Free Speech, Hate Speech and an Australian Bill of Rights[1]

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ABSTRACT

This paper asks the very specific question of what provisions could be included in an Australian Bill of Rights, if Australia were to institute one in either a statutory or constitutional form, to preserve free speech and also to respond to hate speech? First an overview of convincing and important arguments in favour of free speech is provided. Then an outline of statutory provisions already adopted at both federal and state level in Australia which seek to respond to hate speech is provided, which demonstrates Australia's existing commitment to both free speech and hate speech policies. In this context, the attempt in South Africa to incorporate a response to hate speech in their Bill of Rights is examined in comparative perspective. I conclude by arguing for the inclusion of a qualified free speech clause in any Australian Bill of Rights, should one be instituted. Such a clause could take one of two forms: either a general limitation clause or a hate-speech-specific limitation on the free speech right.

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This paper sets out to ask a very specific question. If Australia were to institute a Bill of Rights (either in statutory or constitutional form), what provisions could be included within that document to preserve free speech[2] and also to respond to hate speech?[3] Many liberal democratic jurisdictions protect free speech explicitly in a Bill of Rights. The United States does so constitutionally, the United Kingdom in a statutory Bill of Rights. Neither of these countries contain specific hate speech provisions within those Bills of Rights. In other examples, however, such as South Africa, a hate speech provision has been included within a (constitutional) Bill of Rights.

This paper first provides a brief overview of the convincing and important arguments that exist in favour of free speech. These arguments bear out the sometimes implicit assumption that free speech is, indeed, important and that if Australia were to adopt a Bill of Rights a free speech clause of some kind would seem essential, or even inevitable. At the same time, Australia has adopted statutory provisions which seek to regulate hate speech, at both state and federal level, creating a framework in Australia of an existing commitment to both free speech and hate speech policies. In this context, the attempt in South Africa to incorporate a response to hate speech in their Bill of Rights is outlined, with a view to investigating the feasibility of such a provision in any Australian Bill of Rights. I conclude by arguing for the inclusion of a qualified free speech clause in any Australian Bill of Rights, should one be instituted. The specific form any such qualification might take is outlined and explained.

The Importance of Freedom of Expression

When discussing the issue of freedom of expression, there is no single author more cited than John Stuart Mill whose seminal work 'On Liberty', first published in 1859, has become a central text in debates examining the tensions between individual liberty and the social order. Mill was particularly concerned to establish a theory of individual liberty incorporating protection from both oppressive popular opinion, which he called the 'tyranny of the majority', and government authority (Riley 1998, p. 42).[4]

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2 The terms 'speech' and 'expression' will be used interchangeably in this paper and are intended to mean expressive activity, broadly conceived.

3 The terms 'hate speech' and 'vilification' will be used interchangeably throughout this paper.

4 Mill's arguments were developed in four major works: *Considerations on Representative Government* (1861); *The Subjection of Women* (written in 1861 but published in 1869); *Utilitarianism* (1861) (which clarified Mill's notion of happiness, the scope and content of the sphere of morality and developed a theory of justice); and *On Liberty* (1859) which sought to justify a sphere of non-interference in which individuals are able to make the autonomous choices necessary for them to be able to enjoy individuality and pursue happiness (Gray in Mill 1991: viii).

Mill's thesis in *On Liberty* is that liberty, conceived of as a general absence of restraint or impediment, is a necessary condition for the cultivation of individuality via self-development (Rees 1985, p. 48; Gray in Mill 1991, pp. xiii–xv). His work has deeply informed liberal deontology and the philosophy of law around the question of the speech liberty. Mill argued there were four, interrelated, reasons for the special protection of freedom of expression on 'truth' grounds (1991, Chapter 2). First, no individual is infallible. The second reason is that if an opinion or idea is silenced, even if it is wrong in its entirety it may contain elements of 'truth'; hitherto unappreciated or unknown knowledge. The only way to ascertain if this is the case is to allow a collision of diverse opinions to occur. Thirdly, even if the opinion originally held by the listener is more correct than an opposing or conflicting one, it is only possible to discern that by allowing the opinion to be tested out against other ideas. The fourth reason is that even if the opinion originally held by the hearer is more true than an opposing or conflicting one, the meaning of that opinion is weakened if the holder does not actively participate in its defence. Contemporary manifestations of the argument from truth tend to be expressed in the notion of a 'marketplace of ideas.'[5]

Central to Mill's argument was the idea that speech ought to be accorded special protection from government regulation, because expression was a human activity which ought to be regarded on a similar plane as thought. That is, it is a process which is highly individualised and private and which ought not to be subject to regulation. Mill's view of expression is related to his view of the importance of individual self-development within which self-development is each individual's responsibility, and takes place in a different way for each person. Because of the high regard with which Mill viewed expression, it would require a high threshold to define an expression as sufficiently affecting others to warrant censure.

