



DE MINIMIS

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FREE TO DISAGREE? The erosion of public debate in Australia

Freedom of speech is the concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment.

After the Zachy Mallah fiasco, I think we can all conclude that in Australia, this concept is under serious, serious threat.

I mean, how else could you interpret the response to the ABC's decision to allow a former terrorist suspect to ask Liberal MP Steven Coibo a very provocative – but no less important – question on Q & A a few weeks ago?

By way of summation:

The tabloid media had a field day, castigating the public broadcaster as actively promoting terrorism and calling for further cuts in what was equal parts hypocritical (Mallah had been interviewed in literally dozens of mainstream newspapers, radio shows and television programs in the preceding years) and illogical (nobody, I repeat nobody did or could be “radicalised” by what Mallah had to say, a point that was eloquently expressed by Dr Anna Aly on the program the following week);

Right wing group United Patriots

Front protested the ABC's headquarters, raising concerns for the safety of staff members and basically reminding us that proponents of White Australia are still very much alive and kicking.

Finally, and most significantly for our purposes, the government launched an official inquiry into the public broadcaster, indicating that the program may be axed and placing a three month embargo on members of the front bench appearing on the show.

All because we allowed an angry young man, with a chip on his shoulder, to ask a question.

Specifically, what the government's unprecedented decision to allow a Minister to unilaterally strip a person's citizenship when they are *suspected* of fighting abroad – curbing the presumption of innocence, the rule of law and the rest of those pesky principles that we (used to) pride ourselves – on would have meant for him.

The minister's reply? Instant and unapologetic exile. Even though Mallah was found innocent for terrorism charges. And yes, you read

that correctly, the ABC is the one being reprimanded.

So what does this saga mean for Australia going forward? Well for a start, it marks a dangerous turning point in the government's willingness to silence dissent and circumvent accountability.

Mallah is a dickhead, but if the ABC was wrong to give him a platform then they were also wrong to have the likes of Alan Jones or Andrew Bolt on the panel, who between them have spouted more racism and misogyny than Mallah – a guest – ever could.

It exposes a dangerous hypocrisy to take a stand against your detractors on principle, but stay silent when you're not in the firing line.

A notion perhaps best exemplified by the man who initiated the inquiry, our fearless leader Tony Abbott, who famously refused to boycott Jones' radio show after he claimed that then-Prime Minister Julia Gillard's father had “died of shame”. Why did he refuse?

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Interview

SARAH MOORHEAD SPEAKS WITH KATIE ROBERTSON, SOCIAL JUSTICE LAWYER EXTRAORDINAIRE

Clerkship applications open: cue fit of denial and rebellion; wailing and gnashing of teeth; general existential crisis. Response: interview the most social justice-y lawyer likely to answer my email. Result: inspiring, refreshing, exciting chat with Katie Robertson.

Describe your current role.

I'm an Associate in the Social Justice Practice at Maurice Blackburn. We do public interest cases; that is, cases that benefit more than the individual involved in the case, and will hopefully have an impact on the progressive development of law.

Recently, I've been doing a lot of strategic asylum seeker litigation, but we also have a history of doing cases on behalf of Aboriginal Australians, human rights cases...etc

Oof, interest levels peaking. Elaborate?

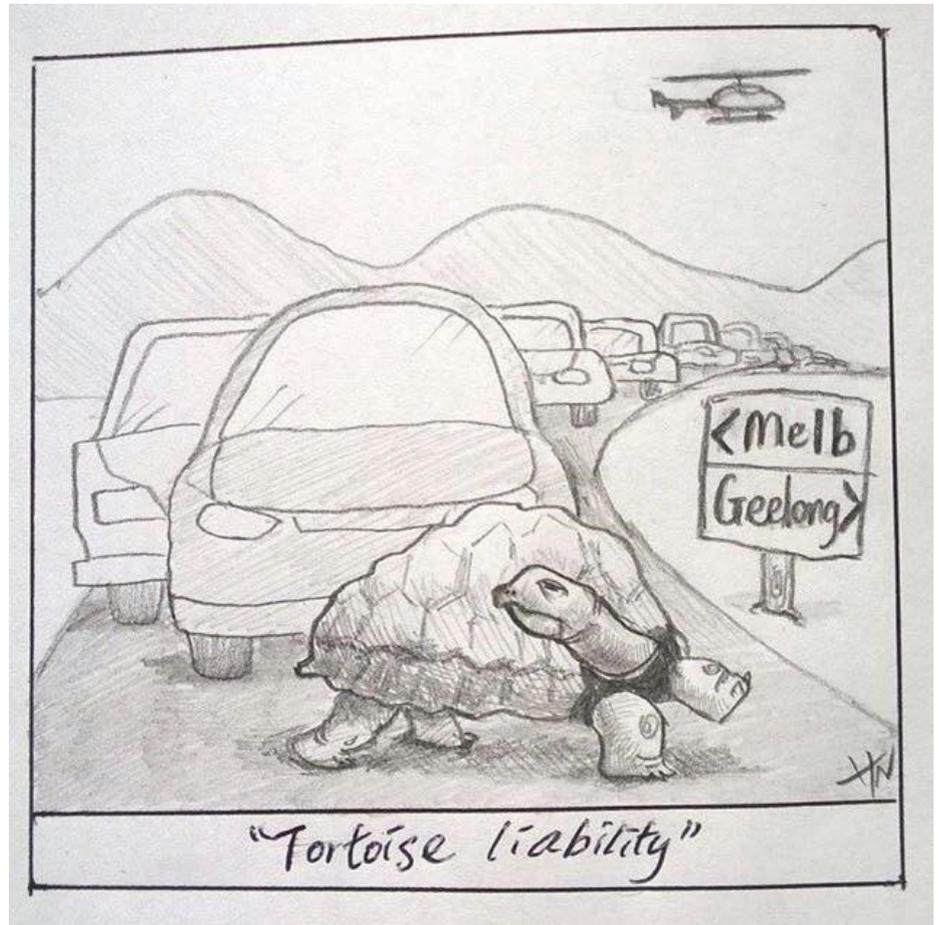
Well, for example, we're running a case on behalf of the Fertility Control Clinic in East Melbourne. There are people who stand outside the clinic each day – self-described 'sidewalk counsellors' – and attempt to talk to women entering and exiting the Clinic.

