

The Meaning of Life, the University and Everything — Freedom of Speech and Academic Freedom

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1. The value of free speech is variable. In a book called *Tales of the Dying Earth* a well-known fantasy writer, Jack Vance, imagined a traveller called Guyal who was about to embark on a risky quest but thought he should first consult an augur about possible outcomes. Before lawyers there were oracles and augurs. They began by discussing the augur's fees for his advice:

What are your fees? inquired Guyal cautiously.

I respond to three questions, stated the augur.

For twenty terces I phrase the answer in clear and actionable language; for ten I use the language of cant, which occasionally admits of ambiguity; for five, I speak a parable which you must interpret as you will; and for one terce, I babble in an unknown tongue.¹

In the interests of transparency, I should disclose that I am not being paid for this speech.

2. I thank the Ramsay Centre for Western Civilisation for this opportunity to address its annual dinner. The Centre and its mission have from time to time been the subject of public debate. That is not surprising. The meaning of the term 'western civilisation' is contested. Like many taxonomical debates in science and the humanities it tends to enliven disproportionate passions. Now is not the time to revisit it. The Centre can be judged upon a more useful criterion than its name. That criterion is found in the words of the New Testament, unfashionable in some quarters, but still good value:

A good tree cannot bear bad fruit, and a bad tree cannot bear good fruit
... by their fruit you will know them.²

¹ Jack Vance, *Tales of the Dying Earth* (Orb, 2000).

² The Holy Bible: Mathew 7:15-20.

The fruits of the Centre are well demonstrated by the biographies and achievements of its 2024 scholars. Their disciplinary diversity is striking. They cover the physical and biological sciences, history, philosophy, language and literature, the arts, law, national and international, human rights, international relations and security, and architecture.

3. There is also a theme of interdisciplinary engagement reflected in the biographies of a number of the scholars. There are references to digital humanities methodologies, philosophy and international affairs and something called ‘engineering biology’. One scholar, Jesse Woods, has an intriguing combination of interests in theoretical physics and power lifting. If his researches take him in the direction of a new theory of changeable gravity called modified Newtonian dynamics, which may explain away dark matter, he may also find it easier under certain extreme conditions to lift heavy things.
4. Interdisciplinarity is of critical importance. Different disciplinary perspectives interact to produce new and fruitful approaches to our understanding of the universe, our world and our society.
5. A very recent study conducted by a researcher at the London School of Economics and published in February this year, looked at the characteristics of scientists who have made major scientific discoveries. This included reviewing 533 Nobel prize winners from 1901 to 2022.³ The study found an interdisciplinary background to be a significant common factor. Half of all Nobel prize discoveries were made by scientists with at least two degrees in different fields. The paper observed:

This enables greater interdisciplinary methodological training and novel methodological connections and perspectives across fields that can spark new scientific advances.

6. There is evidence of increasing interdisciplinary engagement in the arts and the humanities.⁴

³ Alexander Krauss, ‘Science’s Greatest Discoverers: A Shift Towards Greater Interdisciplinarity, Top Universities and Older Age’ (2024) 11 *Journal of Humanities and Social Sciences Communications* 272.

⁴ William Condee, ‘The Interdisciplinary Turn in the Arts and Humanities’ (2016) 34 *Issues in Interdisciplinary Studies* 12–29.

7. In this respect the law does not stand apart. Much of our law — our Acts of Parliament and the common law, which is part of our historical heritage, is better understood with an awareness of its history, and the political and social movements that bore upon it. The law also frequently intersects with scientific questions. An illustration of an intersection with science and history occurred during my time as Chief Justice. In 2015, the High Court held that an isolated nucleic acid segment containing indicators of susceptibility to breast cancer and ovarian cancer was not a patentable invention within the meaning of the *Patents Act 1990* (Cth).⁵ The *Patents Act* requires that to be patentable, an invention must be a ‘manner of new manufacture’. That was a term used in a statute enacted in the United Kingdom in 1624 in the reign of James I. In essence we concluded by reference to the 17th century terminology of the statute and the long history of its application, that an invention must be something which is made. The isolation of a segment of DNA containing markers for susceptibility to cancer is a discovery of information about the person from whom the DNA is taken. It is not an invention.
8. My own interdisciplinary history sadly did not put me on the track for a Nobel Prize. In the final year of my science degree majoring in physics, I presented a seminar to my fellow students on the topic of ‘Mathematical group theory and elementary particles’. It concerned work done by a Nobel Prize winner Murray Gell-Mann, who successfully predicted the existence and properties of the omega minus particle. At the end of my presentation the Professor of Physics said: ‘You express yourself magnificently, but I am not sure you know what you are talking about.’ That being so, law was a natural choice for my second degree.
9. Sometimes there are tensions and even turf wars between different disciplines. In the 1990s I was asked to speak at a conference convened at the University of Western Australia to encourage greater collaboration between the different disciplines engaged with the investigation of native title claims. These included anthropologists, historians, archaeologists and linguists. Like many in the social sciences, they were all inclined to regard lawyers as blinkered reductionists. To encourage collaboration and a cross-cultural perspective, I cited a cartoon in the *Spectator* magazine. It depicted two armies lined up ready to do battle. One was an army of Philistines; the other was an army of

⁵ *D’Arcy v Myriad Genetics Inc* (2015) 258 CLR 334.

