'I am not a racist, but …': Free speech, racial vilification and the Bolt case

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In 2009 the *Herald Sun* published two articles penned by staff columnist Andrew Bolt, 'It's so hip to be black' and 'White fellas in the black' (Bolt 2009a) (Bolt 2009b). In the first article published on April 15, Bolt listed 16 people he referred to as 'the white face of a new black race—the political Aborigine,' inferring that their identification as Aboriginal was for financial gain (Bolt 2009a). In August 2009, the *Herald Sun* published Bolt's second article on the same theme. Bolt listed seven people he accused of identifying as Aboriginal for financial gain, five of whom he had identified in the original article. Bolt stated that those individuals 'who, out of their multi-stranded but largely European genealogy,' instead 'decide to identify with the thinnest of all those strands,' do so in order to secure 'special encouragements and prizes we set aside for Aborigines' (Bolt 2009b). Nine of the people named in the articles, activist Pat Eatock ; former ATSIC chairman Geoff Clark; author Anita Heiss; artist Bindi Cole; health worker Leeanne Enoch; academics Graham Atkinson, Wayne Atkinson and Larissa Behrendt; and lawyer/academic Mark McMillan, issued proceedings against Bolt and the Herald and Weekly Times (HWT) under section 18C of the *Racial Discrimination Act* (1975). Bolt and HWT countered with the claim that the articles were written in good faith, the content was in the public interest and under the provisions of 18D of the Act, were fair comment. The hearing began under Justice Mordecai Bromberg on March 29, 2011. On September 28, 2011, Justice Bromberg ruled in favour of Pat Eatock and the others named by Bolt and ordered the *Herald Sun* to print a court-worded apology. Bolt and HWT chose not to appeal the decision despite an avalanche of calls to do so from politicians and commentators linking the outcome in the case to an attack on free speech.

On October 5, 2011, the Institute of Public Affairs ran a full-page advertisement in *The Australian,* featuring 650 names presumably in agreement with their sentiments, declaring freedom of speech to be under threat in Australia following the result of the Bolt case, and stating: 'It is alarming that in 2011 someone can be taken to court for expressing an opinion' (2009b). The constant reiteration by Bolt and other commentators aided and abetted by conservative politicians such as George Brandis and Tony Abbott, that Justice Bromberg's ruling was an attack on free speech obscures the outcome that Bolt's original comments were found to be racist according to the *Racial Discrimination Act*. Further, in calling for the repeal of section 18C of the Act due to its curtailing of a perceived freedom of speech, despite Justice Bromberg's ruling that Bolt's two articles were found not to be fair or accurate reports or fair comment, the implication is that racist attacks on minority groups are acceptable whereas attacks on freedom of speech are not.

The *Herald Sun's* September 29 editorial defending Andrew Bolt against Federal Court ruling argues that the offending columns were justified. In the second paragraph the editorial 'maintains' the view that:

> What Bolt wrote in this newspaper and online was not based on race, but on the way those who took such offence used race ('Free Speech is vital to society' 2011).

This is a semantic point that twists the argument to suggest that the actions of those who claimed to be offended, insulted, intimidated and humiliated by Bolt's comments are themselves racist. In the fifth par the editorial insists the paper was right to publish Bolt's comments:

> We say [publication] was [justifiable] and if it is the interpretation of the law that comes into question, then it is the law that should be changed ('Free Speech is vital to society' 2011).

This is a key turning point in the argument, which sets up the HWT defence that the unfettered principle of free speech must trump a law, which attempts to curtail it. *The Australian's* legal editor Chris Merritt made the same point reminding us that if his News Limited bosses lose their legal challenge, 'the onus will fall to the government – or its replacement—to rebalance this biased law' (Merritt 2011). The bold statement here is that the law is wrong—not the actions of Andrew Bolt.

What is free speech in the Bolt context?

The following paragraph from the *Herald Sun's* editorial of 29 September defending Andrew Bolt attempts to define free speech in this context:

> A key measure of a mature society is the ability to publicly discuss unpopular views without fear, no matter how distasteful they are to some of us, and to follow this discussion with vigorous public debate ('Free Speech is vital to society' 2011).