Essentially we're seeking a writ of mandamus against the Council, arguing that there are certain regulations the Council should use to prevent these people harassing the Clinic's clientele.

Cool! So how did you end up here?

Originally, I really just didn't want to practise law at all. I did an Arts degree, and it was only after I started volunteering at a community legal centre that I thought oh, maybe there are socially progressive things you can do within the law.

So then I did a double degree, but



Cartoon by Harley Ng

even then I didn't do any clerkships or anything like that, and I still wasn't interested in practising.

Good lord, this is like watching 'This is Your Life'. Go on.

I graduated and applied for a traineeship at Maurice Blackburn, because it accorded most closely to my values. I was attracted to work there because, without wishing to sound cheesy, the social justice work we do really is the backbone of the firm.

So you did end up qualifying, obviously...

It's weird, when I was going through my law degree heaps of people who were doing jobs that interested me used to say, "You really should qualify, go do your articles", and I used to roll my eyes and go, "Whatever."

But now I actually am one of those people, because I do think if you go and get good training you can take it anywhere, particularly if you want to go and work in the legal aid sector. Legal Aid needs good skills, and needs good lawyers, and so you're in a much better position to go and do

the work you're really passionate about if you have that basic training.

I've certainly had a lot of people tell me that you kind of have to go slog it out in the corporate sector for a bit, and then go off and pursue your dreams of doing good...

I do know a number of people who've gone and spent a fairly short amount of time at large corporate firm, like your Allens or your Freehills, and have used that as a platform to go and work in the international sector, the legal aid sector, or the government sector.

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Interview

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If somebody goes to work in a corporate firm it's only going to open doors for them, not close them.

But I couldn't have done that myself. So I would say to people who are concerned about training somewhere where they don't feel the values of the place align with theirs that there are other options. It's beneficial to get your training but you can be discretionary about where you get that training.

You mean I have a choice? I can have standards? I don't just have to sell my soul/brain to anyone who will take it?

I was lucky, in one sense, because I was the last of the dinosaurs: I was in the last year where firms weren't as strict in terms of only taking on trainees who'd clerked with them. During my degree I was far too interested in travelling and doing non-legal things during my holidays. It's certainly more challenging now to get your foot in the door. But don't compromise too much on doing something you really loathe because there are so many ways to get into what you want to do.

Once you have your degree – and particularly once you're qualified – you realise how many options there are for law graduates in numerous sectors. For me, I've always been

clear with myself about the sort of work I wanted to do.

I really wanted to work at the Aboriginal Legal Aid Service, so I went and did that; I really wanted to work at the Khmer Rouge Tribunal in Cambodia, so I went and did that. It can be scary, but I think sometimes you just have to take a bit of a risk. Going to do things you're passionate about only ever opens up more doors for you.

I think I'm going to make that into an inspirational poster and paper level 3 with it. Brilliant. But back to you. You've done quite a bit of media and lobbying around social justice issues. Do you think that this is part of the role of a lawyer, or do you think lawyers' duty is purely to get the best result for their client?

I don't think the two are mutually exclusive; I think they're completely interrelated. I don't think you can get the best result for your client, necessarily, without keeping your finger on the pulse of what's going on at a policy level.

That's certainly the case in migration law. The law's very limited in the options available to asylum seekers, so a lot of my work tends to be on the political advocacy side. But across the field, lawyers are advocates and, in furtherance of advocating for their clients, they need to be advocating for progressive change in the law.

Hmm. If I learned one thing from Admin (debatable), it's that a judge isn't likely to take kindly to being told that the law needs to be changed. Something about the sepa-

ration of the rule of law on the merits. And powers. Those too.