It is possible to discern in Mill's argument more than one type of free speech defence. One is the argument from truth which has been explored and critiqued by other free speech writers, including Rauch (1993), Schauer (1982) and Barendt (1985). Similarly the argument from self development, that free speech is necessary to allow the cultivation of the individual, has been examined in detail (see for example Barendt 1985).

Two other types of arguments persist in free speech literature. The first of these is the deontological argument that individuals have a right to free speech, most convincingly explored by Ronald Dworkin (1977a). The second of these is the argument from democracy, which maintains that effective democracy is dependent on citizens' ability to criticise government, and to develop their capacity for self-

5 This analogy was used by Justice Holmes, dissenting, in *Abrams v. U.S.,* 250 U.S. 616, (1919) at 630–1. Justice Frankfurter concurred in *Dennis v. United States*, 341 U.S. 494 (1951) at 546–53.

determination by participating actively in deliberation over issue (see for example Rosenberg & Williams 1997).

These four types of free speech defence have been integrated into developing Australian jurisprudence around free speech, which is itself influenced by US First Amendment jurisprudence (Barendt 1994, p. 150, 161). For example, in the free speech findings delivered by the Australian High Court in 1992,[6] the justices held that because the Australian Constitution enshrined a system of representative government, this implied the right to freedom of communication on 'political' matters (Kirby 1993, pp. 1778–1779; McDonald 1994, pp. 176–177; Kirk 1995, p. 40). It has been argued that in these cases the High Court 'adopted a 'free-market' notion of speech' (Rosenberg & Williams 1997), the idea that free speech 'will facilitate the discovery of truth' (Kirk 1995, p. 52), and an argument that 'more speech will facilitate the discovery of truth' (Cass 1993, p. 231). Barendt argues US First Amendment jurisprudence, from which Australia has drawn, is often based in the argument from truth, the argument that individuals have a 'right' to 'decide for themselves the good life' (1994, p. 154), and the argument from democracy (1994, p. 161). Australian common law has also protected free speech (Cass 1993, p. 230). There seem, then, to be good reasons for and historical evidence of the protection of free speech within Australia.

However, Australia has also demonstrated a willingness to develop statutes which prohibit hate speech. Criminal and/or civil provisions exist in every state and Territory except the Northern Territory, and at the Commonwealth level,[7] against racist hate speech. New South Wales,[8] the Australian Capital Territory,[9] South Australia,[10] Queensland[11] and Victoria[12] have both civil and criminal provisions. Western Australia[13] has exclusively criminal provisions, and Tasmania has exclusively civil provisions.[14] The *Racial Hatred Act* 1995 (Cth) creates a civil offence of racial

6 *Australian Capital Television & others v. The Commonwealth* (1992) 177 CLR 106, *Nationwide News Pty Ltd v. Wills* (1992) 177 CLR 1.

7 *Racial Hatred Act* (Cth) 1995.

8 *Anti-Discrimination Act* 1977 (NSW), ss 20C & 20D.

9 *Discrimination Act 1991* (ACT), ss 66 & 67.

10 *Racial Vilification Act 1996* (SA).

11 *Anti-Discrimination Amendment Act 2001* (Qld), ss 124A, 131A.

12 *Racial and Religious Tolerance Act 2001* (Vic).

13 *Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990* (WA).

14 *Anti-Discrimination Act 1998* (Tas), s19.

vilification. All of these statutes contain significant exemptions for fair reporting, academic and scientific research, artistic work, and matters of public debate.