But this case was not about tasteful or distasteful comments. It was about the deliberate denigration and traducing of nine individuals based only on their ethnic identity. The Herald and Weekly Times justification on this point seems to imply that anything goes in the freedom of speech stakes. Writing in the *Herald Sun* the day after the Federal Court decision, senior Murdoch reporter Paul Toohey wrote an op-ed piece attacking the recently announced government media inquiry. The same free speech argument was raised in the context of possible legislative and regulatory outcomes imposed by government. The Murdoch press in Australia is positioning the inquiry as a threat to freedom of speech, despite no evidence to suggest this is the government's intention. Toohey cites the American situation against a background of what he says is international concern that the government might intervene to curtail press freedom:

> [W]hile American press freedom is not absolute, any legislative media restrictions cannot override the underlying rights to freedom of expression (Toohey 2011).

This argument takes no account of the public benefit and public interest in having a legal means to curtail hateful, hurtful and inflammatory propaganda, as occurred in the Bolt case. Any society that wants to call itself democratic and civilized will have legislative and legal provisions preventing racist speech. There is no right to freedom of speech that involves racial or other defamation based on stereotyping, misconceptions, or deliberately deceptive arguments. There is no right to free speech if the aim of that speech is to encourage others

to action—even if that action (at this point) is merely an invitation to share such views. On this point the *Herald Sun* editorial spins itself a very tight web, but unfortunately it appears caught in the clever strands of its own faulty logic:

> This has very much been a trial of freedom of speech [sic]. Those who complained had the opportunity to put forward their own views. They were offered equal space on these pages, but sought to silence Bolt on the subject of the social consequences of their choice to identify as Aboriginal ('Free Speech is vital to society' 2011).

We cannot, at this point, offer an opinion on whether or not the complainants were offered and refused a chance to respond in the paper. However, we observe that this would not necessarily have been in the plaintiff's best interests. The only possible outcome would be to add fuel to the fire Bolt was attempting to ignite with an explosion of feigned moral outrage. If we had been advising the nine our recommendation would have been not to engage with Bolt in the pages of his own newspaper. Bolt has previous form in these matters and he would know that anything the accused put forward in their defence would be used to further inflame the mob rule atmosphere that demagogues thrive in. But on the last line, 'the social consequences of their choice to identify as Aboriginal,' we can surmise that the irony of this comment is lost on the editorialist ('Free Speech is vital to society' 2011). One of the social consequences the plaintiffs had to endure was the vilification and opprobrium heaped on them by Andrew Bolt in his offending columns and by his legion of ill-informed fans who lap up his diatribes.

Linking the 'Bolt principle' to 'illiberal' attacks on the free speech

That Paul Toohey's 29 September *Herald Sun* column arguing against the government's media inquiry appeared on the same page as the pro-Bolt editorial and a long piece by Bolt himself, is no coincidence.

On 29 September, *The Australian*'s legal editor Chris Merritt wrote a comment piece, 'A biased principle threatens the nation', criticising the Federal Court decision in the Bolt case (Merritt 2011). He even names it 'The court's "Bolt principle"' and argues it will turn Australia into 'a nation of tribes…protected species too fragile to cope with robust public discourse' (Merritt 2011). Merritt labels Judge Bromberg's decision 'patronising' toward Aboriginal people and warns it will 'divide the nation' (Merritt 2011). The flaw in the ruling is that the judge—in Merritt's view—operated as 'a kind of uber-editor' who took it upon himself to rule out words 'he did not like,' in effect, trying to tell Andrew Bolt how to write his column (Merritt 2011). He concludes: 'It was almost funny' (Merritt 2011). Merritt's punchline is hard to miss: 'how easily the Racial Discrimination Act can silence unpopular opinion' (Merritt 2011). Merritt suggests, without any evidence, that this new power will 'have a pernicious effect' on public debate 'on the issue of race' (Merritt 2011). Fortunately, we are given a fearful example of how this 'pernicious effect' might operate on Australian the psyche:

> It will encourage people to see themselves not as Australians but as separate racial groups. By thinking in such racist terms, they will have the advantage of a law that is ridiculously skewed in their favour (Merritt 2011).

There's a lot wrong with this statement; a key issue is the essentialised idea of 'race' at the core. Other Murdoch commentators have made similar arguments that touch on the issue of separatism in multicultural society. In this instance Merritt appears to be suggesting that the Federal Court decision will somehow make it easier for groups arguing for a racially separatist approach in Australia to stop opponents from criticising them:

> Such people, if indeed they exist, will then be able to use the 'Bolt principle' to silence their critics 'using a procedure [Bromberg's ruling] that is almost guaranteed to favour racial groups claiming to be offended' (Merritt 2011).

