Truth and freedom: the importance of robust debate



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I will never forget the day when I was called to give evidence in a defamation case being heard in the Adelaide Supreme Court. An official ushered me into the witness box, asked me to place my right hand on a Bible, and say: "I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."

Most of us have watched television dramas where witnesses have been sworn in court using similar words. This requirement to tell the truth in court proceedings is part our culture, not just here in Australia but in Britain, America and throughout the English speaking world.

The commitment of the Australian legal system to reveal the truth in both civil and criminal proceedings is reinforced by the crime of perjury. A witness who promises to tell the truth, but who lies about matters that affect the outcome of the case, may be charged with perjury. This is considered a serious offence, as it can lead to miscarriages of justice, and offenders can be sentenced to lengthy jail terms.[1]

The requirement to tell the truth, the whole truth and nothing but the truth is so embedded in Australian culture that we may assume that it is universal – and part of all cultures in all countries of the world. However, this does not seem to be the case.

For example, Islamic courts have no standard oath for witnesses as part of court proceedings. Rather, a relevant principle in Islam is that a person should not incriminate himself.

While the Quran commends truth and condemns lying, the doctrine of *taqiyya* – meaning permitted lying or deception – is also affirmed.[2] One Quranic text often used to justify *taqiyya* states: "And make not your own hands contribute to (your) destruction but do good." (Q 2:195) This is interpreted as requiring Muslims to save life, honour and property from danger and unlawful destruction by any means possible, including lying.[3] Thus, preserving honour is more important than truth in Islam.

Defamation law

The clash between truth and honour is seen most starkly in laws against defamation, both written (libel) and verbal (slander), which allow a person who is defamed to sue for damages. Australian common law, inherited from England at settlement, allowed truth as a defence. A person whose reputation was harmed by a published statement would not be awarded damages if the person who made the offending statement could show that it was true. In short, truth was considered more important than honour.[4]

However, the convict colonies of New South Wales and Tasmania modified the libel and slander laws to provide stronger protection of the honour of colonialists – particularly to protect those with a convict past or ancestry from having that background revealed publicly.[5] In those colonies, someone defending himself against a charge of libel had to establish, not only that the statement was true, but also that it was for the "public benefit". This restriction on freedom of expression in New South Wales and Tasmania, inherited also by Queensland and the Australian Capital Territory, continued until 2006 when a major reform occurred.

The other states – Victoria, South Australia and Western Australia – retained the original common law definitions of libel and slander, under which truth was an absolute defence.

With the development of national media and the internet, the need for uniform defamation laws grew. The issue was on the agenda of the Standing Committee of Attorneys-General from 1980 until 2006, when agreement was finally reached. A critical issue was whether *truth alone* should be a full defence or whether *truth and public benefit* would need to be proved. In a conflict between truth and honour, which should prevail?

Finally, agreement was reached with all states that substantial truth would be a complete defence against a charge of defamation – thereby returning to the English common law provision. In 2006, uniform defamation laws were enacted by the Commonwealth and all State and Territory parliaments.[6] Thus in Australian defamation law today, truth trumps honour.

Parliamentary privilege

Another situation where truth sometimes challenges honour is in the functions of parliaments. While most people are familiar with the role of parliaments to legislate, sometimes the equally important roles of inquiry and debate are overlooked. Before parliaments can enact wise laws, they need reliable information on the potential and actual effects of policies, programs and laws. Parliamentary inquiries provide an important means of obtaining such information.

The powers of parliamentary inquiries are considerable. They can require the attendance of witnesses, the answering of questions and the production of documents – and these powers can be enforced. Non-compliance is considered contempt of parliament and is punishable with fines or imprisonment. The reason for these powers is to ensure that parliaments can obtain the information they need govern responsibly. These powers are part of *parliamentary privilege*.[7]

Parliamentary inquiries can be embarrassing by exposing activities such as fraud that damage the reputations and honour of some individuals. One example is the 2010 Senate inquiry into the Energy Efficient Homes Package which investigated the implementation of the Home Insulation Program initiated by the Rudd Labor Government.[8] The report of the inquiry exposed incompetence, fraud and unsafe work practices – and damaged the reputations and honour of some people and organisations involved in its implementation.

