good about Gandhi, use it to bring out the best in people? It is a valid question, and one that those who have built shrines to Gandhi have probably answered for themselves. After all, it is possible to admire the work of great composers, writers, architects, sportspersons and musicians whose views are inimical to our own. The difference is that Gandhi was not a composer or writer or musician or a sportsman. He offered himself to us as a visionary, a mystic, a moralist, a great humanitarian, the man who brought down a mighty empire armed only with Truth and Righteousness. How do we reconcile the idea of the non-violent Gandhi, the Gandhi who spoke Truth to Power, Gandhi the Nemesis of Injustice, the Gentle Gandhi, the Androgynous Gandhi, Gandhi the Mother, the Gandhi who (allegedly) feminised politics and created space for women to enter the political arena, the eco-Gandhi, the Gandhi of the ready wit and some great one-liners — how do we reconcile all this with Gandhi's views (and deeds) on caste? What do we do with this structure of moral righteousness that rests so comfortably on a foundation of utterly brutal, institutionalised injustice? Is it enough to say Gandhi was complicated, and let it go at that? There is no doubt that Gandhi was an extraordinary and fascinating man, but during India's struggle for freedom, did he really speak Truth to Power? Did he really ally himself with the poorest of the poor, the most vulnerable of his people?
"It is foolish to take solace in the fact that because the Congress is fighting for the freedom of India, it is, therefore, fighting for the freedom of the people of India and of the lowest of the low," Ambedkar said. "The question whether the Congress is fighting for freedom has very little importance as compared to the question for whose freedom is the Congress fighting."60
In 1931, when Ambedkar met Gandhi for the first time, Gandhi questioned him about his sharp criticism of the Congress (which, it was assumed, was tantamount to criticising the struggle for the Homeland). "Gandhiji, I have no Homeland," was Ambedkar's famous reply. "No Untouchable worth the name will be proud of this land."
History has been unkind to Ambedkar. First it contained him, and then it glorified him. It has made him India's Leader of the Untouchables, the King of the Ghetto. It has hidden away his writings. It has stripped away the radical intellect and the searing insolence.
All the same, Ambedkar's followers have kept his legacy alive in creative ways. One of those ways is to turn him into a million mass-produced statues. The Ambedkar statue is a radical and animate object.62 It has been sent forth into the world to claim the space — both physical and virtual, public and private — that is the Dalit's due. Dalits have used Ambedkar's statue to assert their civil rights — to claim land that is owed them, water that is theirs, commons they are denied access to. The Ambedkar statue that is planted on the commons and rallied around always holds a book in its hand. Significantly, that book is not Annihilation of Caste with its liberating, revolutionary rage. It is a copy of the Indian Constitution that Ambedkar played a vital role in conceptualising — the document that now, for better or for worse, governs the life of every single Indian citizen.
Using the Constitution as a subversive object is one thing. Being limited by it is quite another. Ambedkar's circumstances forced him to be a revolutionary and to simultaneously put his foot in the door of the establishment whenever he got a chance to. His genius lay in his ability to use both these aspects of himself nimbly, and to great effect. Viewed through the prism of the present, however, it has meant that he left behind a dual and sometimes confusing legacy: Ambedkar the Radical, and Ambedkar the Father of the Indian Constitution. Constitutionalism can come in the way of revolution. And the Dalit revolution has not happened yet. We still await it. Before that there cannot be any other, not in India.

This is an edited extract from The Doctor and the Saint, a preface by Arundhati Roy to BR Ambedkar's Annihilation of Caste, published by Navayana and available at www.navayana.org from April 1.

http://www.theaustralian.com.au/arts/review/arundhati-roys-preface-to-br-ambedkars-annihilation-of-caste/story-fn9n8gph-1226867657395

Holocaust Survivor Moshe Fiszman Begs Prime Minister Tony Abbott Not To Change Racial Discrimination Act

By Anne Lu | March 28, 2014 2:20 PM EST

Prime Minister Tony Abbott's plans to change the Racial Discrimination Act have been met with criticisms from various groups. Holocaust Survivor Moshe Fiszman pleads the country's leader to abandon his proposed changes, saying that he would be taking away their freedom in doing so.

