

## Identity politics: equality, and the threat to freedom

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Good afternoon. Firstly, can I join in expressing my thanks to BYU, the International Centre for Law and Religious Studies and the LDS church for the opportunity to attend this symposium. It has been a privilege to be here and to hear from and discuss questions relating to our fundamental freedoms with so many extraordinary people.

Today, I'd like to share something of the recent Australian experience and the manner in which identity politics - - this idea that human existence involves the exercise of hegemonic power, the workings of which must be disclosed and dismantled require the oppressor (the mainstream) to be silenced so the oppressed can finally be heard - has helped to give rise to the new fundamentalist doctrine of equality.

The pervasive nature of this doctrine has been, and remains at the heart of the attacks on our freedoms - most significantly freedom of speech and by extension, freedom of religion.

Freedom of speech is a hot topic in Australia. Ever since the conservative newspaper columnist, Andrew Bolt was found to have breached s 18C of the *Racial Discrimination Act 1975* - which makes it unlawful for someone to do an act that is reasonably likely to "offend, insult, humiliate or intimidate" someone because of their race or ethnicity - the question of free speech has been front and centre.

Whilst there is not time for a discussion of the particulars of the case, the point is that this case inflamed a public discussion about how to strike an appropriate balance between protecting people from harm and maintaining the right to freedom of speech.

It should be noted that when this Act was introduced in 1975 it was intended as a means to eradicate racism, however, overtime it has been very influential in setting the tone for subsequent debates about equality and social inclusion. This has been joined by many other anti-discrimination laws that include race, sex, sexual orientation, disability and age.

Section 18C has proved especially controversial because of the prohibition against giving offence. In a society where one's "feelings" and "emotions" now have pride of place, the threshold for offence is now very low.

When you throw into the mix the highly fashionable and seemingly undeniable "right to equality," you now have a new creed that is almost beyond question; where non-discrimination is the new norm and where any difference of opinion is a sin in the new religion of equality.

Prohibiting offence, as s 18C does has been influential in setting the tone for how the broader questions of freedom have been dealt with in Australia in recent times. It is

through the lens of free speech that debate about other freedoms – especially the freedom of religion – has formed.

I would observe that the question of freedom of religion has not been a first order issue in Australia. Yes, freedom of religion is provided for in our constitution, but it is not a right that is often invoked, unlike in the United States, for example.

In fact, freedom of religion arguments don't usually fare well in the courts of Australia and as Professor Greg Craven of the Australian Catholic University has observed, they are almost seen as a “sub-right”; one where the legal psychology these days tends to see religion as a restriction of rights rather than a freedom. For this and for other reasons for which time does not allow me to detail at the moment, fundamental assumptions about freedom of speech, conscience, association and religion are now being challenged.

*The other reason I would suggest as to why freedom of religion has never registered high on the Australia radar is because of the social covenant that has existed between the state and churches. Religion in Australia today is viewed as a private devotion, not one that is loudly proclaimed. For many people their interaction with churches is often via the provision of education, health and social welfare services. With the churches now receiving extensive amounts of government funding to service these there has been little appetite to upset the apple cart as it were and the cooperation between church and state has been strong.*

*However, this is beginning to change. Assumptions about freedoms of speech, conscience, association and religion are being challenged.*

For Australians, when talking about attacks on our fundamental freedoms the oft cried phrase has been that “it won't happen here, this is something that only happens overseas”.

But the examples we have are now Australian ones.

## **Marriage**

Our big wake-up call as to the real threat to freedom of speech and religion has been on the question of marriage.

In 2015, the Australian Catholic Bishops Conference decided to publish a pastoral letter entitled *Don't Mess with Marriage*. This letter set out to defend the traditional Christian teaching on marriage and to answer the arguments put forward by proponents of same-sex marriage. The document was measured and it made the point that every man, woman and child should be treated with “respect, sensitivity and love”.