Which is more important – to learn the truth about bad policies, practices and programs, or to protect those responsible from exposure? Good governance requires truth, even if it is sometimes uncomfortable or unwelcome. An important aspect of parliamentary privilege is the protection provided to those giving potentially defamatory information to parliamentary inquiries.[9] Parliamentary privilege – sometimes called parliamentary immunity – guarantees that witnesses cannot be sued

for defamation for evidence given to such an inquiry. Again, truth is judged to be more important than honour.

Parliamentary debate

A visit to any Australian parliament, or the original Westminster parliament in London, will reveal that each chamber has two sides: one for the Government and one for the Opposition.

On formal occasions, the Government and Opposition may be referred to as *Her Majesty's Government* and *Her Majesty's Loyal Opposition*. These formal terms express two important concepts. Firstly, both the Government and the Opposition have a shared common loyalty to the Crown - the institution above politics that represents the whole nation. Secondly, the Opposition has an acknowledged and legitimate role: to question, to scrutinise and to oppose the Government, thereby holding it accountable. The Opposition is sometimes described as a "government-in-waiting".



Australian House of Representatives

Parliament, therefore, is a place of debate – of ideas, policies and values. Here incompetence and corruption are exposed. Ministers who mislead the parliament may be forced to resign. Reputations are made and destroyed. Parliament can be a brutal place – because truth is valued over reputation or honour.

Respect for truth is not universal. During the 1930s, Soviet biologist Trofim Lysenko proposed an "agricultural revolution" which he claimed would triple or quadruple crop yields,[10] based on the ideas of an earlier French biologist Jean-Baptiste Lamarck.[11] Lysenko's proposal was adopted because it fitted communist ideology at the time and became Soviet agricultural policy. The result was disastrous. Lamarck's theory was wrong and the policy resulted in widespread crop failures and mass starvation. The political correctness of communist ideology had been considered more important than establishing the truth.

Respect for open and robust debate in the pursuit of truth, both in parliaments and in the media, safeguards our freedom. The ruthless suppression of debate in China following the Tiananmen Square protests of 1989[12] and in Iran following the presidential election in 2009[13] illustrates the nexus between denial of debate and denial of freedom.

Truth and language

Why does Australia have such a strong cultural commitment to truth – for example in court procedures, defamation laws and parliamentary practice? Certainly, some people still lie, cheat and act corruptly – and some of these miscreants are prominent business leaders, politicians and judges. Nevertheless, as a World Bank survey shows, Australia is one of the least corrupt countries in the world.[14] And the Worldwide Governance Indicators, prepared by the World Bank, show a strong correlation between freedom of speech and the control of corruption.[15] What is the origin of Australia's respect for truthful speech?

Australia's culture has been profoundly shaped by its British heritage, which evolved over centuries under the influence of the Christian faith. Alfred the Great is credited with introducing a legal code in about 890 AD incorporating the Ten Commandments,[16] one of which states: "You shall not give false testimony against your neighbour."[17] This command is elaborated elsewhere in Holy Scripture to condemn false witness in court[18] as well as malicious lies[19] and damaging gossip[20] in the community. The importance of truth in our use of language, enjoined in this command, forms the historical basis for today's laws against perjury and defamation.

Other cultures are different. Indian author Vishal Mangalwadi tells of his quest for truth as a student at Allahabad University. He was puzzled that his professor of Indian philosophy sought to cultivate deep respect for the Hindu scriptures, yet he never suggested reading the Vedas – the primary and holiest Hindu texts. When Vishal tried to buy a copy in a bookshop, he discovered they were not available in Hindi, India's national language! Why not? Mangalwadi writes:[21]

The bookseller gently explained that the Vedas could never be translated because they were too sacred and difficult to understand. Besides, understanding was not necessary. They were never written to teach the truth. They were mantras to be memorised and correctly chanted with careful pronunciation, enunciation and intonation. Their magic was in the sound, not in the meaning. I must find a competent guru and spend years at his feet practicing the art of Vedic chanting, while performing the prescribed sacrifices.