The language in these passages from Merritt is vague, but on closer reading the words reveal a subtle coding. Judge Bromberg erred by not using 'community standards' as the 'critical threshold test'. His favoured method, to question Bolt's statements 'from the perspective of a hypothetical representative of those claiming to be offended', is wrong in Merritt's opinion (Merritt 2011). But how does this reconcile with Bolt's comments being 'unpopular opinion' as suggested in several Murdoch paper editorials and by Merritt himself? If Merritt believes Bolt's columns would not have offended 'community standards' they must, almost by definition, be at least somewhat popular. By acknowledging they are 'unpopular' the Murdoch stable of writers is establishing that popular taste is not dictated by ordinary Australians but by an elite that includes the 'political' and 'professional' Aborigines, some members of the judiciary and their supporters in the chattering classes and liberal commentariat. This appeal to populism is common among conservative commentators worldwide. It is a theme taken up with some gusto by News Limited columnist and blogger Miranda Devine:

> The Federal Court has shown us that the Racial Discrimination Act can be used to silence unfashionable opinion (Devine 2011).

What Justice Bromberg found in the case against Bolt was not just unfashionable opinion but two 'inflammatory and provocative' articles where 'the use of mockery and derision was extensive' (Bromberg 2011). Bromberg stated that:

> There is no doubt that the newspaper articles were designed to sting the people in the "trend" and in particular those identified therein. The language was not simply colourful … It was language … intended to confront those that he accused with "the consequences of their actions" and done with the expectation that they would be both "offended" and "upset" and in the hope that they would be "remorseful" (the words quoted are Mr Bolt's) (Bromberg 2011).

But, as Devine warns, 'make no mistake' there is a conspiracy under way to silence those who dare to speak out against political correctness:

> [T]he swarm of Left-wing lawyers who have urged it on, acting pro bono or commenting approvingly from the sidelines, are all part of an illiberal movement in Australia to crush dissent (Devine 2011).

There is no evidence for this claim, nor for the ludicrous idea that Andrew Bolt is somehow a dissenter; but it is a consistent thread in the Murdoch press oeuvre on this issue. What's missing from this one-sided fusillade of misdirected potshots and crazed sniper fire is any

attempt to address issues of power. Bolt, Devine, Merritt and the other hacks in the Murdoch stable have almost unlimited resources to traduce their straw man enemies as confirmed by News Limited CEO, John Hartigan:

> [W]e have around 140 newspapers in Australia. That includes one national broadsheet, 15 daily and Sunday metropolitan newspapers, 107 community titles & 21 regional newspapers. We've also got 27 magazines in our stable, from Vogue to Golfing Digest. We run over 100 websites and now have iPad applications for five mastheads. 7 in every 10 Australians read a News Limited newspaper or visit one of our websites every week. Our national and metro mastheads are read by over 8.6 million Australians each week … I'm giving you these figures not to boast but because understanding our reach is key (Hartigan 2011).

Bolt, in particular, has extraordinary reach, writing two columns per week for the *Herald Sun* which are then syndicated via News Limited newspapers throughout Australia, writing his own Bolt Blog posted seven days per week on the *Herald Sun* website, hosting his own Sunday morning television commentary program, the Bolt Report, as well as a regular morning spot on a Melbourne talkback radio program. There can be no doubt Andrew Bolt is an influential asset supporting Murdoch's political reach into Australian society.

Mainstreaming Racism

Paul Kelly writing in The Australian blamed the federal government for being out of touch with 'mainstream values' and for refusing to 'condemn the stifling of debate' (Kelly 2011).

> Indeed, it is hard to find a more perfect example of the trap of political correctness and the legal-human rights culture of legislating for good behaviour than this application of the Racial Discrimination Act … when will Labor get some mainstream common sense into its values? (Kelly 2011).

James Allan reiterated Kelly's call for an endorsement of mainstream values, declaring 'that most Australians are on the side of more free speech, at least outside the Green-voting inner-city suburbs' (Allan 2011).

> Enforced hate-speech laws. Ridiculous talk of new privacy laws … and that Green party-driven media inquiry … we are not heading in the right direction on free speech in this country. And it's up to us to make our dislike of the malevolent direction plain (Allan 2011).

