'Freedom of speech and its limits'[1]

Mitchell Oration

11 July 2009, Adelaide

Associate Professor Katharine Gelber[2]

I acknowledge that we are meeting on the traditional country of the Kaurna people. I recognise and respect their cultural heritage, beliefs and relationship with this land.

Commissioner, Ladies and Gentlemen, good afternoon.

It is a great honour to be presenting the Mitchell Oration today, an oration that recognises Dame Roma's lifelong advocacy for human rights and preventing discrimination. I thank the South Australian Commissioner for Equal Opportunity, Linda Matthews, for her invitation.

Dame Roma Mitchell was a woman of extraordinary talents, wisdom and humour. Unfortunately, I never had the opportunity to meet her. However even a cursory examination of the wealth of biographical information available to us has shown me that, as well as being the first woman Queen's Counsel in Australia (1962), the first woman judge of the Supreme

[1] This paper is developed in part from arguments in Gelber (2009a: forthcoming).
[2] School of Social Sciences & International Studies, University of New South Wales, Sydney (k.gelber@unsw.edu.au).

Court of South Australia (1965-1983), the first Chair of the Commonwealth Human Rights Commission (1981-1986), the first woman Chancellor of an Australian University (1983-1990 – University of Adelaide), and the first woman governor in Australia when she became governor of SA (1991-1996), she apparently had a warm and discerning sense of humour.

She was also a very private person, which led to inevitable speculation about her personal life. Sir William Deane, in his eulogy at her funeral Mass, recounted the following story about her.

> During an interview in her early years on the Supreme Court, the following exchange occurred with a somewhat brash journalist. 'You are not married?' 'I am not'. 'And you do not drive a car?' 'I do not'. Undeterred by the terseness of the replies, the journalist pressed on: 'The Chief Justice, Dr Bray, is also unmarried. Is there any chance that the two of you might get together?' 'No', Roma replied, 'that would be no good at all. He doesn't drive a car either'. (Deane 2000 cited in Magarey 2008, p. 12.13).

The topic of my presentation today, freedom of speech, was also a central concern to Dame Roma. But, as I will argue here, she too became convinced that freedom of speech ought not to be held as an absolute, as an attribute to be defended and protected above all else. As is the case across the field of human rights debates, the reality of human rights advocacy is a complicated and multilayered one. In this reality there are few rights that are best seen as absolutely deserving of protection all of the time. This is because the protection of human rights and the prevention of discrimination need at times to focus not on hard line drawing,

but instead on the protection of concrete rights, belonging to real people, in everyday circumstances. The nuances and complexities of society require us to do that.

Before discussing how and why that might be so, I want first to focus on freedom of speech as a value. I want to explore a few of the reasons why we should consider freedom of speech as vitally important in Australia today.

Freedom of speech is a right many people take for granted. Australians believe firmly both that they have, and that they should have, the right to free speech. A national survey of 437 young people in high schools and youth centres in 2005 showed that, unprompted, the right they most frequently believed to exist in Australia was freedom of speech (HREOC 2005: 46). In a national survey conducted in 1991, 100% of people surveyed agreed or strongly agreed that freedom of speech should be included in the Australian Constitution.[3]

The national citizenship test introduced in 2007 listed 'freedom of speech' second in a list of 'values which are important in modern Australia' (Commonwealth of Australia 2007: 5), coming after 'respect for the equal worth, dignity and freedom of the individual'. Freedom of speech also featured prominently in the television advertisement which accompanied the launch of this test.

Our politicians also have described free speech as central to Australian political and legal culture. During the height of Pauline Hanson's popularity, when she was attracting widespread media coverage of her controversial views on race and immigration, former

[3] Mail survey, question G2 (Galligan et al 1992).

Prime Minister John Howard described free speech as a 'cardinal principle, a given of our free and open society' (Howard 1996). The Prime Minister preceding him, Paul Keating, also described freedom of speech as one of the 'basic principles of Australian society' (Keating 1995). Our current Prime Minister Kevin Rudd's home page describes Australia's system of government as 'based on the liberal tradition, which includes religious tolerance and freedom of speech and association' (Rudd 2009).

Why then, ought free speech to be considered important?