Vishal became interested in the Transcendental Meditation movement started by Maharishi Mahesh Yogi, a graduate of his alma mater. Maharishi gave Vishal a mantra to recite silently twice daily.

I asked what my mantra meant. He told me not to bother with the meaning. The point was not to know truth, he said, but to empty my mind of all rational thought – to "transcend" thinking... Thinking must be stopped and the mind must be silenced because the root of existence is not logos, *the rational word, but* Avidhya, *ignorance.*[22]

In Maharishi's view, ignorance was to be valued more highly than rational thought.

In stark contrast, the Judaeo-Christian tradition recognises that intelligible language is one of the major differences between humans and other animals. We enjoy the great privilege of being able to communicate with others an unlimited range of ideas and concepts.

This ability to communicate is a significant aspect of men and women being created in the image of the God who speaks: "In the past God spoke to our ancestors through the prophets at many times and in various ways, but in these last days he has spoken to us by his Son."[23] How we use language is vitally important because of its capacity for both good and evil. The apostle James warns that, although the tongue is only a small part of the body, wrongly used it can corrupt the whole person.[24]

Truth and freedom

The Australian citizenship pledge includes an optional sworn oath:[25]

From this time forward, under God,
I pledge my loyalty to Australia and its people,
whose democratic beliefs I share,
whose rights and liberties I respect, and
whose laws I will uphold and obey.

Including the oath "under God" reinforces the seriousness of the commitment, by the person acknowledging God as a witness. The seriousness of this oath in Judaeo-Christian understanding derives from the commandment: "You shall not misuse the name of the LORD your God, for the LORD will not hold anyone guiltless who misuses his name."[26]

However, at the time of Christ, oaths were commonly divided into two classes, those which were absolutely binding and those which were not. Bible commentator William Barclay explains:[27]

Any oath which contained the name of God was absolutely binding; any oath which succeeded in evading the name of God was held not to be binding. The result was that if a man swore by the name of God in any form, he would rigidly keep that oath; but if he swore by heaven, or by earth, or by Jerusalem, or by his head, he felt quite free to break that oath. The result was that evasion had been brought to a fine art.

Jesus condemned that dichotomy saying: "Simply let your 'Yes' be 'Yes', and your 'No,' 'No'; anything beyond this comes from the evil one."[28] The apostle Paul likewise encourages Christians to "put off falsehood and speak truthfully".[29] Furthermore, Jesus

highlighted the connection between truth and freedom when he said: "If you hold to my teaching ... you will know the truth, and the truth will set you free."[30] Truth and freedom – by insisting on the importance of speaking truthfully and keeping promises, Jesus established bedrock values for a society to develop trust and freedom.

Restrictions on free speech

Is speaking the truth so important that it should be completely untrammelled? In the United States of America, following the adoption of its Constitution in 1787, moves were made to protect some fundamental liberties through amendments to the Constitution. The first amendment included a prohibition on any law "abridging the freedom of speech".[31]

Did this mean no restrictions on free speech whatsoever? This was tested during the 20th century in the US Supreme Court through cases alleging sedition: speech aimed at overthrowing the government. The Court confirmed the validity of laws to proscribe speech which presented a "clear and present danger" of inciting evils that Congress has a right to prevent. However, in other cases, the Court has upheld a right to produce and consume pornography – even child pornography.[32] What are legitimate restrictions on free speech?

Australia has no explicit right to freedom of speech. However the High Court of Australia declared an "implied freedom of political communication" in 1992.[33] Professor Nicholas Aroney of the University of Queensland explained the Court's reasoning this way: "... because the Constitution provides for a system of representative government and since representative government requires freedom of speech in order to function effectively, the Constitution necessarily implies a guarantee of freedom of political communication in order to ensure that the system operates effectively."[34]

Apart from this constitutional right to free communication on political matters, speech in Australia has long been restricted by laws on such matters as defamation, sedition, obscenity, commercial confidentiality and national security.