These provisions have been justified *inter alia* as being derived from international standards as expressed in multilateral treaties such as the International Convention on the Elimination of Racial Discrimination,[15] which contains a provision for the right to freedom of opinion and expression (Article 5(viii)), and a provision for the prohibition of 'dissemination of ideas based on racial superiority or hatred' (Article 4 (a)) (Gelber 2000, p. 13). A similar provision prohibiting 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' is contained in the International Covenant on Civil and Political Rights.[16] The Australian High Court has consistently upheld the Commonwealth's power to implement the terms of international treaties under the constitutional external affairs power (Section 51 (xxix)), for example in *Koowarta v. Bjelke Petersen.*[17]In the *Tasmanian Dams* case,[18] it also upheld the idea that the terms of treaties create a reasonable expectation that they ought to be upheld in domestic law, even where a specific domestic law to such effect has not been enacted (Galligan 1995, p. 178).

The existence of both a free speech framework and statutory provisions against hate speech in Australia implies that if an Australian Bill of Rights were to be enacted, consideration should be given to how both of these elements might be combined within it. The question of including hate speech provisions in any Bill of Rights, however, is difficult because it raises the spectre of two perceivably *competing* interests: the interest of maintaining free speech conditions, and the interest of regulating to prevent the harms of hate speech. The endeavour to cater for both of these interests has been described as the most intractable and difficult problem in speech theory (Smolla 1992, p. 151). In light of the existence of both these elements in the existing Australian legal and policy frameworks, consideration will now be given to how some other jurisdictions have attempted to marry these two, apparently, competing policy demands.

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15 Which entered into force for Australia on 30 October 1975.

16 Article 19(3) also allows for restrictions on free speech 'such as are provided by law and are necessary for the protection of national security or public order. The ICCPR entered into force for Australia in 1980, except Article 41 which entered into force for Australia on 28 January 1993 and allows the United Nations Human Rights Committee (UNHRC) to hear complaints lodged by one State Party against another State Party. This followed on from Australia's ratification of the First Optional Protocol of the ICCPR, which entered into force on 25 December 1991 and allows individuals to lodge complaints with the UNHRC of ICCPR violations in Australia.

17 *Koowarta v. Bjelke-Petersen* (1982) 153 CLR 168.

18 *Commonwealth v. Tasmania* (1983) 156 CLR 1.

Free Speech and Hate Speech Provisions in International Perspective

Although international law is in theory 'the embodiment of the will of the international community' (Wallenstein 2001, p. 355), the prohibition of hate speech in signatory nations to international conventions is less straightforward than other obligations which are universally accepted and have customary status (such as, for example, the refusal to officially sanction torture and extra-judicial killings) (Wallenstein 2001, pp. 355–356.)[19] In the context of the recognition in the international documents referred to above of the need to prohibit hate speech, many jurisdictions with Bills of Rights have not incorporated a specific hate speech provision into those documents. Instead, hate speech provisions have usually been incorporated via other statutes. The United Nations Human Rights Committee has stated explicitly that the right to free speech does not protect 'racial or religious hatred' (Wallenstein 2001, pp. 367),[20] however the precise terms and scope of domestic hate speech provisions vary greatly between countries.

In the United States the First Amendment to their Bill of Rights protects free speech broadly, and attempts to enact statutory restrictions on hate speech have tended to be rejected by the Courts on First Amendment grounds. Examples include *R.A.V. v. City of St. Paul*[21] in which a Minnesota ordinance punishing words producing anger or resentment on the basis of race, religion or gender was declared 'presumptively invalid' as it was content-based, and *Skokie v. National Socialist Party*[22] in which an ordinance imposing limitations on public marches, which was designed to disallow a march organised by Nazis, was held invalid. Some hate speech, narrowly defined as 'fighting words' which are considered to cause an immediate breach of the peace and grave danger of violence,[23] has been held to constitute speech unprotected by the First Amendment.

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19 Wallenstein argues that the ICCPR can be considered customary international law because the U.N. General Assembly has ratified it (2001: 367). However, accepting that dissemination of expressions of racial hatred should be prohibited is a different question from the form that prohibition might take. In this paper I argue over the latter of these two questions, and in that respect empirical evidence demonstrates a lack of consistency between jurisdictions in their statutory approaches to hate speech.