Journalists often claim a denial of any underlying intent and trivialise any effect of racist writing on recipients. In a piece in *The Australian* four days after Justice Bromberg's ruling, Bolt not only disputed the ruling but reversed it by stating: 'I am not a racist, my message was anti-racist and my message has always been consistent' (Allan 2011). Fellow News Limited columnist Brendan O'Neill, while lamenting the creation of a new paradigm of 'censure and censorship,' provided an example of the trivialisation of the effect of Bolt's columns on their subjects:

> The terrifying thing that this ruling codifies is the idea that people's feelings are more important than free speech… In short, the case confirms the modern-day

> sanctification of the Offended Minority, whose personal and emotional interests must override the rights of the rest of us' (O'Neill 2011).

A similar line was taken in a piece in *The Weekend Australian*. 'They,' meaning other than the stereotypical 'noble savage' in need of protection:

> … push the abstract rights agenda of educated, urban Aborigines over the housing and education needs of indigenous Australians in remote and regional communities … most Australians … are sympathetic to indigenous disadvantage but troubled by affirmative action for educated, urban Aborigines ('Wisdom resides in the votes of all people' 2011).

The repeated accusation of priviledge for 'urban Aborigines,' reflects an accepted division of indigenous 'place' in Australia, and reveals the supposed transgression of this group. As Jon Stratton states:

> "Australian" settlement has traditionally located itself in a factual history of white settlement occurring from the south-east of the continent. The north of the continent has been constructed as the site of the Other, of that which has been repressed in the south's production of the real (Stratton 1989).

Critical discourse analyst, Teun van Dijk, has been mapping the discursive reproduction of racism in the media in an ongoing project from the early 1980s. 'Elites,' van Dijk states, of which the media is one body, 'initiate, monitor, and control the majority and most influential forms of institutional and public text and talk … may set or change the agenda of public discourse and opinion making' (Van Dijk 1995: 4). Cultural theorist Stuart Hall believes the media 'classify … the world in terms of race' by constructing 'a definition of what *race* is, what meaning the imagery of race carries, and what the "problem of race" is understood to be' (Hall 1981: 37). In addition, the media 'are not only a powerful source of ideas about race. They are also one place where these ideas are articulated, worked on, transformed and elaborated' (Hall 1981: 37).

In the reproduction of racism in the media, where social norms generally prohibit explicit discrimination, elite discourse 'expresses, persuasively conveys and legitimates ethnic or racial stereotypes and prejudices among white group members, and may thus form or confirm the social cognitions of other whites' (Van Dijk 1993: 179). Van Dijk identifies strategies of defence and positive self-presentation that are used against allegations of outright racism. Journalists may deny that they made incriminating statements or that there was any 'underlying intentions, purposes, or attitudes' by stating "I did not do/say that", "I did not do/say that on purpose", "That is not what I meant", "You got me wrong" (Van Dijk 1993: 180). In addition, accusations about biased news reports about minorities are dismissed by denying any responsibility for prejudicial attitudes these reports may generate in their audience through a claim to truth: 'Telling the truth' may thus be the typical euphemism of those accused of saying or writing derogatory things about minorities' (Van Dijk 1993: 180).

The consensus seems to be, for most journalists, that any form of media censorship, by way of legal constraints such as the Racial Discrimination Act, 'must be broken in order to tell the "truth" [even though] to "state the truth", meaning "to say negative things about

minorities", may well be against the prevalent norms of tolerance and understanding' (Van Dijk 1993: 183-4). This denial of racism through asserting that the writer is only conveying the truth as he or she sees it and must be able to convey their version of the truth to the public:

> … presupposes that the journalist or columnist believes that his or her own group or country is essentially 'tolerant' towards minorities or immigrants. Positive self-presentation … in journalistic discourse … should be seen as the argumentative denial of the accusations of anti-racists (Van Dijk 1993: 183).

As Marcia Langton in the *Sunday Age* noted 'the presumption is that "white people" … are not members of a race but normal' (Langton 2011).

Journalists denials and disclaimers are often 'intended as an exculpatory device … rather than a genuine attempt to counter … contrary messages' as was pointed out by Justice Bromberg highlighting the disingenuousness of a disclaiming paragraph inserted into the middle of Bolt's first article (Bromberg 2011). Bolt wrote:

> I'm not saying any of those I've named chose to be Aboriginal for anything but the most heartfelt and honest of reasons. I certainly don't accuse them of opportunism, even if full-blooded Aborigines may wonder how such fair people can claim to be one of them and in some cases take black jobs (Bolt 2009a).