Vilification laws

In recent times a new kind of law restricting free speech has been introduced in some jurisdictions in Australia and other countries: vilification or so-called "hate speech" laws. Whereas defamation laws protect *individuals* from damaging statements, vilification laws seek to protect *groups of people* who share a common characteristic, such as race, religion or sexuality. Typical provisions proscribe speech that incites "hatred towards, serious contempt for, or severe ridicule of" the group,[35] or is "is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people."[36]

At first glance, speech that involves hatred, serious contempt or severe ridicule seems thoroughly reprehensible. However, closer scrutiny exposes some problems.

Firstly, vilification laws can have a chilling effect on legitimate discussion and debate about subjects covered by identified characteristics, such as race, religion or sexuality.

Secondly, the intention of the speaker or writer is generally considered irrelevant. The offence is usually defined in terms of the perception of the hearer or reader.

Thirdly, truth is not a defence. In vilification laws, honour trumps truth.

Race

Herald Sun columnist Andrew Bolt stirred up a hornet's nest in 2009 with the publication of columns entitled "White is the new black"[37] and "White fellas in the black".[38] He drew the public's attention to some winners of grants and prizes intended to encourage indigenous Australian artists. Such awards might be expected to be given to underprivileged black Aboriginal artists from outback areas.

Bolt questioned the propriety of giving the $40,000 Telstra Award to a fair-skinned, blue-eyed, ginger-haired arts academic with an American-Australian father and a mother with only part-Aboriginal ancestry in her otherwise Irish-Australian past. He also asked why a law academic describing himself as a "blonde-haired, blue-eyed, fair-skinned Aboriginal Australian" should be eligible for the Fulbright Indigenous Scholarship.



Andrew Bolt

His comments provoked activist Pat Eatock to mount a Federal Court class action against Bolt under the Commonwealth Racial Discrimination Act 1975. The Act includes "racial hatred" provisions, introduced in 1995, making it illegal "to offend, insult, humiliate or intimidate another person or group" because of "the race, colour or national or ethnic origin" of the other party.[39]

At a Federal Court hearing on 29 March 2011, Andrew Bolt said that his columns were part of robust democratic debate.[40] That is the nub of the problem with so-called "racial hatred" laws. How can public debate occur on awards intended for the benefit of indigenous people, if any discussion results in legal action? Sound governance is undermined when honour is elevated over truth.

Religion

How did a private seminar on Islam in Melbourne explode into a million dollar, internationally reported court case on religious vilification?

On 9 March 2002, Pastor Daniel Scot of Brisbane presented a day seminar on Islam in a Melbourne church. A former university mathematics lecturer, Pastor Scot was uniquely qualified to explain Islam because of his experience of growing up in Pakistan as a Christian and his extensive knowledge of the Quran and the Hadith.[41]

At the seminar, Pastor Scot encouraged Christians to love Muslims. "I make it clear in my seminars that not all Muslims know what Islam teaches," Pastor Scot explained later. "Most Muslims are ignorant of the full teaching of Islam and are peaceful friendly people. But I believe it is important that people are aware of the implications of the full teaching of Islam. In my seminars I express criticism of Islamic teaching on jihad, women and other matters. These criticisms of Islam are not unique to me. They are mainstream international concerns."[42]

Unknown to Pastor Scot, three Australian converts to Islam were in his audience. They had been encouraged to attend by a Muslim member of the Islamic Council of Victoria seconded to work for the Victorian Equal Opportunity and Human Rights Commission. The three Muslims took notes and subsequently made a formal complaint of vilification under the Racial and Religious Tolerance Act,[43] which had come into effect only three months earlier, on 1 January 2002.

The complaint grew into a 35 day hearing at the Victorian Civil and Administrative Appeals Tribunal, spread over nine months until the end of June 2004. This was followed by an appeal to the Victorian Supreme Court which vindicated Pastor Scot in December 2006. After legal and court costs estimated at over a million dollars, the complaint was settled in 2007, but remained unresolved. The parties agreed to differ.[44]

What an appalling way to try to resolve a difference of opinion over religious teaching! This attempt to elevate honour over truth exposes its folly.

