September Spring E-newsletter: Keeping it together — free speech and social cohesion

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Kirk's death highlights the fragility of free speech everywhere

Free speech can come with a price in the United States despite the strong constitutional guarantee provided by the First Amendment. The shocking killing of Charlie Kirk on a college campus, while debating his views, is a reminder of that reality.

Australia has no express guarantee of freedom of speech in our Constitution. It does have an implied freedom of political communication which places a limit on the powers of parliaments and judges to constrain public debate and discussion.

Even with constitutional guarantees, freedom of speech is under pressure. Examples from around the world demonstrate that such guarantees are ineffective if a public or governmental culture is intolerant of diversity of views. It may also be under threat from those who would exercise the freedom themselves but cannot tolerate its exercise by those who would differ from them.

Australia is not immune from the development of a toxic culture inimical to the freedom which can reach across ideological and political spectrums. Nor are we immune from the development of a culture of denigration of people by people with opposing views.

In a recent and disturbing development, the 25th Anniversary edition of the survey-based *Edelman Trust Barometer* published this year, referred to a profound shift in acceptance of aggressive action and a widespread sense of grievance in Australia. Thirty-one percent of Australians were said to support at least one or more of the following actions:

> "Attacking people online, intentionally spreading disinformation, threatening or committing violence, damaging public or private property."

That sentiment was said to have increased to one in two for Australians aged 18 to 34.

The Scanlon Foundation Research Institute published a Social Cohesion Report in 2024 — the eighteenth in a series of surveys dating back to 2007. Encouragingly, it reported a stability in social cohesion in Australia across the previous 12 months, reflecting the resilience of Australian society and the bonds that connect people. Participation in the social and civic life of communities had been at least as strong as in previous years.

That said, the sense of belonging and social justice was significantly below long term averages. Acceptance of Australian diversity and multicultural harmony was also strained by the experience of discrimination and mistreatment.

As appears from these international and national surveys, we have no cause for complacency. Social media can have toxic effects not only upon young people but upon society generally. It seems to feed intolerance of diversity across the spectrum of opinion. Neither the "right" nor the "left" has a monopoly on intolerance. The strident grievance of some so-called conservatives is matched by the unctuous judgmentalism of some so-called progressives.

These trends require whole of society attention. But Australian universities, beset as they have been with the challenges of governance and financial sustainability, have vital roles to play in this area. The first is simply to set an example of respectful discourse between people of diverse and opposing views, whether they be visitors to the university or students or staff on campus. Universities must make sure that their conduct codes for staff and students and visiting speakers cannot be weaponised against expressions of opinion which may result in some people feeling offended or even insulted. The term "hate speech" should not be so broadly defined that it can be used as an instrument to suppress speech which some sector of the university regards as offensive or crossing some informally prescribed red line.

In a Model Code on Freedom of Speech for Australian Universities which I proposed in a report to the Commonwealth Government in 2019, freedom of speech on campus is called a paramount value. It is subject to the statutory duty to foster the wellbeing of staff and students. But that duty does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another. The duty does allow universities to impose measures to ensure that staff and students are not subject to unfair, adverse discrimination or threatening or intimidating behaviour. The Code and variants of it have been adopted by most Australian universities.

That said, codes and rules, however tightly drawn, can never trump culture. A culture of chronic antagonism between societal groups rooted in different world views is a slow and sometimes not so slow poison against social cohesion. That does not mean people have to agree. Their disagreements can be emphatic and values-based. Beliefs and opinions can be attacked — beliefs and opinions have no rights. However, people do have a right to recognition of their basic human dignity and not to be subject to personal denigration or imputation of impropriety or unfitness simply because of the lawful expression of their opinions.

Universities have a special role to play in welcoming diversity of views on campus and supporting open and vigorous debates between those of differing perspectives. A culture of tolerance and respect for individuals, even if not for their opinions, can provide a socially valuable example. It can also inform the world view of graduates and their capacity to engage constructively with diverse opinions in the wider Australian society.

A related issue in which universities, among others, have a role to play is that of civics education. That is a basic understanding of how our representative democracy works and the multiple histories which have brought us to be one of the world's most successful representative democracies. Ignorance or misunderstanding of our democracy and of our society generally provides rich soil for the vendors of divisive misinformation and disinformation which is now pervasive in social media and beyond.

When we think about recent events in the United States, including the shocking assassination of Charlie Kirk, we may be gratified that we have not descended to that level of violence in this country. But we have no cause for complacency. We are not immune from the effects of entrenched disadvantage, grievance, misinformation and disinformation. The appointment of special envoys to address the particularly toxic behaviours of antisemitism and Islamophobia are important steps on their own. But they are not enough. Social cohesion, a tolerant culture and a strong program of civics education are important national objectives, responsibility for which should be shared between the national, state and territory governments. The current landscape in this area is fragmented and at least as national school assessments show, we are underperforming.

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