One reason is that freedom of speech is vital to democracy; it's the engine room of the machinery of democratic practice. Freedom of speech is essential to democracy because effective democracy is dependent on citizens' ability to criticise government and to participate actively in deliberation over issues affecting them (Dworkin 1977: 14-16; Schauer 1982: 35; Barendt 2005: 18-21; Smolla 1992: 12-17). The argument that freedom of speech lies at the core of democratic governance is one of the most commonly expressed arguments justifying freedom of expression (Barendt 2005: 18).

This idea that freedom of speech is intrinsic to democracy is also in part the basis for the development in the High Court of Australia of a jurisprudence recognising that the Australian constitutional framework implies a freedom of communication on political matters. In Australia there is no explicit mention in the Constitution of freedom of speech. Nevertheless, since 1992[4] the High Court has held that the form of responsible and representative

[4] The two founding cases were *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 and *Australian Capital Television v Commonwealth* (1992) 177 CLR 106. The scope of the doctrine was clarified in a unanimous judgment in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, and updated slightly in

government established by the Constitution implies a freedom from government restraint on political communication. Political communication includes non-verbal means of expression,[5] and is understood to mean discussion relating to matters relevant to voting choices.[6]

The idea that our Constitution implies freedom of communication on political matters derives from the representative and responsible form of government it establishes (Stone 2001; Patapan 2000: 51-9). Specifically, it derives from sections 7 and 24 of the Constitution, which require that the houses of the national parliament be 'directly chosen by the people'. So it has a democratic foundation, but it is not absolute. Laws that restrict political speech are still permitted if they are reasonably appropriate to achieving a legitimate government end, such as public safety for example.

In this way we can see that freedom of speech performs a social role, it is a collective good. But this is not all it is. Participating in speech opportunities is not only important for the value it bestows on the democratic polity. It is also important for its role in individuals' lives, as an individual good. This is because the benefits to democratic practice of freedom of speech only accrue where and when the people are able to engage in, to participate in, speech. Rather than seeing freedom of speech as an abstract value, I prefer to see it in more concrete terms. It is by ensuring that as many people as possible are able to engage in the activities of speech that the democratic payoff occurs.

Coleman v Power (2004) 220 CLR 1. Even where a communication can be considered political, its restriction is still permissible if the law which does so is 'reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of responsible government' (*Coleman v Power* (2004) 220 CLR 1 at 66.)

[5] *Levy v Victoria* (1997) 189 CLR 579.

[6] Described as communication 'concerning political or government matters which enables the people to exercise a free and informed choice as electors', in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 560.

And this then has another effect; an effect on the individuals who participate. Participating in speech is vital to the development of thought and interaction required for individuals to develop their own capacities well. It is an intrinsically human endeavour to be able to engage in thought and to be able to express the outcomes of that thought in ways which are comprehensible to others, and which allow us to act together as social beings. It is (partly) by participating in speech that we develop as human beings, become capable of making choices about our lives, become able to socialise and commune with others. We need to be able to engage in the activity that is speech, to think about what we want to say, to conceive of options for what we might say, to be capable of saying it in a way that we mean and that others might understand, and we need to be able to be heard and responded to by others to whom we are speaking (Gelber 2009).

When we think of freedom of speech in this way, the result is a robust idea of the role of speech and the importance of its freedom. Freedom of speech is important both to a democratic polity and to the individuals who comprise that polity.

That is why I, along with many others, was concerned for example at the ways in which security for the APEC Economic Leaders Meeting in Sydney in September 2007 was organised with evident disregard for human rights and free speech principles.

Protests at the event were regulated by specific point-in-time legislation[7] which created declared and restricted areas and gave police special stop and search, seizure, directions and

[7] *APEC Meeting (Police Powers) Act* 2007 (NSW), which operated from 1 to 13 September 2007.

exclusion powers. Youtube footage[8] of anti-APEC protests includes allegations that police were rounding up organisers after a march had been peaceful, that police targetted 'troublemakers' for arrest, that they made errors in understanding the boundaries of the 'declared area' in relation to APEC, that innocent bystanders were caught up in police-initiated violence, and that the police had promised to use 'extreme force' to control protests and that they did so. An analysis of the impact of NSW police powers on human rights during this event concluded that the legislation significantly impinged on basic human rights including the right to freedom of speech (Snell 2008: 6)