Samaritans. The Philistine General asked the Samaritan General if they could call off the battle because his men wanted to watch day-time television. The Samaritan General responded ‘anything to help’. So across a great cultural divide an outcome, satisfactory to both cultures, was reached. Whether my listeners thought any better of each other or of lawyers after that address, I do not know.

10. Reflecting on interdisciplinary collaboration opens the way to a much larger question about how we engage with diverse perspectives in society generally. This seems to be an increasingly challenging task in an era of polarisation across multiple dimensions of politics, culture, historical narratives and ethical norms. It can be linked to diminishing trust in societal institutions. Last year, a global report issued under the banner of the Edelman Trust Barometer reflecting the results of a survey-based methodology conducted in 28 countries around the world. This was its 23rd year. The global index is based on what is called an ‘average percent trust in NGOs, business, government, and media’. In 2023, Australians were said to have indicated a level of trust measured at 48%. One can ask, why should the Edelman Trust Barometer be trusted? The answer is perhaps because it accords with what we see ourselves. Causative factors include economic imbalance, institutional imbalance, and the battle for truth in which media and particularly social media play a part. As the Report observed:

A shared media environment has given way to echo chambers, making it harder to collaboratively solve problems. Media is not trusted with especially low trust in social media. So called Gen Z is said to lead the decline in trust.

11. Australia falls into what the Trust Barometer calls the field of moderate polarisation where people see deep divisions but think they might be addressable. Nor surprisingly perhaps, the United States is said to be ‘severely polarised’. There are many factors feeding into those results, but particularly economic inequality and inequality of opportunity. A sharp dramatisation of events contributing to that state of society in the United States was the film ‘The Big Short’. It was a black comedic depiction of the collapse in 2007-2008 of a housing market bubble supported by sub-prime mortgages and improvident lending. 3.8 million Americans lost their homes to foreclosures in that collapse. The contrast between the victims and market predators was wickedly demonstrated by Margot Robbie, sitting in a bubble bath holding a glass of champagne

and explaining to those viewing the film what collateralised debt obligations were all about.

12. Economic and social inequities are just part of the picture. Polarisation in our society is exacerbated by patronising, condemnatory, judgmental and angry exchanges in public discourse. Anger and condemnation are sometimes warranted. However, they must not be tools of routine resort. They rarely yield durable beneficial outcomes. It is of fundamental importance that those engaging in public discourse and advocacy within our society, whether in politics, the sciences, the humanities, the professions, or the halls of the Academy, should maintain respect for those whose views differ from theirs and particularly for those whose experiences of life have shaped different world views.
13. That said, offensive and insulting language has a long history which overshadows contemporary calls for civility. There are many examples across millennia. Cicero in his Second Philippic against Mark Antony in AD43, accused Mark Antony of sturdy wickedness and lightweight worthlessness. In a lengthy oration he recalled an incident in which Mark Antony had too much to drink at a wedding and threw up in public the next day:

What a disgusting sight, raged Cicero.

Disgusting even to hear of ... at a gathering of the Roman people while conducting public business as Master of the Horse when a mere belch would have been shocking ... he vomited.

Cancellation then was a more drastic sanction than it is today. When Antony came to power, Cicero was proscribed and executed and his head and hands displayed in public.⁶

14. There is also a long history of legal sanctions against various forms of speech. Over the last century or so common law courts have tended to construe such laws so as to minimise their incursions into freedom of speech.
15. In 1966, a university student at the Australian National University, Desmond Ball, protested against Australia's involvement in the Vietnam war. He climbed onto a statue

⁶ Cicero, 'Orationes Philippicae II' in DH Berry (tr) *Cicero Orations* (Folio Society, 2011) 295.

of King George V outside Parliament House in Canberra. He placed on its head a placard reading 'I will not fight in Vietnam'. He refused to remove the placard or to climb down. He was charged with the misdemeanour of behaving in an offensive manner in a public place, contrary to s 17 of the *Police Offences Ordinance* of the Australian Capital Territory.