Stella Coram, in a posting on the internet forum, *The Conversation*, considers that Bolt's proviso exposes his failure in understanding:

> Bolt reveals his cynicism in the contentious belief that people who are essentially white choose to identify as Aboriginal … are profiting from claiming to be Aboriginal … At the same time, Bolt fails to see his own unearned privilege traditionally associated with being 'white' (Coram on Jakubowicz 2011).

Symbolic Racism: Who gets to define Aboriginality?

Justice Bromberg, in ruling against Bolt, found that each of the nine individuals who gave evidence in the Federal Court was 'entitled to regard themselves and be regarded by others as an Aboriginal person,' and went on to state:

> I have taken into account the possible degree of harm that … the conduct involved may have caused … I have also found that the conduct was reasonably likely to have an intimidatory effect on … fair-skinned Aboriginal people and in particular young Aboriginal persons or others with vulnerability in relation to their identity … and … the articles may have been read by some people susceptible to racial stereotyping and the formation of racially prejudicial views and that … racially prejudiced views have been reinforced, encouraged or emboldened (Bromberg 2011).

A 2003 government briefing paper, 'Defining Aboriginality in Australia,' recounts an episode of symbolic racism that occurred in 1988 at the RSL national conference. Victorian state president Bruce Ruxton called for an amendment to 'the definition of Aborigine to eliminate the part-whites who are making a racket out of being so-called Aborigines at enormous cost to the taxpayers' (Slee 1988). National president, Brigadier Alf Garland called for an

examination to verify whether an Aboriginal could claim to be 'a full-blood or a half-caste or a quarter-caste or whatever' in determining eligibility for government assistance (Slee 1988). On the front page of the *Herald Sun* the day after Justice Bromberg handed down his ruling, Bolt, echoing the former assimilationist and integrationist policies discarded during the 1970s, questioned the right individuals have to identify as indigenous Australians, stating that he 'cannot be the only Australian to wonder why fair people with European ancestry insist they are Aboriginal only' (Bolt 2011). In a ricochet of the sentiments of Ruxton and Garland, this theme reverberated in the media in the following days:

> What determines who is an Aborigine? Does one's Aboriginal great-great-grandparent qualify them to apply for special entitlements, particularly when they have a job, a good home and living standards similar to mainstream Australia? … I don't think Justice Bromberg realised he had opened a Pandora's box when he made his recent findings … the goodwill that has continued since the 1967 referendum will gradually disappear, and that would be a tragedy for all of us but particularly for the Aboriginal community (Cohen 2011).

Under the headline, 'Why can't I be free to speak?' Bolt declared:

> I believe we can choose or even renounce our ethnic identity, because I have done that myself. But I also believe that many people now increasingly do insist on asserting racial and ethnic identities, and that we increasingly spend money and pass laws to entrench them … I wrote about people who, it seemed to me, had other options than to call themselves … "Aboriginal" … They could choose to identify as Aboriginal, or as some other ethnicity in their ancestry, or, as I do, as Australian (Bolt 2011).

What is Bolt saying here? That those people who identify as Aborigine, and are therefore, indigenous to Australia sharing a culture that can be traced back 60.000 years, are not Australian? He appears to be suggesting that if an Aboriginal person in Australia today is not living in the 'outback', dispossessed and marginalised then they have not right be call themselves an Aborigine. Even worse, the implication is that if your skin is not dark enough then you should not call yourself an indigenous person today. This is dangerous ground for a modern public intellectual to take; it skates very close to a discredited eugenics view of race and ethnicity. But Bolt's purpose is not to open up debate, but rather to drive a racial wedge into Australian public life.

Each of the people singled out by Bolt, besides identifying as Aboriginal, are recognised in their respective fields for their achievement and excellence. As Langton observed, this 'is also Bolt's gripe. His columns twisted their achievement into something sinister and underhanded' (Langton 2011). Bolt, having constructed an image of indigenous Australians as not 'fair-skinned,' creates further doubt about the complainants' aboriginality by avowing that it is a choice they have made. This 'signalling [of] journalistic doubt and distance' is a device employed to rebound an accusation of racism back onto the victim (Van Dijk 1993: 186). Bolt's plea to identify allegiance to 'white group solidarity' coupled with strategies of denial of racism, van Dijk asserts, have a socio-political function, delegitimising the need for measures to combat racist attitudes. Van Dijk states that denials 'challenge the very

legitimacy of anti-racist analysis … as long as a problem is being denied in the first place, the critics are ridiculed, marginalised or delegitimated' (Van Dijk 1993: 181).