A challenge was raised to the constitutional validity of the exclusion powers, which prevented access to a considerable part of the central business district from King Street to Circular Quay by excluded persons. The challenged relied on the implied freedom of political speech. But it challenge failed, as the Court decided that although the legislation did burden freedom of political communication it was nevertheless reasonably appropriate to ensuring safety.[9]

Similar problems regarding a lack of recognition of the importance of human rights including freedom of speech were reported with the no-World Trade Organisation protests held in Sydney on 14 and 15 November 2002 (UTSCLLRC 2002).[10] Prior to those protests the NSW Police Minister unsuccessfully attempted to have web sites, discussing the protests and alleged to incite violence against police, banned. However the Australian Broadcasting

[8] http://www.youtube.com/watch?v=xgNkwsFCsIY, accessed 19/11/08.
[9] *Padriac Gibson & Ors v Commissioner of Police & Ors* [2007] NSWCA 251 (6 September 2007).
[10] Policing of which occurred under the auspices of the *Sydney Olympic Park Authority Act* 2001 (NSW).

Authority declined to refuse them classification on the ground that they did not reach the threshold of inciting people to commit violent offences (UTSCLLRC 2002: 13-14).

There are, unfortunately numerous examples of freedom of speech being overridden in Australian politics. In 2004 political artworks commissioned by the Blacktown Arts Centre were removed by a local council officer on spurious grounds (Gelber 2006). In 2007 reports were made of the government's corruption of public debate (Marr 2007) and the silencing of dissent in universities, non government organisations, the media, the public service and the military (Hamilton & Maddison 2007). And in 2005 the federal government passed anti-terrorism legislation which revived the offence of sedition,[11] despite opposition from the Labor Party[12] and a broad range of community representatives including media, artists, lawyers and Muslim community members (SLCLC 2005: 76)

Freedom of speech is vital to the effective functioning of democracy in Australia and there are shameful examples of its suppression in the interests of convenience and ideology. Nevertheless, as I suggested earlier, freedom of speech ought not to be considered in absolutist terms. There are some appropriate limits to freedom of expression. The big question of course is where are those limits and how do we discover them?

If we think of freedom of speech in the terms in which I discussed it earlier we begin to get some answers to those questions. If we think of speech as important because, and to the extent to which, it is able to help individuals develop their own capacities to function as fully

[11] *Anti-Terrorism Act (No. 2) 2005* (Cth) (Schedule 7), which introduced five new provisions into s80.2 of the *Criminal Code Act 1995* (Cth) (Schedule 1).
[12] The ALP moved an amendment in Parliament to remove Schedule 7 from the Anti-Terrorism Bill (No. 2) (Commonwealth of Australia 2005).

fledged members of a democratic society then this gives us a guide for where and when speech might be able to be regulated. What would happen, for example, when the speech we're considering is not constitutive but instead is destructive of those individual and collective processes? Is it possible that if, and to the extent to which, individuals' ability to participate in democratic processes and to develop their own capacities was injured by the speech of others, we might have a place to drawn the line and a reason for drawing it? I think we do.

Some speech arguably crosses that line. One of the most obvious is vilification. If it can be established that vilification is able to prevent individuals from developing their capacities to participate as full members of our community, and by doing so to prevent their equal participation as citizens and community members, then there is an argument for its regulation.

Vilification is 'speech or expression which is capable of instilling or inciting hatred of, or prejudice towards, a person or group of people on a specified ground' (Gelber & Stone 2007: xiii). Vilification's core meaning and force are that it is speech which harms identified targets and the community to which those targets are perceived to belong by ascribing negative stereotypes to all perceived members of that community. In doing so, it does more than offend its targets; it harms them in tangible ways and is thus a discursive manifestation of prejudice. Vilification enacts (racist or other) discrimination through its expression. Vilification as an expression, in the very saying of it, undermines the abilities of others to imagine and plan their own versions of a good life, and undermines their ability to participate meaningfully in the processes required to self-govern. One person's freedom to express

messages of hate necessarily subverts the freedoms of others to participate meaningfully in society. One person's freedom to express messages of hate constitutes a fundamental injustice being perpetrated against the targets of that hate. There are numerous examples of this, including far-right race hate messages posted on the world wide web (Flint, 2004; Tsesis, 2002, 70-74), and the race riots in Sydney's Cronulla on 11 December 2005. In the prior altercation which led to the violence, lifesavers were reported to have taunted Lebanese-background youth by telling them they did not belong on their beach. Locals declared they would 'take back the beach' and the media got involved, saying 'we' were 'tired of' Muslims, calling them 'grubs', and calling for a community 'show of force'. The day of riots and assault was declared 'Leb and wog bashing day' (Poynting, 2007: 165-166).