20 Derived by Wallenstein from *J.R.T.* and *W. G. Party v. Canada*, 2 Selected Decisions of the Human Rights Committee under the Optional Protocol, U.N. Doc. CCPR/C/OP/2 at 25, 26 (1983).

21 *R.A.V. v. City of St. Paul* 505 U.S. 377 (1992).

22 *Skokie v. National Socialist Party* 373 NE 2d.21 (1978).

23 Developed in *Chaplinsky v. New Hampshire* 315 US 1 (1949), and then delimited further in *Cohen v. California* 403 U.S. 15 (1971) which qualified that the target audience must have no reasonable means of avoiding the words, and *Gooding v. Wilson* 405 U.S. 518 (1972) which

Canada protects free speech in its Bills of Rights, but has no hate speech provision in the same document. It has statutorily enacted a criminal offence of 'hate propaganda' (*Criminal Code*, Part VIII) which prohibits the advocacy of genocide and public incitement of hatred based on colour, race, religion or ethnic origin, where such incitement is likely to lead to a breach of the peace (ss 318, 319) (McNamara 1994; McNamara 1995; Freckleton 1994). The United Kingdom similarly protects freedom of expression in its *Human Rights Act* and makes no specific provision therein for hate speech. Hate speech provisions have been enacted statutorily in the context of the *Public Order Act* 1986 (s 23) (Twomey 1994, pp. 238–239). Wallenstein argues that the United Kingdom's provisions 'represent the prevailing world view', that hate speech provisions do not require 'the element of a causal nexus' (2001, p. 368). That is to say, it need only be demonstrated that the hate speech under question would be capable of producing the offence (in this case against public order), not that it actually *did* produce the offence. Existing Australian hate speech provisions are also consistent with this view (Gelber 2000, p. 14).

It is possible, then, to protect freedom of expression in a Bill of Rights and make no express provision in the same document for a response to hate speech. Instead, hate speech provisions could be enacted in a range of other domestic frameworks including via statutory criminal and/or civil provisions. Where no specific hate speech provision has been incorporated into a Bill of Rights, the inclusion of general limitation clause in the Bill of Rights would render other policy approaches generally unproblematic, as long as they were not devised in an overbroad manner. Such a general limitation exists in the Canadian entrenched Bill of Rights (Part I, Section 1). General qualifications such as these tend to allow for reasonable limitations to be imposed on protected rights, as prescribed by law and necessary in a free and democratic society.

An alternative model, however, would be to incorporate a hate speech provision into the Bill of Rights document itself. This has occurred in South Africa. It is useful to examine the South African provision, and its scope, when considering the possible inclusion of a hate speech provision in an Australian Bill of Rights.

The Constitution of the Republic of South Africa, enacted in 1996, protects freedom of expression (Article 16). This freedom is, however, limited in Article 16(2), and does not extend to:

(a) propaganda for war

(b) incitement of imminent violence

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narrowed the definition to language causing acts of violence by the person to whom the remark is addressed.

(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The South African Bill of Rights also contains a general qualification in s36, similar to that which exists in Canada, and allowing for the limiting of rights specified in the Bill of Rights where such limitation is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom' and taking into account factors such as the nature and extent of the limitation.

During the period of South Africa's interim constitution, from 1993 to 1996, the freedom of expression clause (then s15) did not contain a hate speech qualification. The 1993 clause was regarded as important to curtail the government's ability to restrict speech, as had occurred in South Africa historically, and was also interpreted as applying at a private level (Marcus 1997, pp. 114–119). In the 1996 constitution, subsection (2) was added to the new section 16, creating a hate speech qualification on the extent and scope of freedom of expression. Marcus argues that the interpretation of the meaning and reach of the subsection is likely to be drawn from North American jurisprudence. Drawing from a Canadian decision, Marcus suggested that the clause 'constitutes incitement to cause harm' could be interpreted to mean that hate speech itself could be sufficiently detestable to cause 'incalculable damage' and 'lay the foundations for the mistreatment of members of the victimized group.'[24] Thus, it is possible that an instance of hate speech may itself be considered to constitute sufficient harm to warrant its inclusion within the ambit of non-protected speech.

