

**FORUM#****FREEDOM OF SPEECH: CONTEMPORARY ISSUES****FOREWORD**

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This *Forum* finds its genesis in a cartoon by Michael Leunig, published in *The Age* earlier this year. Two figures sit on opposing sides of a desk. The first figure begins by asking: 'If we have this unique Judeo-Christian morality...'

'Yes?' prompts the second figure, so the first figure continues. 'Might we not also have a unique Judeo-Christian blind spot? A special immorality also?' This is not what the second figure was expecting. 'No...' he replies.

But the first figure persists.

'A unique Judeo Christian stupidity...? ...brutality? cruelty...? A flip side? A down side? A dark side?' The second figure responds by bellowing, with increasing intensity, 'No. No, No, No, NO NO **NO NO!**'

This cartoon struck a chord with me. I wondered, are we losing sight of our own failings? Have challenges to our sense of security and certainty made us intolerant of difference, dissent, and criticism?

These questions are not new, but they are as urgent now as they have ever been. And they are answered, most often and most clearly, by reference to freedom of speech. We assume that this principle safeguards forthright and rigorous debate, without demanding a great deal from us as individuals.

Recent experience, however, suggests that we cannot take free speech for granted. This *Forum* is intended to explore the issues currently surrounding free speech, and to explore its limits.

The *Australian Constitution* provides a natural starting point for this discussion. The *Constitution* is the source of the implied freedom of political communication, the only legal doctrine protecting speech in Australia.

Nicholas Aroney begins by investigating recent case law on the status of legal communication. Adrienne Stone then provides a review the High Court's recent interpretation of the implied freedom of political communication as limited by

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the ‘text and structure’ of the *Constitution*, while Dan Meagher critically examines the High Court’s recent invocation of the ‘fighting words’ doctrine, a creature of United States constitutional law.

Next, Katharine Gelber considers some recent developments in hate speech, and Ben Saul reflects on the implications of outlawing incitement to violence, in the context of current and proposed anti-terror legislation.

Agnes Chong and Waleed Kadous, co-convenors of the Australian Muslim Civil Rights Advocacy network, then provide an overview of these laws and their likely impact on free speech, and Professor Eric Barendt scrutinises the latest developments in the United Kingdom. Chris Nash continues by examining the impact of proposed anti-terror laws on freedom of the press.

Jack R Herman, Executive Secretary of the Australian Press Council, expands on this topic by outlining a number of contemporary threats to press freedom. Paul Jones explores the current direction of media policy and the role of moguls, while *Stateline* presenter Quentin Dempster discusses the importance of the public broadcaster in protecting diversity of media opinion. Finally, Kimberly Heitman of Electronic Frontiers Australia contemplates the limits of online free speech.

One theme that emerges from this *Forum* is that freedom of speech is an essential element in the maintenance of democracy and the rule of law. Although the High Court has declined to recognise free speech as an end in itself, the Court has recognised that free political communication is necessary to protect the constitutional system.

This *Forum* also points to the fragility of free speech. Despite official assurances to the contrary, existing and proposed anti-terror laws have the potential to undermine free and open debate, as well as to curb private and religious speech.

The press has an important role to play in this context. As Chris Nash argues, the media can help to guard the democratic process by holding the powerful to account, and the internet may also aid the dissemination of important information.

Of course, this *Forum* is not exhaustive, and I hope that the questions it raises may be as instructive as the answers it offers. The discussion hints at the role that might be played by a Bill of Rights, challenges our assumptions about press freedom, and reminds us that not all forms of speech are defensible.

Ultimately, perhaps it should be noted that the greatest danger to free speech is not posed by terrorism, legislative incursions, or by the absence of constitutional protection. Instead, the threat comes from within – from the real possibility that we may grow comfortable, complacent, and unwilling to question our assumptions. The best safeguard against this outcome is rigorous, open and tolerant public debate, which I hope will be fostered by this *Forum*.

I would like to thank each of the contributors to this *Forum* for their thoughtful, incisive pieces. Sincere thanks are due to faculty advisors Robert Shelly and Alex Steel, whose wise counsel has been invaluable. I am also grateful to Emeritus Professor Michael Chesterman, who has given generously of his expert advice. Finally, this *Forum* would not have been possible without the tireless work of the Editorial Board, whose friendship and commitment have been a great inspiration.