Sexuality

One of the worst examples of suppression of truth and freedom of expression must surely be the enactment by the NSW parliament in 1993 of a law against homosexual vilification.[45] Although the wording of this law exempts reasonable discussion or debate, the effect has been different.

In one case, a NSW regional newspaper published a letter from a doctor who listed the disadvantages of the homosexual lifestyle, including the risk of HIV/AIDS. A gay and lesbian group wrote a formal letter of complaint. The NSW Anti-Discrimination Board thereafter acted for this group, and required the doctor and the newspaper editor to answer the complaint.

The doctor went to some trouble to produce a number of papers from academic journals supporting the statements in his letter to the editor.

The Anti-Discrimination Board took some weeks to consider this evidence. The Board then told the doctor that he should have included all these references in his letter to the editor. The doctor responded that if he had included the references, his letter would have been long and complex – and would thus have been rejected for publication. After some further weeks of deliberation, the Board eventually decided to dismiss the complaint.[46]

However the case has had a chilling effect on public discussion of risks associated with the homosexual lifestyle. While mainstream newspapers frequently publish articles and letters on lifestyle health issues – including obesity, alcohol use, smoking, lack of exercise and sleep – they seldom (if ever) address health problems associated with the homosexual lifestyle.

The public is being denied the truth through a misplaced sensitivity to the feelings of homosexuals.

Freedom to disagree

A free society depends on the free exchange of ideas. The book of Proverbs in the Bible stresses the benefits of an "abundance of counsellors", which contribute to the success, safety and victory of a people.[47] The writer notes that truth is more likely to emerge when both sides of an argument are put: *He who states his case first seems right, until the other comes and examines him.*[48]

A free society depends on the free exchange of ideas.

This approach to the free exchange of ideas is central to the kind of democracy we have in Australia. The very notion of an official Opposition indicates the expectation that an organised group of members of parliament will actively challenge the views expressed by the Government. This is in sharp contrast to totalitarian regimes where the expression of a view contrary to the government is seen as rebellion and can be punished severely.

For example in January 2010, Iranian student activist Abed Tavnacheh was sentenced to one year in prison merely for giving an interview to the German magazine *Der Spiegel* in which he opposed capital punishment and accused Iran's leaders of dictatorship. The court said: "You have no right for participating in such discussions. These topics are related to us. Governing the country is related to us and it is not related to you".[49]

Vilification laws effectively block off areas of discussion as no-go zones by prohibiting the expression of views that may upset others. In Australia today the key areas seem to be sexuality, especially homosexuality, and religion, especially Islam. Resisting and overturning such laws is essential for political freedom as well as for freedom of religion.

Conclusion

As Janet Albrechtsen wrote in *The Australian,* on the mad march of political correctness:[50]

The principles are clear enough: free speech is not a Left-Right thing... It's a free-unfree thing. You don't get to cry in favour of free speech just to defend those with whom you agree. And free speech must include the right to offend. If we prosecute offensive opinions, we just encourage ever more ridiculous claims to protection. We fuel that marketplace of outrage. And we end up shutting down the true genius of modern Western civilisation: the contest of ideas.