Reuters

Australian Prime Minister Tony Abbott tells parliament in Canberra that satellite imagery has found two objects possibly related to the search for missing Malaysia Airlines flight MH370, in this still image taken from video March 20, 2014. Australian search aircraft are investigating two objects spotted by satellite floating in the southern Indian Ocean that could be debris from a Malaysian jetliner missing with 239 people on board, Abbott said on Thursday. REUTERS/Australian Broadcasting Corporation via Reuters TV

The Government has made known of its plans to remove key sections of the RDA, including Section 18C, which makes it unlawful to do an act that is "reasonably likely, in all the circumstances, to offend, insult, humiliate, or intimidate another person or a group of people" based on their racial or ethnic backgrounds.

The Opposition and Greens have opposed the proposal, saying that the changes will just make it legal for bigotry to rule the country.

Mr Abbott claimed that the changes are necessary to remove the restrictions on "free speech," and that they also include strong prohibitions on racial vilification.

Mr Fiszman, a 92-year-old Holocaust survivor who spent the Second World War in Nazi concentration camps, begged to differ. He penned an open letter to the PM, asking him to abandon his plans to change the RDA.

"You might think you are increasing freedom, but let me assure you that you will be taking away the freedom of communities such as mine. The freedom to live without hatred and without lies being told about us," he wrote.

"That is why every single ethnic community is against this change. Some 39 communities have protested against it. Australia is a beautiful country because, like the United States, we are all migrants – not minorities. But if this law gets up, we will be made to feel like minorities.

"You might think you are increasing freedom, but this change will hurt disadvantages, underprivileged groups, like the Aborigines who regularly visit the Jewish Holocaust Museum."

He continued, "I came to this country because it was the furthest away from Europe I could get. Also, I had four years behind bars as a refugee after the war because nobody wanted me, so I had plenty of time to check out what Australia was made of. I researched its constitution and so forth, and I liked it.

"We are quite happy with the freedom we have got at the moment. There is nothing wrong with it. For God's sake, you can do whatever you like in this country. We are even freer than in the United States.

"What do they want to change this law for? If you start playing around with it, where will it end up? Who is it giving the freedom to? They want the right-wing loonies to have a free rein so they can write and say whatever they like and get away with it scot-free. Holocaust deniers like the Adelaide Institute."

Mr Fiszman was the only member of his family to survive after suffering in various Nazi concentration camps, including the Auschwitz-Birkenau and Dachau.

"This is my opinion as a survivor, the opinion of a man who went through living hell for five-and-a-half years, on death row for 24 hours a day. I am dead against it. Don't let them touch the freedom of the people in the country.

"At the moment I am an Australian. I am not defined as being a Jew or a Catholic or a Protestant. But if these laws go through, we will end up as members of minority groups. Then God help us."

He concluded his letter with: "I love this country. There is no other country in the world as free as ours. Lease don't change the law, Mr Abbott."

Mr Fiszman's letter has been obtained by The New Daily.
To contact the editor, e-mail: editor@ibtimes.com

MIDDLE EAST REALITY CHECK

EXPOSING PRO-ISRAEL BIAS, PROPAGANDA, DISINFORMATION AND SPIN IN AUSTRALIA'S MAINSTREAM MEDIA. MONITORING PRO-ISRAEL INFLUENCE IN AUSTRALIA'S PUBLIC AND POLITICAL ARENA

FRIDAY, MARCH 21, 2014

Clarification Sought

Notice how Netanyahu describes criticism of Israel asvilification:

"In a world where Israel is vilified, castigated, where a beleaguered democracy is defending its very life against radical Islamist forces, we don't always get credit..." Israeli PM,Benjamin Netanyahu, quoted in *Netanyahu plans historic visit*, John Lyons/ Jared Owens, *The Australian*, 20/3/14).

Notice how local Zionist lobbyist, Peter Wertheim, describescriticism of a "group" as vilification:

"The Jewish community has been at the forefront of opposition to changes to the [Racial Discrimination] Act. Peter Wertheim, head of the Executive Council of Australian Jewry, points out laws against vilification operate in Britain, Canada... 'The protections provided by section 18C are similar to those that exist under defamation laws, but the protections extend to groups and not merely individuals'." (*The recovery of liberty*, Christian Kerr,*The Australian*, 20/3/14)

When is someone - *anyone* - in the corporate media going to ask the ubiquitous Mr Wertheim what he means by "group," and specifically, whether the term encompasses Israel/Israelis/Zionists?

POSTED BY MERC AT 6:42 AM LABELS: ECAJ, FREE SPEECH
http://middleeastrealitycheck.blogspot.com.au/