The definition of Aboriginality in Australia has a legacy of a hard-fought, often contentious struggle for recognition that reveals its grounding in historic colonial racism. From the 1830s to the 1950s, aboriginality was defined according to 'Blood-quotum' classification; from the 1960s to the 1970s, definitions of race came into play, and by the 1980s what came to be known as the 'Three-part Definition' was adopted which defined an Aboriginal as:

> … a Person who: (a) is a member of the Aboriginal race of Australia, (b) identifies as an Aboriginal, and (c) is accepted by the Aboriginal community as an Aboriginal (Gardiner-Garden 2003: 4).

In a landmark paper, 'The legal classification of race in Australia' published in 1986, John McCorquodale analysed over 700 pieces of legislation and identifies 67 'classifications, descriptions or definitions' relating to Aboriginality, wryly noting that there were no equivalent definitions of 'European' (McCorquodale 1986: 9-11) McCorquodale concluded that indigenous Australians had been 'singled out for … an extraordinarily diverse range of legislation … simply upon grounds of presumed racial superiority' (McCorquodale 1986: 8).

> A new species of legal creature was created and sustained as a separate class, subject to separate laws, separately administered. This form of legal apartheid preceded that of South Africa by more than two generations and continued on a different, but parallel course, for another three … The unequal provision and treatment of law … mocked the notion of equality; when considered in the absence of any comparable law for "whites", or even other "colours" (McCorquodale 1986: 15-16).

McCorquodale cites a West Australian case Spitz vs. Eades, 1971 which, he states, illustrates 'the worst aspects of legislative racism, assertions of apartheid, negative stereotypes, and the equation of "white" with "civilized,"' where the Court ruled that to establish Aboriginality a person had to live' as 'an Aboriginal native' requiring 'proof of a nomadic life-style':

> A person could not be held to be living as 'an aboriginal native' when it was shown by evidence that he was living in a house situated amongst those occupied by "white" citizens of Australia, and was generally in regular employment and had been so during the previous five years, owned his own car, travelled to Perth three times a year to visit friends and relatives, conducted himself acceptable to responsible citizens of his area, dressed well, and was able satisfactorily to speak the English language' (McCorquodale 1986: 17).

In 1966, South Australia introduced the first anti-discrimination laws. Tasmania became the last state to enact anti-discrimination laws in 1998. The *International Convention on the Elimination of all forms of Racial Discrimination*, ratified by the General Assembly of the United Nations in 1965, permitted the undertaking of:

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be

> necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination (United Nations 1965).

Forty-five years later, indigenous Australians still experience substantial discrimination. In a UN report released in 2010, 'Situation of indigenous peoples in Australia,' there are still concerns about 'ongoing effects of historical racism' in Australia. The report notes that 'additional efforts' are needed 'to create a healthy environment conducive to the enjoyment of rights and freedoms' for Indigenous Australians (Anaya 2010: clause 73).

David O Sears and P J Henry describe 'symbolic racism' as a modern, less overt form of racism where the presumption is that 'Whites have become egalitarian in principle and … new forms of prejudice, embodying both negative feelings toward Blacks as a group and some conservative non-racial values, have become politically dominant' (Sears & Henry 2003: 259). Symbolic racism comprises of a political belief system that encompasses four key principles: '(a)Blacks no longer face much prejudice or discrimination, (b) Blacks failure to progress results from their unwillingness to work hard enough, (c) Blacks are demanding too much too fast, and (d) Blacks have gotten more than they deserve' (Sears & Henry 2003: 259). Symbolic racism often manifests in a society, according to Sears and Henry, through opposition to racially targeted policy proposals (Sears & Henry 2003: 259). It is clear that Bolt returns to symbolic racism in his discourse and his attempts to portray the complainants as themselves racist. Such 'turning the tables' is a classic tactic of the politics of racial discrimination in Australia.

Media Racism: In good faith?