16. There was no evidence of anyone actually being offended by the behaviour. The judge who tried the case was Justice John Kerr. He set a high threshold for conviction. To be offensive he said the behaviour must be calculated to wound the feelings, arouse anger, resentment, disgust or outrage in the mind of a reasonable man. This paragon of gendered equanimity was defined as a person who was 'reasonable, tolerant and understanding and reasonably contemporary in his reactions.'⁷ The judge dismissed the charge. The legal standard he formulated, which has often been cited, acted as a warning to judges to proceed with caution before finding that a legal prohibition on offensive behaviour had been breached. Desmond Ball later became a renowned scholar in strategic studies nationally and internationally, a Professor at the Australian National University and the recipient of many honours, including the award of Officer of the Order of Australia. Sir John Kerr became Governor-General of Australia, and in 1975 dismissed the Whitlam government. That action overshadowed his considerable contributions to Australian society in the reform of our administrative law system in the 1970s and our engagement with the judiciary of the Asia Pacific region with the creation of LawAsia.
17. In the political sphere there is now constitutional protection for freedom of speech, including the offensive or insulting variety. The protection originated in an unlikely combination of the *Australian Newspaper* and the High Court. The *Australian Newspaper* published an article highly critical of the Industrial Relations Commission of Australia. It said, among other things:

The right to work has been taken away from ordinary Australian workers. Their work is regulated by a mass of official controls, imposed by a vast bureaucracy in the Ministry of Labour and enforced

⁷ *Ball v McIntyre* (1966) 9 FLR 237, 245.

by a corrupt and compliant ‘judiciary’ in the official Soviet-style Arbitration Commission.

18. The newspaper was prosecuted for a breach of s 299 of the *Industrial Relations Act 1988* which provided that:

(1) A person shall not:

...

(d) by writing or speech use words calculated:

...

(ii) to bring a member of the [Industrial Relations] Commission or the Commission into disrepute.

19. The High Court held the section to be invalid. Three members held that it infringed an implied freedom of political communication. That implication was based on the text and structure of the *Constitution* relating to representative democracy and election of parliamentary representatives by the people. It was also applied by a majority of the Court in the companion decision *Australian Capital Television Pty Ltd v Commonwealth*.⁸ This implied freedom is a limitation on the legislative power of the Commonwealth and of the States and Territories of Australia. It also limits the application of the common law of defamation in relation to public figures.
20. It is notable that the notion of ‘bringing into disrepute’ was at the core of the statutory prohibition. This is a term which has appeared in a number of university misconduct policies over the years.
21. This leads me on to the topic of universities generally, which appears in the title of my speech. I have passed over the meaning of life. Those who want to undertake further reading on that topic should consult the *Hitchhikers Guide to the Galaxy* in which Douglas Adams' fictional computer ‘Deep Thought’ was asked — what is the answer to the question of life, the universe and everything? After 7.5 million years of reflection, it came up with the answer ‘42’. A television series based on the book, suggested that

⁸ (1992) 177 CLR 106.

the question about the meaning of life was what is 6 x 9? 42 is the correct answer if you use a numerical system based on 13 instead of 10.

22. The perception of the university as a crucible for interdisciplinary interaction and for great and not so great intellectual debates has a long ancestry.
23. John Henry Newman, writing in 1856, in an essay entitled 'What is a University', offered the following often quoted description:

It is the place to which a thousand schools make contributions; in which the intellect may safely range and speculate, sure to find its equal in some antagonist activity and its judge in the tribunal of truth. It is a place where inquiry is pushed forward and discovery verified and perfected and rashness rendered innocuous and error exposed by the collision of mind with mind and knowledge with knowledge.⁹

24. Melbourne University picked up on this in a substantial marketing campaign in 2016 in which it was self-described as a place where 'great minds collide'. In fairness, this was meant to refer to collaboration rather than collision in the ordinary sense of that word.
25. Sometimes one great mind finds itself in collision with another which it does not think is quite as great. Even then, mutual civility and respect for the lesser mind's perspective is desirable. They might just be right. A university should be a place in which the possibilities of civil exchange should be demonstrated. That is even more so when a member of a university community engages in debate in the wider community. Sadly, human nature being what it is, this does not always happen.
26. But does this mean that universities should sanction uncivil, offensive or insulting speech? My answer to that question is a qualified 'No'. In 2019, I provided to the Commonwealth Government a Report on Freedom of Speech in Australian higher education providers. In fact the Report covered both freedom of speech and academic freedom. The Report proposed a Model Code protective of those freedoms which has been adopted in one form or another, across most Australian universities. The definition of 'academic freedom' proposed in the Report, is now enshrined in the *Higher*

⁹ John Henry Newman, 'Historical Sketches 1856' (Longmans Green & Co, 1913) 16.

Education Support Act 2003 (Cth) which requires Australian universities to protect freedom of speech and academic freedom.