This what provides the justification for a government-assisted response. Vilification inflicts injury on the vulnerable and threatens their dignity and equality (Barendt 2005: 171-4) which provides a justification for the state to act to deter the activities that caused that harm and to ameliorate its effects, both to assist the individuals who may be targetted and to promote equality in the community more generally.

There are likely to be other examples of speech which is capable of inflicting the kinds of harms which can prevent individuals from participating in democratic processes and from developing their own capacities. Whenever an example is raised, the merits of its regulation need to be fully and comprehensively examined and debated to decide whether it is appropriate to draw a line and prevent its expression. Given the importance of freedom of speech generally, care has to be taken.

An example of a restriction of freedom of speech which requires this kind of careful deliberation is sedition. In a generous reading of the sedition offences some people might be tempted to interpret them as trying to prevent activities which could undermine individuals' ability to participate meaningfully in democratic deliberation. However, there is an important difference between sedition laws and anti-vilification laws. Sedition laws are designed to prohibit speech directed at the state – the most powerful and authoritative institution in society. Anti-vilification laws, by contrast, are intended to protect members of vulnerable and marginalised groups. Ironically, when the 2005 sedition laws were introduced it was pointed out that some marginalised communities were concerned that they could create a climate of fear and uncertainty which was likely to have a chilling effect on their speech, and contribute to an anxiety that public authorities might misunderstand their words. This was argued to be leading to self-censorship and an inhibition of inter-community dialogue (Chong 2006: 163; ALRC 2006: 148-150). The effect of the sedition laws was to have a silencing effect on already marginalised communities, instead of having a protective effect for the state as was intended.

Since sedition laws are designed to protect the state there is, I think, a strong argument that the state ought to tolerate expression directed against it to a very high degree. The state is strong enough to withstand the criticisms of individuals, even if those criticisms are trenchant and treacherous. Indeed, it ought to tolerate them because that is essential to democratic practice. By contrast, asking targetted communities to tolerate vilification in the name of freedom of speech is asking already marginalised and vulnerable communities disproportionately to bear the cost of that freedom (Gelber 2009b). That does not appear to be protecting freedom to me.

This may be a controversial view, but it is one which Dame Roma herself came to support. In the inaugural Mitchell Oration in 1989, she expressed the view that there 'should be legislation to outlaw statements which constitute incitement to racial hatred' (Mitchell 1989: 9). She called on the Commonwealth to amend the *Racial Discrimination Act* 1975 (Cth) to introduce legislation prohibiting racial hatred, although they did not do so until 1995.[13] She also welcomed the introduction of New South Wales' racial anti-vilification legislation, enacted in 1989 and the first of its kind in Australia, and called for the introduction of similar legislation in South Australia (Mitchell 1989: 9).

She was in favour of limits to freedom of speech on the ground of preventing the specific harm occasioned by racial vilification. She was careful to express some caution at the efficacy of such laws, noting their potential for misuse since '… many who offend in [the area of racial discrimination] do so through thoughtlessness rather than malice, and those who are malicious may glory in a prosecution in which they have an opportunity to flaunt their racial prejudices' (Mitchell 1989: 8). There are reasons to believe this concern is warranted, in relation to some recent cases of vilification (eg ABC Radio 2009).

Nevertheless, despite this note of caution Dame Roma concluded that since 'no-one can, with impunity, defame his neighbour. Why should he be permitted freely to impugn his neighbour's racial background? … Freedom of speech does not imply freedom to vilify' (Mitchell 1989: 9-10).

[13] *Racial Hatred Act* 1995 (Cth)

Ultimately, the argument I have presented here is an argument in favour of substantive equality. It is critical of the view that to achieve equality only requires treating everyone the same way. It is critical of the view that equality must mean sameness. It embraces the idea that real, substantive equality can only be achieved by recognising the concrete circumstances and contexts within which individuals find themselves in disputes over human rights.

