

Address to the Institute of Public Affairs, Sydney

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Tony Abbott - Leader of the Opposition

FREEDOM WARS

Right now, Australians are understandably and necessarily impressed by China, a country which has liberalised its economy without liberalising its polity. Lifting several hundred million people from poverty into the middle class in a single generation certainly is one of the great economic transformations in human history.

China's success, though, need not mean that liberal democratic freedoms are merely an optional extra for countries that take nation building seriously. The communications revolution is affecting China no less than everywhere else, despite official misgivings. The blogosphere and tweeting could soon give even China the "question everything" mindset that has been so important to other countries' creativity and weight in the world.

Then there's India which has achieved a scarcely less remarkable economic transformation while largely preserving democracy, the rule of law and freedom of speech. Two decades after Francis Fukuyama jumped the gun to proclaim the end of history and the triumph of liberal democracy, it would be equally presumptuous to conclude that western civilisation's moment has largely passed. History's lesson is still that countries are stronger, as well as better, with democratic freedoms than without them.

Freedom of speech is not just an academic nicety but the essential pre-condition for any kind of progress. A child learns by trial and error. A society advances when people can discuss what works and what doesn't. To the extent that alternatives can't be discussed, people are tethered to the status quo, regardless of its effectiveness.

Freedom of speech can't be absolute. A persuasive case can be made to limit people's freedom to publish material that might breach national security, prejudice a fair trial, or deliberately mislead consumers about the performance of a particular product; but there is no case, none, to limit debate about the performance of national leaders. The more powerful people are, the more important the presumption must be that less powerful people should be able to say exactly what they think of them.

Parliamentary speeches have always been privileged against defamation suits because it has been taken for granted that MPs had to be absolutely unmuzzled if parliament was to do its job. On matters of the greatest moment, all that should ever gag individual MPs is

their own judgment. They should face criticism, censure, loss of office and electoral defeat if they misuse their freedom but they should never be legally constrained from expressing what they think the national interest demands.

Freedom of speech is an essential foundation of democracy. Without free speech, free debate is impossible and, without free debate, the democratic process cannot work properly nor can misgovernment and corruption be fully exposed. Freedom of speech is part of the compact between citizen and society on which democratic government rests. A threat to citizens' freedom of speech is more than an error of political judgment. It reveals a fundamental misunderstanding of the give and take between government and citizen on which a peaceful and harmonious society is based.

At an even deeper level, free speech is essential to human integrity. It enables us to express who we are and what we believe. Freedom of speech empowers Christians, Muslims, Jews, atheists, environmentalists, climate change sceptics, conservatives, socialists, gays, gen Ys and gen Xs, baby boomers, veterans, everyone and anyone publicly to affirm whatever it is that is important to their identity. They can do so free from fear of a knock on the door in the middle of the night or a subpoena from a tribunal in the middle of the day.

It's human nature, of course, to support free speech as long as it's agreeable. The trouble is deciding which opinions can be censored. The danger is that a government that can censor a free press is quite capable of censoring a free people.

The price of free speech – which we must be prepared to pay – is that offence will be given, facts will be misrepresented and lies will be told. Truth, after all, only emerges from such a process. Thanks to free speech, error can be exposed, corruption revealed, arrogance deflated, mistakes corrected, the right upheld and truth flaunted in the face of power. On issues of value, purpose and meaning, there is no committee, however expert, and no appointee, however eminent, with judgment superior to that of the whole community which is why the best decisions are made with free debate rather than without it.

Free speech can be restrained at the margins but only in order to secure other important rights. As my colleague, George Brandis has noted, there are "exceptions to this rule" but never counterweights. Free speech shouldn't be restrained just to prevent hurt feelings and it should never be restrained in order to protect poor performance.

This might normally be regarded as a statement of the obvious. Imagine the reaction, for instance, had the Howard government sought to gag naval personnel after "children

overboard". It badly needs re-affirmation now because of the current government's attempts to bully critics into silence.