27. The impetus for the Report was initially the treatment of controversial visiting speakers on university campuses. That, however, turned out to be a lesser problem than the constraints on enjoyment of the expressive freedoms presented by the internal policies of universities. I examined 101 policies from 41 universities, covering staff and students' conduct, disciplinary procedures, and inclusiveness.
28. A common concern was the breadth of the language used by universities in policies defining misconduct. One example was:

Staff must seek to maintain and enhance public confidence in the integrity of the university as a body receiving public funding and our actions should not adversely affect the good standing of the university.
29. A number of Codes made similar reference to upholding the reputation of the institution. In some cases that reference was expressly connected to freedom of expression. One Code provided that:

Students in exercising their rights to freedom of expression, have a responsibility to give consideration to the reputation of the university and its orderly and safe functioning.
30. This kind of language begs the question 'reputation' from whose point of view — the government, potential donors, sections of the community with particular political or ideological views? A controversial opinion on a particularly contentious topic might be seen by some who vehemently disagree with it, as damaging the reputation of the university, but not so seen by others.
31. Any enforceable policy which defines misconduct extending to expressive conduct including speech, is an instrument for the exercise of power by one person or group of persons over the freedom of speech of another. Whether it be an administrator, a human resources director or a disciplinary tribunal, the scope of potential adverse action against proscribed expressive conduct depends upon the width of the language that defines that proscription.

32. It is also important to be aware of and to resist the broadening of ordinary English words describing very bad conduct in such a way that they cover other conduct of which people disapprove and which they want to penalise. Terms that come to mind in that context are hate speech and bullying. Hate has a particular meaning. The ordinary English meaning of the verb ‘hate’ is to have feelings of hostility or strong antipathy towards someone. Today, however, it seems to be smeared out to cover speech, but which does not necessarily reflect that core meaning. The ordinary meaning of the term ‘bully’ is to ‘persecute, intimidate, oppress (physically or morally) by threats or superior force.’ The term ‘bully’ in the workplace context today seems to encompass a much wider range of conduct. On the other side of the coin is the term ‘safety’.

33. None of these terms should be used to penalise speech which challenges the views or beliefs of others. Sigal Ben-Porath in a book *Free Speech on Campus* said:

Protecting a student’s intellectual comfort by avoiding serious challenge to her views may create a sense of wellbeing and safety, but the price paid in development and in the opportunity to participate in the university’s mission would be too high to pay. On the other hand, when the challenges presented to a student are based not on sharing her beliefs or views but rather on undermining her dignity and questioning whether she belongs in the institution altogether — especially as a member of an identity group — this can damage not only her sense of well-being but also the ability of others to hear her and evaluate her views. The guiding principles for drawing this line should be based on a democratic commitment to inclusive freedom rather than on principles of civility.¹⁰

34. In an endeavour to respond to some of these concerns, the Model Code provides that every member of the staff and every student at a university enjoys freedom of speech, exercised on university land or in connection with the university, as a paramount value, subject to reasonable and proportional regulation. Freedom of speech is a paramount value but is not an absolute freedom. It never has been. It does not authorise intrusion into the rights and freedoms of others. It does not encompass attacks on that human

¹⁰ Sigal Ben-Porath, *Free Speech on Campus* (University of Pennsylvania Press, 2017) 42.

dignity which is protected against vilification on grounds of race, religion, ethnic, or national origin. Academic freedom is a special feature of the relationship between academic staff and their universities, and universities and the wider community.

35. One of the restraints flows from the duty imposed by law upon universities to foster the wellbeing of students and staff. It is not defined in the *Higher Education Support Act* but is defined in the Model Code. It extends to ensure that no staff member or student is subject to threatening or intimidating behaviour by another person on account of anything they have said or propose to say in exercising their freedom of speech. It covers measures to prevent any person from using speech which would be regarded, in the circumstances, as likely to humiliate or intimidate other persons and which is intended to have either or both of those effects. Importantly, it does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.
36. Academic freedom is somewhat distinct from the ordinary freedom of speech that everybody should enjoy on or off campus. As defined in the Code and now in the *Higher Education Support Act*, it covers the freedom of academic staff to teach, discuss and research, to engage in intellectual inquiry and express their opinions and beliefs, and to express their opinions in relation to the higher education provider in which they work or are enrolled. It also extends to students. It also extends to the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the way in which they are taught and the choices of research activities and the way in which they are conducted.
37. Neither academic freedom nor freedom of speech should be eroded by unscrutinised incursions whether they be by the laws of the land, by university regulations or by policies which employ virtuous sounding language of wide application and can create vaguely defined legal constraints and administrative powers limiting these important freedoms. The other take away of course, is that freedom itself is not a virtue. Its value depends upon how we exercise it. My advice to the scholars this evening is to enjoy the freedoms, protect them, and exercise them well.