**Proposed changes to Section 18C: welcome but hollow**

**Scott Buchanan**

*Note: the bulk of this article below was written before the outcome of the recent parliamentary inquiry into proposed changes to Section 18C. I have left the article largely intact, with just a few nods to events of the past month.*

Free speech advocates have every reason to feel aggrieved with the current government. Why, just a few weeks ago – after a parliamentary inquiry into proposed changes to Section 18C of the *Racial Discrimination Act* – Coalition politicians somehow managed to combine pusillanimity with pugnacity. [Scott Morrison brusquely claimed](http://www.smh.com.au/federal-politics/political-news/scott-morrison-warns-against-internal-fight-over-free-speech-laws-it-doesnt-create-one-job-20170228-gunoqu.html) to ‘know’ that ‘this issue doesn’t create one extra job’, failing to ‘see any intersection between the issue and those [i.e., economic] priorities’. Other ministers made the same attempt at compensating for their lack of ideological fortitude by publicly scorning the expansion of free speech.

This is not a new claim, by any means. Morrison’s argument reminds me of some rather tremulous [comments the Prime Minister uttered](https://www.theguardian.com/world/2016/aug/19/labor-accuses-coalition-of-changing-stance-on-racial-discrimination-law) last August in response to the same issue:

*With all due respect to the very worthy arguments surrounding it, it is not going to create an extra job or…build an extra road.*

Around the same time, one of Turnbull’s ministers, Mitch Fifield, said much the same thing on ABC’s [*Q and A*](http://www.abc.net.au/tv/qanda/past-programs-by-date.htm) program on 22nd August 2016 (even repeating the phrase ‘worthy arguments’ to ensure everybody knew he was on message):

*While I appreciate many of the worthy arguments that some of my colleagues put forward in relation to 18C, it's not something that we have an intention to change*.

Fifield went on to offer a rather insipid rationale for inaction, which sounded uncannily like his leader’s. And, last December, the Liberal member for the federal Sydney seat of Bennelong, [John Alexander, urged the government](http://www.theaustralian.com.au/national-affairs/malcolm-turnbull-faces-section-18c-test-amid-ethnic-opposition/news-story/dacbbe824735cde032905b90918fd35f) to concentrate on ‘productive things rather than political things [i.e., debates over amending 18C]’. It seems that this kind of febrility is endemic within the Liberal Party.

To be sure, Turnbull has softened his opposition to changing 18C, and his government is now proposing certain amendments to the offending act. He’s offered a welcome rationale for the public modification of his assessment, saying ‘there is a view’ that ‘the bar has been set too low’ with regard to the law in question, thereby constituting an unwarranted ‘restriction [upon] free speech’. This is quite reasonable: as recent controversies have indicated, views that appear to fall outside the definition of racially offensive speech have nonetheless proven vulnerable to legal censure. To what extent Turnbull’s change of heart has been the result of a genuine shift in perspective – as opposed to a restive backbench – is uncertain. But even some of his more recent reflections on the subject are relatively muted: witness the way he talked about freedom of speech in the abstract (‘there is a view…’), as if he himself were too afraid to own the opinion to which he was referring. A full-throated shout of defence it was not.

The lack of conviction is still a worry, particularly from someone who supposedly holds to the tenets of classical liberalism. That other segments of the Liberal Party – you know, that party of small government and personal liberty – should also be shy on this issue is equally troubling. Even if the Coalition is successful in securing changes to 18C, the fact remains that a number of senior ministers have staked a lot on the argument that amending the law is a mere distraction from the task of financial and economic management. Moreover, they seem to suggest that trying to change the parameters of 18C – even if successful – would do nothing to improve the budget’s parlous state, ease the country’s financial woes or expand employment opportunities for people. These two concerns are, it seems, mutually exclusive.

