

# A special Castan Centre event: The Freedom Forum

By Stephanie Spratt

Freedom is currently a hot topic in Australian politics. After appointing a new human rights commissioner with a specific remit to consider freedom, the government has initiated an inquiry into the protection of “traditional rights, freedoms and privileges” under Australian law. Now, our political leaders are proposing to repeal s18C of the Racial Discrimination Act in the name of freedom of speech. But the notion of freedom is fluid and evolving. The emerging public scrutiny of the term has proven its malleable meaning in different circumstances.

In an attempt to explore freedom’s boundaries and protections under Australian law, the Castan Centre held a ‘Freedom Forum’ with three prominent human rights advocates. Professor Sarah Joseph, the centre’s director, spoke alongside Joe Caputo, the Chair of the Federation of Ethnic Communities’ Councils of Australia and Professor Wendy Bacon, Professorial Fellow at the Australian Centre for Independent Journalism, UTS. Chaired by ABC radio’s Damien Carrick, the event looked at the political, social and economic implications of freedom as a fundamental part of Australian society.

Carrick launched the event with an introduction of “freedom” as the buzzword of today. He questioned what the term actually means, and how it could be better protected in Australian society. He then welcomed Joseph, who engaged in a rich and varied discussion of freedom as an inherently broad notion.

In light of the lived experiences of Australians, Joseph remarked that the Attorney General’s focus on freedom from government intervention was restrictive. The government has a positive role to protect and fulfil freedoms through practical social policies. Yet the Attorney General and the new Human Rights Commissioner favour an absolutist approach to free speech, which they claim is rooted in our common law.

Joseph explained that she was sceptical that the common law has ever adequately protected freedom, and, at most, it has only acknowledged its importance in the past 20 years. She further stated that the Attorney General’s list of freedoms provided to the Australian Law Reform Commission inquiry fails to acknowledge rights such as freedom from arbitrary detention, as well as freedom of expression, movement, religion and assembly.

This restrictive conception of freedom, Joseph argued, has led to the protection of commercial interests over freedom from harms such as hate speech. For example, an inalienable right to sponsor appears to be encouraged by the current government, after the Attorney General directed the Australia Council to cut funding to arts groups which “unreasonably” refuse corporate sponsorship. Professor Joseph concluded by stating that the government has applied a narrow and inconsistent conception of freedom overall. Real freedom is more complex, and will be jeopardised if we don’t broaden the debate.

Caputo, who compellingly accounted his experiences as a migrant and an activist in Melbourne, continued the evening. He explained that migration was not always a free choice, but rather a choice of survival for many people. Since his arrival over 50 years ago, he has watched Australia embrace multiculturalism and accept change. These profound achievements towards a more tolerant Australia must be built upon, not rolled back in the name of freedom of speech.

In particular, Caputo described s18C of the *Racial Discrimination Act* as a critical moment of equality and protection in our country.



Damien Carrick, our moderator for the evening with speakers Professor Sarah Joseph, Professor Wendy Bacon and Joe Caputo

Unfortunately, he argued, the government’s proposed amendment defines “vilify” and “intimidate” too narrowly in the context of racist harms. Similarly, he said, the reform uses a discriminatory test that measures experiences of racism by reference to the “average” person, rather than the average person of the target group. Overall, Mr. Caputo was deeply concerned that the law sided with perpetrators of racial discrimination.

Bacon concluded the night with a discussion of freedom of speech. Beginning that freedom is not an abstract concept but it is a material, lived experiences that must be fought for in different contexts. She then turned to a consideration of freedom in journalism, arguing that free and accountable reporting is essential for democracy. Government policy, she explained, has unfortunately become more restrictive towards journalist’s sources, which will negatively affect whistle-blowers. Bacon argued that source protection needs to be strengthened for without that there can be no investigative reporting and that today Journalists need to take account of surveillance.

According to Bacon, this approach is rooted in Australia’s political history. During her time as a young journalist, censorship laws were applied to serve the interests of particular groups, while later when she was reporting for The National Times, secret hearings and the offence of contempt of Parliament were invoked to cover political corruption. Where earlier free speech was rooted in the struggle of individuals against state power, now free speech laws and ideas need to take account of private power.

Overall, Bacon identified the lack of freedom to report on asylum seekers in detention, the law of defamation and the concentration of media power as sources of serious limitations on speech in Australia. She argued that ultimately freedom of expression must also include access to information and the ability to have your voice heard. All people deserve a voice, and free speech is only truly achieved when power imbalances in access to communicative power are addressed.

Carrick then challenged the speakers by asking whether it is ultimately better for potentially harmful viewpoints to be publicly debated rather than censored. The speakers ultimately agreed that free speech could be limited to safeguard equality and protect vulnerable groups. They each gave a personal definition of “freedom”, but found that it is inherently difficult to describe. As the freedom debate continues in Parliament, these messages will surely continue to resonate strongly with the evening’s audience.