In a confusing op-ed piece on the ABC's blog site, *The Drum*, the host of the *Media Watch* program, Jonathon Holmes, made comparisons between the *Defamation Act* (2005) and the *Racial Discrimination Act* (1975) prompted by the Bromberg ruling. Holmes, proclaiming that 'the [Racial Discrimination] act sets a disturbingly low bar,' described Justice Bromberg's comment that he was not satisfied that Bolt acted 'reasonably and in good faith,' as 'profoundly disturbing' for the future of freedom of speech in Australia (Holmes 2011). Holmes argued that the Aborigines named by Bolt in his column could have claimed to have been defamed, and that Bolt, due to his 'sloppy' research would not have succeeded with a plea of truth and fair comment (Holmes 2011). However, Holmes then contradicts himself and states that Bolt should have been able to succeed with a fair comment defence against defamation as it is enough, in Holmes opinion, 'that Bolt honestly held the views he outlined, and they are based on true facts' (Holmes 2011). Holmes seems to be mounting a non-argument here. Justice Bromberg states that Part IIA of the *Racial Discrimination Act* is 'concerned to protect the fundamental right of freedom of expression' ((Bromberg 2011: clause 14). However, by including 'errors of fact, distortions of the truth and inflammatory and provocative language' in his articles, Bolt vetoed his right to claim that what he wrote was fair comment under the terms of the Act (Bromberg 2011: clause 23). Why then, given these errors and distortions, does Holmes believe that Bolt would have succeeded with a fair comment defence if Eatock et al, had sued Bolt for defamation? And, as Justice Bromberg wryly contends: 'An expression of identity is itself an expression that freedom of expression serves to protect' (Bromberg 2011: 423). Fairfax columnist David Marr is certain that had the complainants decided to mount a defamation case, they would have

succeeeded. He wryly comments that 'the *Herald Sun* and its star journalist should be thankful they're not facing nine separate defamation trials' (Marr 2011). It is also worth noting that the *Defamation Act* and The *Racial Discrimination Act* were designed for different purposes. Defamtion law concerns the protection of reputation from ill-meaning imputation. The *Racial Discrimination Act* was introduced as part of Australia's commitment at having signed the *International Convention of the Elimination of All forms of Racial Discrimination.* The key provision of section 18C, introduced in 1995, does not state that it is unlawful to offend another person or a group; it states that it is unlawful if the offending act is done 'because of the race, colour or national or ethnic origin of the other person or all of the people in the group'.

Quoting from the scriptures…Bolt wounded by friendly fire

It wasn't just fellow Murdoch hacks who came to Bolt's defence; former Howard government minister, David Kemp argued in *The Australian* that section 18C of the *Racial Discrimination Act* is 'contrary to the principle of freedom of speech that underpins our democracy'. He went on in strong language to describe the process by which Bolt was found to have breached the act 'obscene in the full meaning of the words: offensive, loathsome, ill-omened, disgusting'. Like many conservatives who rallied to Bolt's side, Kemp claimed, without mounting much of an argument that the RDA 'must be abolished as soon as possible' (Kemp 2011).

Kemp quotes from philosopher John Stuart Mill's famous 1859 essay, *On Liberty*, to defend his argument: 'the free expression of all opinions should be permitted, on condition that the manner be temperate, and do not pass the bounds of fair discussion' (Kemp 2011). What Kemp omitted was that Mill also argued against 'the tyranny of the majority' over the minority, asserting that it was:

> [A] social tyranny more formidable than many kinds of political oppression … it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself … there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them (Mill 1989: 8).

Another former Howard Government minister, Kevin Andrews, now Member for Menzies, claimed in yet another op-ed piece in *The Australian*, that the Bolt case highlighted 'the dangers that flow from the assertion of group rights,' ignoring the fact that the case against Bolt was brought by an individual, Pat Eatock (Andrews 2011). Summoning John Locke's 1689 *Letter Concerning Toleration* as evidence, Andrews proposes that Locke's argument for the separation of church and state—'No person shall be compelled to support any religious worship, but all persons shall be free to profess their religious opinions'—has been extended, in an example of the 'new moral relativism' to encompass 'cultural identity and multiculturalism' (Andrews 2011). However, Andrews must distort the case in order to make his point. ' A claim is made for example, that the expression of a moral judgment about the beliefs, statements or actions of another group should be unlawful because it is offensive to members of the group or that it is likely to insult that group'. Here racially motivated slanders are recast as an 'expression' of Bolt's 'moral judgment' and therefore sould be

above legal sanction. Andrews also joins the Greek chorus clamouring for the RDA to be amended or abolished:

> Laws that enable groups, rather than individuals, to assert rights should be repealed before we head further down this dangerous path (Andrews 2011).