However, the basic assumptions resident in the above comments raise crucial and abiding questions about the kind of culture we want to see prevail in this country, the fundamental values that undergird Australia’s liberal democracy and even the relationship (if indeed there is one) between basic politico-philosophical values and economic prosperity. Their Quisling character aside, the arguments proffered by Turnbull et al. revealed a surprising degree of ignorance regarding the relationship between free speech and a healthy body politic. I’ll say more as I proceed.

**A Hollow Vision**

In making their argument against pursing changes to 18C, Coalition ministers repeatedly offered what could be called the ‘technocratic defence’. Theirs were the words of dry administrative experts – of elite technocrats, committed only to solving the impersonal problems of a modern industrial economy. They seemingly lacked sufficient interest in more substantive, indeed existential (in the sense of the deeper character and quality of existence, not its mere presence), issues such as freedom of thought and expression; instead, they preferred to hide behind a supposedly exhaustive obligation to the nation’s technical-economic challenges. In other words, their justification represents the evacuation of philosophical and cultural substance from the project of governance, reducing it to a hollowed-out form of managerialism. Worryingly, their views implicitly devalue the constitutive importance of the basic liberties this country possesses, and upon which our politics – and indeed our society – are built.

As one of those basic liberties, freedom of speech has made an essential contribution to the enviable character of contemporary Australia. Similarly, it is integral to the tolerant and intellectually rich societies that have developed over the centuries in the West. Freedom of speech has been astonishingly successful in enabling Western states to resolve a complex array of problems across virtually every field of inquiry. Without liberality of speech, one loses many of the other important freedoms we cherish: freedom of religion as a crucial subset of free speech; freedom to assemble peacefully for the purposes of, say, political expression; or the freedom to vote for the party of one’s choice (and to later criticise it), as a further instance of the citizen’s articulation of his or her views. Moreover, freedom of speech cannot be separated from freedom of thought: curtail the one and you inevitably restrict a person’s right to pursue the other. Liberal democracies, which have come to represent the fruits of Western culture in political form, cannot properly survive without these elements. They are intrinsically, indissolubly, connected. Almost by definition, Western culture prizes freedom of speech as the public manifestation of rational, free-thinking individuals. Restrict it, and one ends up desiccating the culture to which it gives life.

Advocating for the liberal expression of one’s views – in this case, by urging amendment of an illiberal law – is therefore no mere symbolic act. Conversely, to leave it alone as too controversial is far from inconsequential, such is the deep relationship between this feature of the West’s cultural legacy and the kind of convivial, open society modern Australians enjoy. By contrast, the vision of the putative technocrat, with his narrow dedication to achieving a balance between economic inputs and outputs, is largely empty. It appears satisfied with a rather barren political culture – bereft of the vibrancy that stems from a vision of what makes for a mature, responsible, truly flourishing citizenry. As John Roskam, head of the free-market think-tank *Institute for Public Affairs*, recently quipped, if things like road-building are the final measure of good governance, there really is nothing to separate Australia from North Korea.

To be sure, I am not arguing for an activist administration; states should never be the final guarantors of free speech and ideational exchange (as if all depended on their paternalistic largesse). Nevertheless, there is much they can do to limit themselves so that individual liberty is preserved, even expanded – including divestment of any powers they might have to improperly police individual expression. Anything less is an abnegation of responsibility on the part of liberal democratic politicians and lawmakers. It is therefore surprising in the extreme that elected officials – particularly those in the *liberal* mould – should have thought that road-building and budget repair, as important as those activities are, rank higher than one of the supporting pillars of Western culture.

But the hollowness of vision to which I am referring runs deeper than that. In many ways, political questions can ultimately be reduced to questions regarding the nature of the human person and the proper ordering of human relationships. That is, one of the fundamental issues lying behind political debates is what it means to be truly human – and, hence, what kind of community or social order is likely to be most conducive to human flourishing. Listening to Turnbull, Fifield, Alexander and Morrison trying to play economics off against philosophical concerns, one would get the impression that, for them, a human being can be reduced to a determinable economic unit who will respond appropriately to positive material stimuli. It’s a view that casts individuals as pure consumptive actors, without reference to the kinds of core principles or qualities that animate a person. This is, of course, incredibly shallow. Humans are not simply objects that can be deterministically manipulated by mere material considerations. They are conscious beings, possessed of rationality and free will, capable of exercising these powers as they receive and analyse the world around them. Humans are, as it were, *agents*, acting and engaging and negotiating with reality on the basis of a fundamental orientation – sometimes misaligned, but nonetheless present – towards the attainment of truth.