When roof batts routinely catch fire, damaging hundreds of homes and killing four installers; when \$16 billion has been spent building school halls that could have normally been constructed for less than half the price; when more than \$50 billion is being spent on a National(ised) Broadband Network that the government originally claimed could be done for a tenth the cost; when more than 20,000 illegal boat people have arrived because the government assumed there was no longer a problem and dropped the policy that worked; when a carbon tax that the Prime Minister said would never happen has been introduced to save her political hide; when a well-respected speaker of the parliament has been forced to resign to protect the government's parliamentary numbers; and when the system of justice seems incapable of dealing swiftly with an MP who's clearly ripped off union members, the ability to be critical of government is more important than ever.

Yet instead of ruefully conceding that criticism under these circumstances is only a fair cop likely to spur better performance, the current government's response has been thinly veiled intimidation of critics masquerading as proposals for better regulation. Instead of mounting a better argument, this government's inclination is to disqualify its critics. Its instinctive response to criticism is to bully people rather than to reason with them.

This is not a government that argues its case. Mostly, it simply howls down its critics using the megaphone of incumbency. There's the jihad against mining magnates for daring to question the government's investment-sapping mining tax. There's the claim that Gina Reinhart is a "danger to democracy" because she dared to buy an interest in a newspaper group and refused to endorse the Fairfax group's existing editorial culture. There's the assault on mum-and-dad anti-carbon tax protestors in Canberra as the "convoy of no consequence" or even the "convoy of incontinence". The ferocity of this government's return of serve often goes way beyond reasonable counter-argument to become a form of state-sponsored bullying.

Late last year, Communications Minister Stephen Conroy accused the Sydney Daily Telegraph of a deliberate campaign to "bring the government down". The Prime Minister had a screaming match with former News Ltd boss John Hartigan over an article about her prior-to-entering-parliament dealings with a union official. The government's Green allies have been consistently critical of those whom ex-Senator Bob Brown tagged the "hate media". The prime minister personally insisted that News Ltd in Australia had "questions to answer" in the wake of the UK phone hacking scandal even though she was not able to specify what these might be. It seems obvious that her real concern was not Fleet Street-

style illegality but News Ltd's coverage of her government and its various broken promises, new taxes and botched programmes.

To Justice Ray Finkelstein's credit, there's no specific "get News Ltd" vendetta evident in the report of his "Independent Inquiry into the Media and Media Regulation". Still his recommendation that a powerful News Media Council should "set journalistic standards", "enforce news standards" and "have power to require a news media outlet to publish an apology, correction, or retraction" looks like an attempt to warn off News Ltd from pursuing anti-government stories.

The "community, industry and professional representatives" that Finkelstein wants appointed to the new regulator are unlikely to be truly independent of the government that will fund it. We know the current government's attitude to tough reporting from people such as Steve Lewis and Kate McClymont because it is constantly complaining about it. Perhaps the most shameless example was Senator Doug Cameron accusing the "Murdoch press" of actually "fabricating stories" stories about the prospect of a Rudd challenge – for which he was, himself, one of the numbers men!

Especially in the hands of the current government, any new watchdog could become a political correctness enforcement agency destined to suppress inconvenient truths and to hound from the media people whose opinions might rattle Phillip Adams' listeners. It's easy to imagine the fate of Andrew Bolt or Alan Jones, for instance, at the hands of such thought police. Their demise, you understand, wouldn't be because the government didn't like them but because they'd persistently breached "standards".

In response to a strongly worded critique of the Finkelstein recommendations, the government has just replied to seven media CEOs saying that it might not proceed with a new regulator if the media were to establish more effective forms of self-regulation. In other words, "censor yourselves or we will do it for you". Any government that demands changed behaviour from the media under circumstances like these is not trying to raise journalistic standards but to lower them to the long-term detriment of our country.

The Coalition rejects the Finkelstein proposals and calls on the government to do likewise. The Coalition opposes any coercion towards greater self-regulation and calls on the government to repudiate it. The Coalition rejects calls for the introduction of a public interest test or any other "suitability" test for those for those with a stake in our media and calls on the government to do likewise.

