Andrew Bolt and Freedom of Speech

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Dr David Kemp

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Free people, free society

The Hon Dr David Kemp, former Minister for Education, Training and Youth Affairs and Minister for Environment and Heritage, gave this speech at the Institute of Public Affairs in Melbourne as part of a panel discussion on Freedom of Speech in Australia and the controversial Melbourne columnist Andrew Bolt.

Thank you John, it's a great honour to be speaking here this evening. I regard Andrew Bolt as one of the very greatest journalists that Australia has produced for many, many years and I have no doubt that he is going to go down in Australian history as one of our greatest journalists. I'm not able to quote Voltaire as I think Paul Howes was doing in relation to Andrew because Voltaire said 'I disagree with what you say, but I will defend to the death your right to say it'. My problem is, I largely agree with what Andrew had to say and so I'll say to Paul Howes that although I disagree with everything he says about the Mining Council Industry of Australia, I will defend to the death his right to say it. I want to particularly draw attention tonight to one of the strongest advocates of the ideas which everyone on this platform is going to dissent from tonight.

On the 9th of April, only a few weeks ago, an article appeared in The Australian newspaper in defence of the legislation, which has brought Andrew Bolt before the Federal Court. The article was written by none other than the Honourable Michael Lavarch, the person who was attorney general in 1995, had had the racial vilification clauses inserted into the Racial Vilification Act. Mr Lavarch tells us that after sixteen years of the Act, and I quote his words, 'it is entirely clear that the law does not stifle free speech,' these are his words, and it's important that we try to understand his frame of mind.

Paul Howes mentioned the political correctness on the Labor side of politics that tries to stifle free speech and is intolerant of different views. But here we have a Labor Party attorney general defending the law as being entirely compatible with free speech. My own conclusion is the opposite, in my view it is entirely clear that the law does stifle free speech and it does so because it prohibits people from saying thing they ought to be able to say in perfect freedom without the authority of the state being triggered or aroused in this was. Freedom of speech has clearly been breached when a person may be hauled before a tribunal of public servants or a court because of things that have been said or written in the media and when orders may be issued which prevent them from repeating these things or continuing with their publication and even requiring them to apologise for what they've said.

In the short time I have tonight I propose to look at Mr Lavarch's defence or his legislation and to argue that he has advanced no sound argument to justify it, but in fact that his case is foolish and even dangerous. Now Mr Lavarch starts out by reminding us that freedom of speech isn't absolute and in that of course he is correct. The law, as it stands, apart from his Act does not permit perfect freedom to say anything, to say something which causes a riot, or which libels or defames a person, or which is misleading or deceptive in a commercial sense is not permitted and I don't think anyone on this platform would disagree with that.

The Lavarch Act however, is clearly an attempt to extend the prohibitions of the law, to new kinds of speech and the real policy question is whether this is done with good reason. The Act prescribes unlawful acts which are, quoting the law 'unreasonably unlikely in all the

circumstances to offend, insult, humiliate, or intimidate another person or group of people.' The Act also initiates a new process for dealing with prohibited statements involving tribunals, staffed by public servants as well as courts and the question arises whether this process is an acceptable substitute for freedom of speech. What can possibly be the justification for such a law? Mr Lavarch says the following and his words bear close attention he says, 'The value of the law is to require those engaged in contentious debates to reflect on the accuracy of their arguments and the supporting facts before they are used.' Apparently in Mr Lavarch's view of the world, the well-established processes of public discussion and debate and the sanctions of public opinion what we have hitherto known as freedom of speech is no longer good enough to test contentious views in contentious debates.

Such debates really need to be tested before tribunals of public servants so that parties can be persuaded to reflect on their arguments and their facts. To enable a person who claims to be insulted by what someone else has said to enlist the full panoply of state power against one who has offended them is truly grotesque and it is this grotesqueness that places me on this platform tonight. It is a principle which could not be generally applied without bringing the while system of justice to a halt. To suggest that we need public servants or courts to invite us to reflect on what we say and even to recant and apologise is a reversion to the techniques of the medieval church with all the threat that that implies. To a person used to freedom it's hard to imagine a process more insulting and demeaning, and to claim that it is in the public interest can be mounted in defence as Michael Lavarch does is to ignore the obvious fact that the intimidatory process to which a person can still be subject before such a determination is made cannot be but chilling to the whole process of free speech.