References

1. "Perjury", *Wikipedia*: http://en.wikipedia.org/wiki/Perjury
2. *Islam and Truth*, Barnabas Fund (Wiltshire UK) 2007: http://barnabasfund.org/_images_files/content/resourcePDFs/Islam-and-Truth_booklet.pdf
3. *Ibid.*, p 2.
4. "Defamation", *Wikipedia*: http://en.wikipedia.org/wiki/Defamation
5. Paul Mitchell, *The Foundations of Australian Defamation Law*, 2006: http://sydney.edu.au/law/slr/slr28_3/Mitchell.pdf
6. For example, the *Defamation Act 2005 (NSW)*, Section 25, provides that "It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true." Each of the corresponding State and Territory acts include an identical provision.
7. Now defined in the *Parliamentary Privileges Act 1987*.
8. *Energy Efficient Homes Package Report*, Senate Environment, Communications and the Arts References Committee, July 2010: http://www.aph.gov.au/Senate/committee/eca_ctte/eehp/report/report.pdf
9. *Parliamentary Privilege*, Senate Brief No 11, May 2011: http://www.aph.gov.au/senate/pubs/briefs/brief11.htm
10. "Lysenkoism", *Wikipedia*: http://en.wikipedia.org/wiki/Lysenkoism
11. "Lamarckism", *Wikipedia*: http://en.wikipedia.org/wiki/Lamarckism
12. "Tiananmen Square protests of 1989", Wikipedia: http://en.wikipedia.org/wiki/Tiananmen_Square_protests_of_1989
13. "2009–2010 Iranian election protests", Wikipedia: http://en.wikipedia.org/wiki/2009%E2%80%932010_Iranian_election_protests
14. "Worldwide Governance Indicators", Wikipedia: http://en.wikipedia.org/wiki/Worldwide_Governance_Indicators
15. Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues*, Policy Research Working Paper 5430, The World Bank Development Research Group, September 2010: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130
16. "Alfred the Great", *Wikipedia*: http://en.wikipedia.org/wiki/King_Alfred
17. Exodus 20:16.
18. Exodus 23:1-9; Proverbs 19:5, 9; Matthew 19:18; Mark 10:19; Luke 18:20; Romans 13:9.
19. Proverbs 6:16-19.
20. Leviticus 19:16-17; Ephesians 4:29; James 4:11.
21. Vishal Mangalwadi, *The Book that Made Your World: How the Bible Created the Soul of Western Civilisation*, 2011, Thomas Nelson, p 45.
22. *Ibid.*, p 80.
23. Hebrews 1:1-2.
24. James 3:3-12.
25. http://www.citizenship.gov.au/ceremonies/pledge/
26. Exodus 20:7.
27. *The Gospel of Matthew: Volume 1*, William Barclay, The Saint Andrew Press: Edinburgh, 1958, p 157.
28. Matthew 5:37.
29. Ephesians 4:25.
30. John 8:32.
31. "First Amendment to the United States Constitution", *Wikipedia*: http://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution
32. *Ibid.*
33. *Australian Capital Television Pty Ltd v Commonwealth of Australia, (No. 2)* (1992) 177 CLR 106 and *Nationwide News Pty Ltd v Wills*, (1992) 177 CLR 1.
34. Nicholas Aroney, "A Seductive Plausibility: Freedom of Speech in the Constitution", *University of Queensland Law Journal*, Vol 12, No 2, pp 249-274, 1995.
35. *Anti-Discrimination Act 1977* (NSW), Section 20C.
36. *Racial Discrimination Act 1975* (Cth), Section 18C.
37. Andrew Bolt, "White is the new black", *Herald Sun*, 15 Apr 2009.
38. Andrew Bolt, "White fellas in the black", *Herald Sun*, 21 Aug 2009.
39. *Commonwealth Racial Discrimination Act 1975* (Cth), s 18C(1).
40. Norrie Ross, "Debate is lifeblood of democracy, Andrew Bolt tells the Federal Court", *Herald Sun*, 29 Mar 2011.
41. Roslyn Phillips, "Religious vilification: the Daniel Scot decision", *Light*, May 2005, pp 8-11.
42 . *Ibid.*
43. *Racial and Religious Tolerance Act 2001* (Vic).
44. Roslyn Phillips, "Vilification laws – the enemy of truth", *Light*, February 2007, pp 8-11.
45. *Anti-Discrimination Act 1977* - Sect 49ZT, introduced by the *Anti-Discrimination (Homosexual Vilification) Amendment Act 1993.*
46. Private communication by the doctor. Details of the case are not available for public examination.
47. Proverbs 11:14, 15:22 and 24:6.
48 . Proverbs 18:17.
49 . http://www.iranhumanrights.org/2010/08/the-iranian-judiciarys-outrageous-treatment-of-a-student-activist/ .
50. Janet Albrechtsen, "Mad march of political correctness", *The Australian*, 3 Aug 2011.