This is an interesting restatement of classic bourgeois individualism, but the irony is lost on Andrews. Groups have rights in contemporary capitalist society; particularly groups of wealthy and priviledged former Government ministers who claim a travel allowance and generous (self-awarded) pension benefits. However, the point here is not to poke easy fun at Kevin Andrews. The point is that Andrews also distorts (by selective quoting) the meaning of Locke's message. Locke ended his *Letter* by declaring (in a passage omitted by Andrews) that 'no opinions contrary to human society, or to those moral laws which are necessary to the preservation of civil society, are to be tolerated' (Locke 2003: 244). Surely then, under Locke's argument, Section 18C of the Racial Discrimination Act outlawing racial vilification is an example of a moral law 'necessary to the preservation of civil society'?

This point is affirmed by Justice Bromberg's deliberate mention of the rhetoric employed by Bolt in the two original articles. Bromberg pointed to Bolt's 'liberal use of sarcasm and mockery,' noting its 'capacity to convey implications beyond the literal meaning of the words used' (Bromberg 2011). In the same vein, J.S. Mill also drew attention to the hegemonic capacity of language:

> With regard to what is commonly meant by intemperate discussion, namely, invective, sarcasm, personality, and the like … whatever mischief arise from their use, is greatest when they are employed against the comparatively defenceless … the worst offence of this kind which can be committed by a polemic, is to stigmatize those who hold the contrary opinion … unmeasured vituperation employed on the side of the prevailing opinion, really does deter people from confessing contrary opinions, and from listening to those who profess them (Mill 1989: 35-6).

We would argue that detering people from 'confessing contrary opinions' and 'listening to those who profess them' was entirely Bolt's purpose in the offending columns. You either accept that there is a need in a democratic society to protect citizens from racial vilification or you do not.

Conclusion: Who decide's what is 'acceptable journalism'

These attempts to justify Bolt's words and then to attack the Federal Court decision ultimately fail because of their own internal insincerity and the self-serving rhetoric they employ. Justice Bromberg's ruling is distorted; attempts are made to portray Bolt as the victim of political correctness and the import of his intemperate language is hosed down in an attempt to make it into some innocuous statement of personal 'moral' belief.

However, Bolt's carefully chosen attack was not innocuous; by his own admission he is a culural warrior for Australia's conservatives. He knew full well that his attack on 'pale skinned' Aborigines would act as a form of dog whistle politics to a key section of Herald Sun readers. Bolt's plaintive cry 'I am not a racist', carries with it, like so many utterances of this phrase a very big 'but'. In this case it's 'I'm not a racist'…but, these Aboriginal people are

taking things they don't deserve (and so on). Bolt's columns were offensive; not just to those named and shamed either. Many people find his rhetoric and discourse offensive. That is Bolt's 'schtick' and it is a form of literary bullying.

But what of the so-called 'free speech' argument: have Bolt's rights been taken away from him? Michael Gawenda added his comments to the debate declaring that 'Bolt's offence … should not have been judged by a judge under the Racial Discrimination Act. I don't want judges and lawyers deciding what is acceptable journalism and what isn't' (Gawenda 2011).

But this misses the point on several levels. The first, as we've argued, is that the RDA is a legislative public good that is in place to prevent forms of hate speech and the incitement of racism. It is in the broad public interest that such laws exist. They are not perfect and probably can never be so, but they are an important defence against deliberate and politically-motivated racist attacks on minorities.

Secondly, Bolt's columns can hardly qualify as 'journalism', except at the broadest and most basic level; they appear in a newspaper and in other news-like environments. There was little or no good research involved (which even Bolt admits); there were no interviews and there is hardly a news point to be made in either piece.

Finally, the Blomberg ruling does not make a point about good or bad journalism or about what is acceptable as journalism. It rules on the expression of opinion and the court found that the form of the expression would cause harm.

The judgement about what is 'acceptable journalism and what isn't' is made in the first instance by Bolt's peers and secondly in the court of public opinion.

What's clear in the Bolt case is that the editors *and lawyers* at the Herald and Weekly Times should have made their own judgement before publication. It is clear in this case that a poor decision was made. It was made either because Andrew Bolt is such a drawcard that he has celebrity status and no one is game to stand up to him inside the *Herald Sun*, or it was made because the senior editors on the paper (and across News Limited generally) believe that they are on a mission to correct what they perceive as social evils.

Either way, publication of the columns has proved to be a mistake but it would be a foolish person who put money on the notion that Bolt or 'the Hun' have changed their ways.

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