In his famous essay on liberty, John Stewart Mill, the strongest opponent of political correctness in his day considered the argument put by some at the time that, and I quote Mill, 'the free expression of all opinions should be permitted on condition that the manner be temperate and do not pass the bounds of fair discussion.' Now that's the view Mill's criticising. Mill pointed out the impossibility of fixing where the supposed bounds are to be placed and then he said in words that apply exactly to the present legislation, 'If the test be offence to those whose opinions are attacked, I think experience testifies that this offence is given whenever an attack is telling and powerful and that every opponent who pushes them hard and whom they find difficult to answer appears to them if he shows any strong feeling on the subject to be intemperate.' To make the test is to undermine, to offence the test is to undermine the very freedom which exposes error.

Despite all this, however, Mr Lavarch is confident that free speech has not been damaged by his law because he says, and I quote his words, 'No shock jock has been taken off the air or newspaper columnist closed down.' Think of those words, does that mean, does Mr Lavarch mean that free speech remains untouched and untrammelled so long as no radio host or newspaper columnist has been prevented from speaking or writing at all? Closed down, to use his phrase. If this is his standard for the survival of free speech, many more obnoxious laws I'm sure could be legislated that would still leave the former attorney general fully satisfied.

Mr Lavarch also informs us that allegations under his act have been dealt with in secret, he says confidentially, by the Human Rights Commission with, quote, 'Scores of determinations made initially by the Commission and now by Federal magistrates.' Since it all happens behind closed doors, how can Mr Lavarch, or we, know what the effect of the thousands of instances and scores of determinations have been? The law of secrecy replaces the law of free speech.

If the actions of state are justified in such cases, however, why does it not then apply to offensive, insulting or humiliating remarks that are religious in nature? Or relate to a person's class, or gender, or political views or even to their opinions on industrial relations. The federal law depends on the nation that there is something special about a racial insult, but is there? Why is a special law needed for racial insults? Mr Lavarch in his April article gives us his answer and this is all he has to say about it, 'history tells us', he says, 'that overblown rhetoric on race fosters damaging racial stereotyping and this in turn can contribute to societal harm well beyond any deeply felt personal offence.' Let us substitute the word class for race in the statement, or the word religious, or the word gender, or the word national or even the word politics or political, or, as I said before, even the words industrial relations. Mr Lavarch's statement is true for each; overblown rhetoric on any of these topics can create stereotypes, can cause offence and if made the basis for action, may lead on to damaging consequences.

It wasn't racial hatred, but class hatred that set the guillotine going in the French Revolution. Scores of millions were starved and slaughtered in Stalin's attack on the wealthy peasants, or in Mao's collectivisation and in his vicious cultural revolution or the genocide perpetrated by the Khmer Rouge in Cambodia, but in democracies we have long known that it is not words that produce such horrors, it is the failure to expose prejudice, control violence and ultimately, the absence of democracy that leads to these catastrophes. Violence and incitement of violence are proper domains of the law, but this is not what this law is about. Because history tells us that overblown rhetoric in countries which are not democracies can precede damage to individuals, do we need a tribunal to control our overblown rhetoric?

Australia is a nation, I would have said, with a well established reputation amongst the democracies for both its overblown rhetoric and its peaceful society. Perhaps the two even go together, but not if Mr Lavarch's law is allowed to prevail. I am conscious of a distant echo, a historical echo in this debate. It is the voice of Robert Menzies opposing Chifley's nationalisation of the private banks. Chifley claimed his measure was needed, in an argument worthy of Michael Lavarch on the basis that, quote, 'Since the influence of money is so great, the entire monetary and banking system should be controlled by public authorities responsible through the government and parliament.' Menzies ridiculed this argument as absurd by asking the leader to substitute primary production, transport and even opinion instead of money. Menzies said, 'There we have the entire totalitarian concept, totalitarians in Europe preceded by exactly the same logic they said, "Here is something which has great influence on the community life, therefore the government must control it" and they went step by step so that in the long run, the government controlled everything.'

Mr Lavarch and his ilk tell us that what people say is potentially too dangerous to be left to the uncertain processes of freedom of speech and the sanctions of public opinion. 'What is needed,' he says, 'is a government tribunal to counsel and warn and secure retractions,' like the medieval church. If his view is accepted then liberal democracy becomes a historical interlude between the ruling classes that preceded it and the bureaucracies and tribunals that Mr Lavarch would apparently, like to see replace it.

The numbers here tonight are a clear message, but there are many Australians will not accept that Australia is on the road to such serfdom. The processes of this law I find obscene in the full meaning of the word: offensive, loathsome, ill-omened, disgusting. That is why we are here tonight, the law which has made this event possible, must be abolished without delay.