Freedom of speech respects these insights into the human condition. It rests on the presumption that humans are rational beings, capable of using logic and evidence to explore and determine their views on a particular issue. It places faith in the capacity of human beings to combine intellectual concepts in a coherent and ordered way, such that they may arrive at (rough) approximations of various aspects of reality. To that end, advocates for freedom of speech – correctly, in my view – argue that the best way for grasping the truth, or of deciding on a matter of public importance, is to allow all views to be heard; that way, the individual can, with relative liberty, reason through different lines of argument. This isn’t perfect by any means, since nothing that humans devise ever is. But, comparatively speaking, liberality in speech provides a surer means of developing adequate knowledge about the world and securing correspondence between one’s beliefs and that which is true. To paraphrase the late [Michael Novak](http://www.catholicity.com/commentary/mnovak/08604.html), free speech gives ‘play…to [the] unlimited drive to ask questions, and to [the] unrestricted desire to know’ as humans seek out truth.

Such accounts also implicitly assume the human person is more than the sum of their biological or socio-cultural parts. They tend to conceive of the individual as a positive entity (rather than the mere intersection of broader forces), possessing a self-regarding, self-critical ability to interpret the world around them and to make decisions accordingly. It respects the fact that, whilst a person is obviously shaped by various external factors, they are no mere passive receptacle or programmed automation. Favourable treatments of free speech assume that the person still bears the freedom of will to select some truth-claims over others, and to decide for herself (based, one hopes, on rational thought) where the truth might lie. Of course, presuppositions, unacknowledged self-interest or the effects of social conditioning will invariably insinuate themselves into the structures of an individual’s thinking. However, free speech advocacy takes seriously humans’ capacity for *reasoned* choice. On this view, an unrestricted exchange of views promotes intellectual virtue and provides the most expansive context within which human rationality may flourish.

Unwarranted restrictions on speech, on the other hand, undermine crucial aspects of human uniqueness. Beliefs that have been coerced (or manipulated via the proscription of unpalatable views) are neither rational nor free: they aren’t rational, because coercion as a means of guaranteeing ‘correct’ belief breaks the logical link between adherence to a certain truth-claim and its rational or evidential merits; and they aren’t free, for the self-evident reason that force or arbitrary restriction is the very antithesis of political – even volitional – liberty. Indeed, to accept veridical claims on the basis of active compulsion or government censorship represents the very negation of rational discourse between responsible, thinking beings. To suggest that the concerns of the modern, technocratic state are more important than amending an affront to freedom of speech doesn’t just mute a key aspect of the West’s cultural heritage; it also invites a diminished view of the individual and inhibits a crucial mechanism for the intellectual thriving of human beings.

**A False Choice**

If what I have written were the only reasons for criticising Turnbull and his ministers, then I’d say it was enough. But, in addition to implicitly deprecating the substantive value of free speech, their comments represent a false choice between economic concerns and philosophical principles. The idea that they are separate and separable fails as a general argument, precisely because of the intrinsic connection between the free exchange of ideas and the generation of wealth and economic prosperity. Whilst Coalition ministers sought to play the ‘productive’ off against the (so-called) ‘political’, they were seemingly unaware that the former is, in many ways, reliant on the latter. That is, communication that is largely unrestricted forms a necessary pre-condition for the sort of mesmerising prosperity that Western countries have historically enjoyed. More prosaically, the ability to freely debate important issues offers a society the best chance of developing credible – and, for our purposes here, economical – solutions to complex problems. The economist and economic historian, [Deidre McCloskey, has argued](http://www.nationalreview.com/article/426722/great-enrichment-deirdre-nansen-mccloskey) that the Great Enrichment experienced by the Western world since the middle of the nineteenth century can be explained in large part by the success of certain ideas:

*What mattered [in relation to the enrichment of the West] were two levels of ideas: the ideas for betterment themselves (the electric motor, the airplane, the stock market), dreamed up in the heads of the new entrepreneurs drawn from the ranks of ordinary people; and the ideas in society at large about such people and their betterments – in a word, liberalism.*

According to McCloskey, the West’s unprecedented levels of economic development (unprecedented in historical, and even current global, terms) cannot be understood unless one takes note of their intellectual basis. At one level, that meant the ideas of betterment themselves: technical innovation that led, either directly or indirectly, to expanding prosperity. It hardly needs saying that advances such as these are offered a boon when ideas can be freely exchanged, without restriction. And indeed, at another level, McCloskey seems to be saying exactly that:

*[the] massive ideological shift towards market-tested betterment’, generating not merely technical innovation, but a fundamental change in the way (Western) societies were composed, as well as the manner in which individuals – now seen as beings possessed of freedom and equality – related to each other. McCloskey is clear: ‘our riches [came] from piling idea on idea...*

This should hardly come as a shock. After all, there exists a connection – one that can be intuitively grasped – between freedom of speech and economic prosperity. It may not always be direct, but it is there. Considered as an economic doctrine, freedom of speech promotes the open transmission of ideas conducive to social and material betterment – ideas that, when co-mingling, have the potential to generate profound advances in technological sophistication and material wealth. The zoologist and science writer, Matt Ridley, has cheekily called this process ‘ideas having sex’. By that, he means that the complex marriage of diverse concepts – sometimes from very different fields of enquiry – generates new knowledge, driving significant economic progress. Freedom of intellectual exchange stimulates creativity, leads to an intellectually fertile citizenry and ultimately spurs on all manner of innovations. As the academic Brett Christensen has written, ‘free flowing ideas and debates contribute to creativity…education, and cultural evolution’. The thinking that some of our elected officials have recently showcased relies on a spurious division between two phenomena that are intimately intertwined.

There is, of course, one obvious rejoinder to what I have just said – namely, what any of this has to do with proposed amendments to a law that putatively concerns *racially offensive speech*. Indeed, whilst some may well concede the above points as theoretically valid, they might still argue that issues relating to free speech and racial vilification (on the one hand), and economic progress (on the other), are simply unconnected. To put the point in the form of a question: just how would amending or abolishing 18C of the *RDA* help politicians improve productivity or tackle the country’s budgetary woes?

But if the rejoinder is obvious, so too is a surrejoinder: it is simply impossible to predict what ideas may flow, interact or ‘copulate’ as a result of the removal of restrictions to speech and the exchange of ideas. This may not happen immediately or directly. But if the history of economic and technical progress is anything to go by, the germination of some ideas by others (including those that may, at first blush, appear entirely unrelated) can occur in the most surprising of ways.

Please bear in mind, I am not making the rather outlandish argument that giving space to racially insulting speech might somehow lead to economic enrichment or usefully contribute to policy discussion. What I *am* saying is that winding back 18C might provide clear air for views that have been illegitimately captured by the law – views that might, if given an honest hearing, open up discussions around important issues that touch on both society and economics (however obliquely). Indeed, as UQ professor of law James Allan has remarked, the remit of 18C has expanded to the point where it is now invoked to try and silence serious views regarding culture and public policy, on the spurious grounds that they are racist. This is in large part because of problems with the law itself. Amend it, and politicians and policy-makers wrestling with complex, multifaceted problems might find themselves aided by propositions that now fall under the shadow of legal sanction.