This view of equality is not unique, nor is it unusual. It is, for example, enshrined in the expression of equality as manifested in the International Convention on the Elimination of All Forms of Discrimination Against Women. In Article 2 this Convention sets out a substantive definition of equality which calls for the 'practical realization' of the principle of equality by, among other things, ensuring the 'effective protection of women' against discrimination and by calling for laws, regulation, customs and practices of discrimination to cease. Article 4 of the same document provides for temporary special measures 'aimed at accelerating de facto equality between men and women'. There are similar provisions in the International Convention on the Elimination of All Forms of Racial Discrimination.

The first woman appointed to the High Court of Australia, Justice Mary Gaudron, shared this view of equality. She said, '… equality involves the recognition of genuine difference and where it exists, different treatment adapted to the differences'. She argued that equality means 'the principle to treat equally what are equal and unequally what are unequal … To treat unequal matters differently according to their inequality is not only permitted [by the principle of equality] but required' (cited in Tehan 2004: 321).

Dame Roma Mitchell herself cited Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women in favour of her view that affirmative action was needed for women to overcome past disadvantage. She said that while she previously had thought inequality would vanish over time, she no longer believed this. She had come to the view that achieving equality required more than the removal of concrete obstacles, but rather necessitated taking into account the often unrecognised attitudes, experiences and histories which prevented true equality from being achieved (Mitchell 1985).

Formal equality's concern with the eradication of privileges based on innate or immutable characteristics is universally supported – not many people today for example would agree with excluding someone from consideration for a job based on their race for example. However this view of equality is limited and, on its own, not capable of 'fostering genuine equality' (Heywood 2004: 287). In order to do that we need to consider the real circumstances within which people face obstacles to equal participation and recognition of their equal worth.

While more complex notions of equality are neither new, nor particularly controversial, their application to the arena of free speech might be considered unusual. This is typically because freedom of speech is so often thought of in negative terms. It is thought of as an immunity against government intervention, a catch cry against a law or policy which limits a person's freedom of speech. It is typically used to challenge governmental authority.

Governments of course do have the potential to restrict speech, and we need to be vigilant against such efforts. But it is not only governments which have this potential. Sometimes it is

the speech of our fellow citizens which can limit the ability of others to participate in speech activities and opportunities.

Internationally the right to freedom of expression is protected in international law. Article 19 of the International Covenant on Civil and Political Rights protects freedom of expression, but simultaneously recognises that it may be restricted for legitimate purposes. In all liberal democratic societies, freedom of speech is both accorded a high degree of protection and also subject to lawful limits to ensure the protection of human dignity and other countervailing values such as equality (Barendt 2005: 59-7; Coliver ed 1992: 4, 75-263).

In Australia finding the right balance between freedom of speech on the one hand, and appropriate limits on the other, is not easy. But what I have tried to do today is to outline a framework within which we might be able to make sensible decisions about where that balance might lie. And that framework is based on striving for the achievement of substantive equality.

References

ABC Radio 2009. 'Holocaust denier Fredrick Toben: free speech martyr or racist monster?' *Radio National: The Law Report*, 19 May, available http://www.abc.net.au/rn/lawreport/, accessed 3/06/09.

Australian Law Reform Commission [ALRC] 2006. *Fighting Words: A Review of Sedition Laws in Australia*, Report 104, ALRC, Sydney.

Barendt Eric 2005. *Freedom of Speech*, 2nd ed. Clarendon Press, Oxford.

Chong, Agnes 2006. 'Intolerance of Terror or the Terror of Intolerance? Religious Tolerance and the Response to Terrorism', *UTS Law Review* 8: 153-169.

Coliver, Sandra ed 1992. *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination*, Article 19 International Centre Against Censorship, Human Rights Centre, University of Essex.

Commonwealth of Australia 2005. *Parliamentary Debates*, House of Representatives, 10 November: 60, 64 (Kim Beazley).

Commonwealth of Australia 2007. *Becoming an Australian Citizen: Citizenship Your Commitment to Australia*, Attorney-General's Department, Canberra.

Dworkin Ronald 1977. *Taking Rights Seriously*, Duckworth, London.

Flint C 2004. 'United States Hegemony and the Construction of Racial Hatreds: The Agency of Hate Groups and the Changing World Political Map', in Flint C ed. *Spaces of Hate: Geographies of Discrimination and Intolerance in the U.S.A.* Routledge, New York: 165-182.