Well, court isn't the only appropriate forum, and it's obviously quite a restrictive one. But that's no reason why you can't be doing lobbying work on the side. In fact, policy and advocacy work should be done in conjunction with litigation. Lawyers have a really privileged role to play in that sector because we're the ones at the coal face of the issues people are experiencing, so in some ways we're best placed to be providing feedback up the chain.

I really think there's a conscious attack going on against the judiciary by the executive at the moment, and that's a real threat to the rule of law in this country. Again, lawyers need to be playing a really active role in alerting the rest of the community to what's actually going on.

Even if they're in immigration or anti-terror laws, encroachments on judicial power and the expansion of executive powers do affect all of our civil rights in Australia, one way or another.

And what about us law students? What can we do?

Volunteer – law students have a really privileged position in terms of your skills and knowledge, so you are able to and should funnel that into volunteering and hurry up and get qualified so you can help these people!

Sarah Moorhead is a second-year JD student.

Don't like the content? Write your own!

De Minimis is written by, and for, the students of Melbourne Law School.

We welcome any and all quality writing that might interest our readers.

If you have insights into the student experience, the legal industry, events on campus, politics, movies, or even fashion, send an email to the editor:

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FREE TO DISAGREE? The erosion of public debate in Australia

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Well, because “in a robust democracy – there’s got to be a range of views” of course.

The truth is that the censorship of the ABC is more about evading the issue than it is about facilitating a principled discussion. It is a loud and aggressive means of re-positioning the spotlight on unsubstantiated claims of bias, whilst laws that could re-shape Australia’s legal system and fundamentally undermine our Constitution pass quietly through a diluted democratic process.

Democracy is about facilitating a dialogue, and whilst displacing the right to free speech will always be appropriate where a person is defamatory (i.e. Andrew Bolt’s false claim that

Justice Popovic had pre-judged trials) or grossly offensive (i.e. Andrew Bolt’s infamous article “It’s so hip to be black” – sensing a theme here?), the onus is on the party crying foul to show why censorship is *absolutely necessary*.

It is my opinion that the government did not discharge this onus – nor did they really attempt to. The hoopla about national security absolving them of this responsibility the same way it did for Howard or Bush post 9/11.

Without the ability to subject ideas and opinions to critical discussion, how exactly are we free? Without the need to debate and deconstruct arguments, how exactly can we inform ourselves of the right way forward? Without providing rights to each and every Australian citizen to have their say on the issues that affect them, is our claim that we believe in equality accurate?

The truth is that the most appropriate response to ideas that we disagree with is getting involved in the conversation. There need to be standards yes – a respectful debate

will almost inexorably be more productive than a mud-slinging contest – but the fact is that a person has a right to say that another person’s opinion is stupid, and that person has a right to say why that isn’t the case.

Criticize Mallah for his views all you want, but you can’t muzzle him because their not your own. The same goes for the program that facilitated them – especially when the Minister and his government had all the chances in the world to make a case against him.

In fact ultimately, by attempting to silence Mallah, he has earned a far brighter spotlight than he ever deserved.

That’s what happens when you censor people.

It’s a lesson we all need to heed.

Jacob Debets is Co-Editor and Secretary of De Minimis.

Satire

THIS WEEK IN THE LIFE OF THE REASONABLE MAN

Hey guys, the Reasonable Man here. Just thought I’d write in to keep you up-to-date with what I got up to in the Common Law this week.

On Monday, in *LM v K Lawyers*, I decided it would be a good idea to bill a client 24.8 hours of work for a single day.

C’est très drole, you say? On the contrary, I was really fucking busy. Working so fast you *bend time* is no laughing matter.

I also decided it was *totally normal* to charge someone \$270 to print two letters. Who wants to do that shit? Not this reasonable man, and don’t forget I had .08 hours this week to

hire a clerk to do it for me. See? *Totally normal levels of reasonableness*.

Occasionally one is just so busy being an important lawyerly reasonable man that one simply doesn’t want to walk places.

Reasonable? Totally. And why shouldn’t I charge someone for waiting around? My daily schedules are, after all, existential proofs of Einstein’s theory of relativity.

So, combine those two principles of reasonableness par excellence, and I think it evinced *a totally normal exercise of discretion* to charge \$378 for catching a taxi to a J.P. with an affidavit, and waiting while they sign it.

We have to accept that the ‘reasonable man’ is not just some fictitious entity, reflective of accepted community values.

We have to accept that the Reasonable Man is an actual person. This

week, as always, that actual person was me: the same person who charged a client \$81 for Googling the terms ‘Justice of Peace+Ballajura’. The Honourable Registrar Boyle said this wasn’t ‘a proper charge’.

He obviously had time in his schedule to update his Firefox browser this week, but we just don’t all have that luxury.

Yours Sincerely,

Reasonable Man

David Allinson is a second-year JD student.