I think this response can be sharpened up a bit by focusing on one particular manifestation of the wider controversy. Recall the original context in which Turnbull made his comments. They were partly sparked by a complaint (using 18C) against the late cartoonist, Bill Leak, and a [cartoon](http://www.abc.net.au/news/2016-10-20/bill-leak-aboriginal-man-and-son-cartoon/7951508) he’d drawn in *The Australian* of an Aboriginal man who didn’t know the name of his wayward son. Leak sought to go behind the events of the day, which were related to a contemporaneous report on *Four Corners* alleging despicable treatment of young indigenous men at a youth detention facility in the Northern Territory. Leak wanted to ask why these young men were locked up in such facilities in the first place. His point, pungently made, was that the real scandal lay in the neglectful environments in which the boys had grown up, where parents had commonly failed in their duty to model responsibility, moderation and self-control. Certain individuals began legal proceedings in response to the cartoon (since abandoned), which led to several fraught weeks for Leak and his employer.

What has all this to do with economic issues? At first glance, very little. But think about it for a moment. The ongoing ill-health of many indigenous communities – particularly those in remote areas – is very costly. It is costly in human terms, of course, as lives are sometimes irrevocably damaged. But it is also costly economically. All those young indigenous men who languish in prisons and detention facilities around the country obviously aren’t contributing to the economy: they’re consuming public resources and they’re not in the workforce. Their previous crimes have cost individuals and the state both resources and money. Looking at the issue through a purely economic lens, it’s clear that those young men are adding to the overall financial burden of both the states and the Commonwealth.

Leak’s visual commentary sought to provide one explanation for why dysfunction prevails in certain Aboriginal communities – dysfunction that, whilst devastating on a purely human level, also has an important economic dimension. It is an urgent issue that warrants open debate. If the reasons for the existence of such deleterious environments – environments that seem to produce an inordinate number of young men with a propensity for delinquency and criminality – can be found, so much the better. However, if certain views are deemed illegitimate, and attempts are made to silence them via the threat of litigation, then an important public conversation is curtailed. This succeeds only in depriving people of crucial truths and possible solutions.

Public policy cannot long survive without the existence of facts. I’m not referring to dominant narratives, nor comforting ideologies, but to stark, uncomfortable, messy facts. That is the only way a country’s social and economic problems can be properly tackled. If policy is founded upon a bed of truth, then politicians can better target their efforts. But it becomes exceedingly difficult to achieve such a goal when communication and inquiry is diminished – haunted – by the spectre of state-sponsored censorship. Ultimately, this is not a question of whether, say, Bill Leak’s views are correct (although for what it’s worth, I think his cartoon was spot on). The point is that the susceptibility of certain views to legal censure, *before* they have even been discussed or debated, represents an irrational, arbitrary approach to public discourse and the resolution of desperate social and economic problems.

Indeed, if it can be shown *why* some Aboriginal communities are seedbeds for the kinds of young offending we have seen, then policy (to the extent that government policy should be wielded in this area) can be effectively applied. That, of course, can have economic and budgetary flow-on effects, as communities are stabilised, children are properly educated, young men are kept out of jail, people are placed in employment, costs are reined in and the financial burden shouldered by the state is reduced. In point of fact, then, changes to certain race-based laws have the potential to (indirectly) contribute to the very goals our fearless leaders claim to be concerned about. By contrast, restricting certain ideas and opinions for being ‘offensive’ or ‘insulting’ simply chills free debate and risks perpetuating tragic and costly problems. As such, the argument that economic issues and possible amendments to 18C are incompatible or unrelated is false, and anyone making it is either being obtuse or disingenuous.

**Conclusion**

Again, the government’s recently proposed changes to 18C are a welcome development. But one gets the feeling that its heart is still not in this fight. And it is just one of several debates around principles and philosophy from which the Coalition has tried to run, or on which it has remained frustratingly silent. By dragging this particular debate out over several months (and more), the government has needlessly wasted time and political capital. More importantly, by grounding so much of its resistance in spurious arguments, it has undermined its own political and philosophical outlook. Despite the current shift, the vehemence and consistency with which the above views have been articulated by members of the Coalition makes it difficult to believe that they have simply withered away. This is either a sign of political cravenness or a basic loss of liberal values. Is it any wonder, then, that voters have begun to look elsewhere?

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