Galligan, Brian; Roger Jones, Joseph Fletcher & Ian McAllister 1992. Rights in Australia 1991-1992: National Household Sample. [Computer file]. Australian Social Science Data Archive, The Australian National University, Canberra.

Gelber, Katharine 2006. 'Distracting the masses: art, local government and freedom of political speech in Australia', *Law Text Culture* 10: 194-219.

Gelber, Katharine 2009a. 'Free Speech, Hate Speech and the Argument from Democracy: the Transformative Contribution of Capabilities Theory', *Contemporary Political Theory* 8: (forthcoming).

Gelber, Katharine 2009b. 'The False Analogy Between Vilification and Sedition', *Melbourne University Law Reivew* 33(1): (forthcoming).

Gelber, Katharine & Adrienne Stone 2007. 'Introduction' in Gelber & Stone eds. *Hate Speech and Freedom of Speech in Australia*, Federation Press, Sydney.

Hamilton, Clive & Sarah Maddison 2007. *Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate*, Allen & Unwin, Sydney.

Heywood, Andrew 2004. *Political Theory: An Introduction* Palgrave MacMillan, Basingstoke.

Howard, John the Hon. 1996. Edited extract from *Speech to the Queensland Liberal Party Convention*, 22 September, *The Australian*, 25 September: 13.

Human Rights and Equal Opportunity Commission [HREOC] 2005. *Rights of Passage: A Dialogue With Young Australians About Human Rights*, HREOC, Sydney.

Keating, Paul, the Hon. 1995. 'Opening Address', *Global Cultural Diversity Conference*, 26 April [online] http://www.immi.gov.au/media/publications/multicultural/confer/speech2b.htm, accessed 03/11/08.

Magarey, Susan 2008. 'Dame Roma Mitchell's Unmentionables: Sex, Politics and Religion', *History Australia* 5(1): 12.1-12.20.

Marr, David 2007. 'The Corruption of Public Debate Under Howard', *Quarterly Essay* 26: 1-84.

Mitchell, Dame Roma 1985. 'Affirmative Action: Excerpted From Address to the National Press Club, 10 December 1984', *Human Rights*, 12: 8-9.

Mitchell, Dame Roma 1989. 'Looking Back … Looking Forward', *Ten Years of the Mitchell Oration*, South Australian Commissioner for Equal Opportunity, Adelaide.

Patapan, Haig 2000. *Judging Democracy: The New Politics of the High Court of Australia*, Cambridge University Press, Melbourne.

Poynting, Scott 2007. ''Thugs' and 'Grubs' at Cronulla: From Media Beat-Ups to Beating Up Migrants', in Poynting S, Morgan, G eds. *Outrageous! Moral Panics in Australia*. ACYS Publishing, Hobart: 158-170.

Rudd, Kevin the Hon PM 2009. *Prime Minister of Australia: Australia in Focus: Government*, available www.pm.gov.au/australia/government/index.cfm, accessed 03/06/09.

Schauer, Frederick 1982. *Free Speech: A Philosophical Enquiry*, Cambridge University Press, Cambridge.

Senate Legal and Constitutional Legislation Committee [SLCLC] 2005. *Provisions of the Anti-Terrorism Bill (No 2) 2005*, SCLC, Canberra, available http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07.htm, accessed 03/06/09.

Smolla Rodney 1992. *Free Speech in an Open Society*. Alfred Knopf, Inc., New York.

Snell, Liz 2008. *Protest, Protection, Policing: The Expansion of Police Powers and the Impact on Human Rights in NSW*, Combined Community Legal Centres' Group (NSW) and Kingsford Legal Centre, Sydney.

Stone, Adrienne 2001. ‘Rights, Personal Rights and Freedoms: The Nature of the Freedom of Political Communication, *Melbourne University Law Review* 25(2): 374-418.

Tehan, Maureen 2004. ‘Difference, Equality, Recognition and Justice: Indigenous Issues in the High Court Judgments of Justice Mary Gaudron’, *Public Law Review* 15: 320-327.

Tsesis Alexander 2002. *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements*. New York University Press: New York.

UTS Community Law & Legal Research Centre [UTSCLLRC] 2002. *Legal Observer Report: no-WTO Protests November 14 & 15 2002*, UTS, Sydney.