Australia does not need more regulation of the mainstream media but we do need a new debate about freedom of speech because it's important for the current government to

reveal its true colours. So far, a hung parliament hasn't made this government more responsive. Instead, the constant struggle to survive has brought out its authoritarian streak.

It is not the role of government to manage the day-to-day practices of journalism; to dictate who can and who can't control Australian media outlets; or to "score" media coverage against unavoidably subjective standards of fairness. The job of government is to foster free speech, not stifle it. It's to increase the number and the range of people who can participate in public debate, not reduce it.

Additional regulation is one current threat to free speech in Australia. Another is the operation of section 18C of the Racial Discrimination Act, which prohibits statements that "offend, insult, humiliate or intimidate" another person or a group of people on grounds of race or ethnicity.

At the time of its introduction, oblivious to its Orwellian overtones, the then-minister, Nick Bolkus, said that it was designed to prohibit "speechcrime" over and above the traditional tort of defamation. Making the likelihood of causing offence to a group the test of acceptable behaviour goes way beyond the time-honoured remedy when a particular victim has been brought into hatred, ridicule or contempt.

Let's be clear: insulting, humiliating or intimidating others on any grounds, racial or otherwise, is deplorable. It should be everyone's goal to elevate the standards of public debate, not lower them, and to demonstrate respect rather than disdain for the various components of our community. Still, a "hurt feelings" test is impossible to comply with while maintaining the fearless pursuit of truth which should be the hallmark of a society such as ours.

As Sir Robert Menzies declared in one of his "Forgotten People" broadcasts: "The whole essence of freedom (of speech) is that it is freedom for others as well as (for) ourselves ... (It is) a conception which is not born with us, but which we must painfully acquire. Most of us have no instinct at all to preserve the right of the other fellow to think what he likes about our beliefs and to say what he likes about our opinions... (But) if truth is to emerge, and in the long run be triumphant, the process of free debate – the untrammelled clash of opinion – must go on".

The article for which Andrew Bolt was prosecuted under this legislation was almost certainly not his finest. There may have been some factual errors. Still, if free speech is to mean anything, it's others' right to say what you don't like, not just what you do. It's the freedom to write badly and rudely. It's the freedom to be obnoxious and objectionable.

Free speech is not bland speech. Often, it's pretty rough speech because people are entitled to be passionate when they are arguing for what they believe to be important and necessary. Speech that has to be inoffensive would be unerringly politically correct but it would not be free.

If it's alright for David Marr, for instance, to upset conservative Christians, in his attempt to have them see the error of their ways, why is it not alright for Andrew Bolt to upset activist Aboriginals to the same end? The rallying cry attributed to Voltaire, "I disapprove of what you say, but will defend to the death your right to say it", should have been invoked to defend Bolt, no less than it has been to justify robust speech from different points in the philosophical compass.

The Coalition will repeal section 18C in its current form. Any prohibitions on inciting hatred against or intimidation of particular racial groups should be akin to the ancient common law offences of incitement and causing fear.

Expression or advocacy should never be unlawful merely because it is offensive. It ought to be inconceivable that a commentator offering an opinion should fall foul of the law rather than a wave of criticism. This is not a matter of agreeing or disagreeing with Bolt. It's a matter of an expansive or a repressive view of the right to free speech.

It won't just be the current government that the debate over new restrictions on free speech will test. It will be all the commentators and organisations that have ever thundered in defence of free speech but find their indignation highly selective when it's their commercial rivals or philosophical opponents who are in the dock.

The Australian left has long cited the Menzies government's attempt to ban the communist party as an egregious assault on freedom. What will they make of any Gillard government legislation to restrict freedom of speech? Menzies, it has to be said, sought to restrict freedom in order to defend the country. The Gillard government, by contrast, seeks to restrict freedom in order to defend itself.

The Coalition is often tagged the "conservative side of politics" and John Howard has rightly pointed out that the Liberal Party, in this country, is the political representative of both the liberal and the conservative traditions. Essentially, we are the freedom party. We stand for the freedoms which Australians have a right to expect and which governments have a duty to uphold. We stand for freedom and will be freedom's bulwark against the encroachments of an unworthy and dishonourable government.

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