The supporters of same-sex marriage took offence to the letter. A transgender activist and candidate for the Greens party in Tasmania decided to take the Archbishop of Hobart – who had distributed the booklet to parents through the schools in his Archdiocese – to the

state's anti-discrimination commission, claiming that the letter amounted to "hate speech" because it denigrated same-sex relationships.

The complaint has been subsequently withdrawn *for now*. This was for a purely strategic reason, however, as the complainant could see the overreach the case exemplified. Either way, the anti-discrimination commissioner in Tasmania was prepared to test the case, despite the fact that the document was faithfully setting out the church's position on marriage – to say nothing of the fact that the document reflected the current marriage law in Australia. One wonders if someone was to get up in the street and read out the definition of marriage contained in our *Marriage Act*, whether could that document would then be tabled as "hate speech"?

The experience of the Catholic Bishops is now playing out more broadly with the campaign to change the definition of marriage in Australia.

The current proposal before the parliament is that a public plebiscite will be held, giving the Australian people a say as to whether or not the definition of marriage, as the union of a man and a woman, should be changed to allow for two people of the same sex to marry.

This is a controversial plan and one that may not even pass – we will know next week.

Those in favour of SSM largely oppose the plebiscite – saying that the parliament is the proper place for this question to be decided. They argue that because a plebiscite has no legislative effect it is a waste of money and will be a licence for "hate" speech. Some, including the federal Leader of the Opposition and the alternative Prime Minister, have gone as far as to say that a plebiscite has the potential to cause members of the gay and lesbian community to commit suicide.

Just a fortnight ago, a meeting of religious and faith leaders to discuss marriage had to change venue and convene in secret in order for the meeting to go ahead after same-sex marriage supporters forced the venue to withdraw the booking. This is just one example of what is now a regular occurrence in Australia today.

With the experience of the Tasmanian example, some supporters of traditional marriage have suggested that in order to have a free and fair campaign that it might be necessary for anti-discrimination laws to be suspended to ensure that the threshold for hurting people's feelings is not crossed.

As the NSW Solicitor-General has observed "How have we got to the position in Australia where laws might have to be suspended so there can be a proper public discussion of a serious social and political issue in a plebiscite or referendum?"

The viciousness and the lengths by which the self-appointed guardians of the new social and moral order will go to shut down discussion has no limits.

For them the use of intimidation, humiliation and censorship to punish those who do not agree with them is their *raison d'être*.

But we need to remind them that reasonable disagreement does not equal hate. Nor does offering people the chance to express their views at the ballot box equal hate. As we heard yesterday, it is possible and indeed necessary to live with our deepest differences.

The prevalence of identity politics - the defining of an individual or group in opposition to wider society - is making it harder for politicians and leaders to address concerns for the mainstream for fear of offending and antagonising minority groups.

In some respects it has essentially seen the freezing of debate with some political leaders now incapable of dealing with the practical application of principles because they are so invested in the rhetoric of the cause. This is certainly the case in Australia.

For instance, the federal Attorney General in Australia famously said a few years back that “we have the right to be bigots”. Yet he now seems unmoved by anyone arguing for protections to those who have a conscientious objection to making wedding cakes for gay weddings and the like.

The conventional wisdom today is that everyone should be treated the same. It is a proposition that appeals to our worthy intuitions of addressing disadvantage and exclusion. But as we are regularly seeing, this perceived “right to equality” is now, more often than not, trumping any other right with which it might conflict. Speech and religion being but two prime examples.

As Milton Friedman once said “the society that puts equality before freedom will end up with neither; the society that put freedom before equality will end up with a great measure of both.”

In closing, as we continue to discuss the challenges to our freedoms we need to redouble our efforts to defend them. We need to continue to urge people to exercise free speech because, as former Australian Prime Minister Tony Abbott has recently said, “any silent majority that fails to justify itself will become a minority. It might be just a noisy minority at the start; it might be clearly a silent majority at the start but that’s not how it will finish if good people fail to find their voice.”

I’m pleased to say that everyone attending this conference has found their voice, which fills me with great hope for the future.

Thank you.