It is important to note here that the speech need only be capable of incitement to cause harm, it need not be demonstrated to have so incited, to be covered by subsection (2) (Wallenstein 2001, p. 385). Marcus also warns that the word 'hatred' in the *R v. Andrews* decision was interpreted as referring only to the 'most intentionally extreme form of expression' (1997, p. 120), thus rendering the hate speech provision not overbroad in its restriction of freedom of expression. Furthermore in South Africa's new constitution, he concluded, even if an instance of hate speech were to be regarded as non-protected speech under subsection (2), it may still garner protection if subsection (2) could be demonstrated to be overbroad in a particular instance, and thus breach the general limitation clause in s36 (1997, p. 120).

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24 *R v. Andrews* (1991) 3 CRR 176 (SCC).

A recent judgement in the Constitutional Court of South Africa[25] made reference to the particular difficulty to be faced as interpretation of the scope of the South African Bill of Rights develops. 'Our Constitution', argued Justice Kriegler:

> is a wholly different kind of instrument [from that in the United States]. … it is infinitely more explicit, more detailed, more balanced, more carefully phrased and counterpoised, representing a multi-disciplinary effort on the part of hundreds of expert advisors and political negotiators to produce a blueprint for the future governance of the country.

The right to freedom of expression, he continued is not unqualified, and 'not a pre-eminent freedom ranking about all others', most notably the values of human dignity and equality.

The South African model, therefore, presents a more complex picture of possible hate speech provisions within a Bill of Rights. The inclusion of hate speech provisions within that document is not only possible, but it appears to be a goal whose pursuit is relevant in Bills of Rights that might be drawn up at the beginning of the 21st century.

An Australian Bill of Rights: What Provisions?

Several implications can be drawn from this discussion. The first is that Australia is both a signatory to relevant international conventions which contain clauses prohibiting hate speech, such as the ICCPR and the ICERD, and has enacted statutes at federal and state/territory levels designed to respond to hate speech. This implies that Australia takes the issue of hate speech seriously. The existence of a range of both criminal and civil hate speech provisions also implies that Australia regards a more comprehensive policy response to hate speech as necessary than, for example, the United Kingdom which has enacted only criminal (public order/harassment) provisions. The United Kingdom has explicitly stated, in their report to the United Nations in 1994 concerning implementation of the ICCPR, that it had no plans to extend the scope of its laws in response to racial vilification, because it regarded the existing provisions as sufficient.

It would be a relatively straightforward option for Australia to protect freedom of expression in a Bill of Rights, and also adopt a general limitation clause which would allow for such laws as are reasonable and necessary in a democratic society. Such a general limitation clause would, of course, not only apply to hate speech provisions but also to other laws within Australia which sought to limit rights established in the

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25 *S v. Mamabolo* CCT44/00, decided 11 April 2001. At http://www.concourt.gov.za/judgments/2001/mamabolo.pdf.

Bill of Rights. The primary concern if this approach were to be adopted would be whether existing hate speech provisions federally and in the states and territories could be interpreted as overbroad, in light of the Bill of Rights' protection of freedom of expression. If this were to be the case, it could lead to a modification of existing provisions. It also seems important that a Bill of Rights not shut off possibilities for further developments and ideas in racial vilification policy. For example, work I have conducted elsewhere argues in favour of a non-punitive policy response to hate speech, designed to empower its targets to contradict the messages contained within hate speech and to counteract the silencing and disempowering effects of hate speech (Gelber 2002). A general limitation clause would probably allow for such policy developments.

A second option would be to include a more specific hate speech provision in an Australian Bill of Rights, along the lines of the South African model. This alternative would not automatically resolve the problem of establishing whether existing hate speech provisions in Australia could be interpreted as overbroad, because the Bill of Rights would still contain a protection of freedom of expression and a general limitation clause. It might be possible to deal with this interpretive problem by including specific wording in the hate speech qualification. That is to say, if the clause were to specify that hate speech may be regarded in and of itself as an act constituting harm, then existing hate speech provisions would more easily be considered to fall within the ambit of that Bill of Rights clause. This would mean recognising that hate speech can be an act of violence, discrimination or hostility in and of itself, *and* that this discursive act is sufficiently harmful to warrant and justify government regulation. The form of such regulation need not be specified in the hate speech clause in a Bill of Rights, only that it would be justifiable.

The inclusion of a specific clause along these lines within the Bill of Rights would also constitute a clearer statement of purpose pertaining specifically to hate speech, a statement which could explicitly demonstrate that Australia takes the issue of hate speech seriously as a policy issue.

In summary, the argument suggests that an Australian Bill of Rights ought to protect freedom of expression, and that a general limitation clause ought to be included. There are two specific options for responding to hate speech. The first is not to mention hate speech specifically in the Bill of Rights at all, and to justify domestic statutes and regulations on hate speech via the general limitation clause. The second is to include a hate-speech-specific limitation on the right to freedom of expression. The latter option has only been tried in South Africa thus far. However, it seems an important development in international legal norms and may be an option worth considering in an Australian Bill of Rights.

REFERENCES

Barendt, E. 1985, *Freedom of Speech,* Clarendon Press, Oxford.

Barendt, E. 1994, 'Free Speech in Australia: A Comparative Perspective', *Sydney Law Review*, vol. 16, no. 2, pp. 149–165.

Cass, D. 1993, 'Through the Looking Glass: The High Court and the Right to Speech', *Public Law Review*, vol. 4, pp. 229–247.

Dworkin, R. 1977a, *Taking Rights Seriously,* Duckworth, London.

Dworkin, R. 1977b, *The Philosophy of Law,* Oxford University Press, Oxford.

Freckleton, I. 1994, 'Censorship and Vilification Legislation', *Australian Journal of Human Rights*, vol. 1, no. 1, Dec, pp. 327–352.

Galligan, B. 1995, *A Federal Republic,* Cambridge University Press, Melbourne.

Gelber, K. 2000, 'Implementing Racial Anti-Vilification Laws in New South Wales 1989–1998: A Study', *Australian Journal of Public Administration*, vol. 59,

Gelber, K. 2002, *Speaking Back: The Free Speech Versus Hate Speech Debate*, John Benjamins Ltd, Amsterdam (forthcoming).

Kirby, The Hon. Mr Justice M. 1993, 'Freedom of Expression – Some Recent Australian Developments', *Commonwealth Law Bulletin,* vol. 19, no. 4, pp 1178–1781.

Kirk, J. 1995, 'Constitutional Implications from Representative Democracy', *Federal Law Review*, vol. 23, no. 1, pp. 37–76.

Marcus, G. 1997, 'Expression', in *Fundamental Rights in the Constitution: Commentary and Cases*, eds D. Davis, H. Cheadle & N. Haysom, Juta & Co Ltd, Kenwyn, South Africa.

McDonald, L. 1994, 'The Denizens of Democracy: The High Court and the 'Free Speech' cases', *Public Law Review*, vol. 5, no. 3, pp. 160–198.

McNamara, L. 1994, 'Criminalising Racial Hatred: Learning from the Canadian Experience', *Australian Journal of Human Rights*, vol. 1, no. 1, Dec, pp. 198–210.

McNamara, L. 1995, 'Responding to Hate in a Multicultural Society: Forms of Legal Intervention', *Paper presented to 50th Anniversary Conference, Australasian Law Teachers' Association.*

Mill, J. S. 1991, *On Liberty & Other Essays,* with an introduction by John Gray, Oxford University Press, Oxford.

Rauch, J. 1993, *Kindly Inquisitors,* Chicago University Press, Chicago.

Rees, J. 1985, *John Stuart Mill's 'On Liberty',* Clarendon Press, Oxford.

Riley, J. 1998, *Mill On Liberty,* Routledge, London.

Rosenberg, G. & Williams, J. 1997, 'Do not go gently into that good right: the First Amendment in the High Court of Australia', *Supreme Court Review*, Annual, pp. 439–495.

Schauer, F. 1982, *Free Speech: a Philosophical Enquiry,* Cambridge University Press, New York.

Smolla, R. 1992, *Free Speech in an Open Society*, Oxford University Press, Oxford.

Twomey, A. 1994, 'Laws Against Incitement to Racial Hatred in the United Kingdom', *Australian Journal of Human Rights*, vol. 1, no. 1, pp. 235–247.

Wallenstein, J. 2001, 'Punishing Words: An Analysis of the Necessity of the Element of Causation in Prosecutions for Incitement to Genocide', *Stanford Law Review*, vol. 54, pp. 351–398.