**Ideas and Society**

**Racism in Australia**

**6 May 2014 – 12.30 pm**

**John Scott Meeting House, La Trobe University**

**Dr Gwenda Tavan**

I’d like to welcome you here today to this very special La Trobe Ideas and Society event, on the question ‘Should we change the Racial Discrimination Act?’

People will be very well aware of the intense discussion generated in our community about the proposal of federal Attorney General George Brandis to amend Section 18C of the Racial Discrimination Act. Whatever our opinion on the question, there’s no doubt that the issue about how a modern liberal democratic nation balances individual freedom of speech with the protection of citizens from racial abuse is a very important and fundamental issue that deserves serious, considered attention.

We’re very fortunate to have two of Australia’s leading political thinkers to discuss the issue in more detail. Convenor of the Ideas and Society program, La Trobe’s own Professor Robert Manne has a long history of involvement of public and community engagement on a range of issues over a thirty-odd year career. Questions of the freedom of speech and racial discrimination have been a constant preoccupation for him throughout.

Robert is joined in the discussion today by Dr Tim Soutphommasane. Tim is well known in academic circles for his important books on topics of national identity and multiculturalism in recent years, and for his public engagement on a range of political issues. In 2013 he took on the job of Australian Race Discrimination Commissioner and in a very short time has distinguished himself in the role through his energy, his commitment, I would say the quiet dignity that the role deserves, and his willingness to reach out to various segments of the Australian community.

So I’m sure we’re in for a very interesting and very insightful discussion with time for questions at the end. Thank you Robert and Tim.

**Professor Robert Manne**

Thank you Gwenda.

I’d very much like to welcome Tim to La Trobe University. I think that I first encountered Tim in a manuscript, from memory, that I think was of his first book, and I can say that from that moment, I have been an admirer. I was astonished not only by his lucidity and clarity, but by the maturity of judgment which I take to be one of the most important and unusual intellectual qualities, and so I was really delighted when I found that he … I know he was going to go places and will go many places in his life … very delighted when he took on the role of Human Rights Commissioner with a special interest in race and ethnicity.

I also have a private sort of reason for being so delighted with the trajectory that he’s taken because I was involved many, many years ago in the question of trying to find a place in Australia, lobbying for the Vietnamese, Cambodian, Lao people who had been displaced by terrible wars of Indo China. So to see someone from that background make such a positive contribution to this society gives me a special pleasure.

I just wondered Tim, because not everyone will be familiar with your history, whether you’d just say a very short amount about the family history and also your educational history.

**Dr Tim Soutphommasane**

Sure. I was born in France to parents who were from Laos. They left Laos in the 1970s as a result of the Communist takeover and fled to France as refugees via Thailand where they lived for ten years. Then they moved here to Australia where I grew up, in Sydney, for my sins, and I spent my years at university in Sydney before leaving to complete my post-graduate work in England, and then returned here in 2009.

**Robert Manne**

Can I ask you about … your work is in both multiculturalism and the idea of patriotism, but you are I think primarily a political theorist. I don’t know whether you call yourself that or a political philosopher, but I call you a political theorist. What drew you to political theory?

**Tim Soutphommasane**

I guess it really began with the debates in the 1990s that were triggered by the rise of Pauline Hanson’s One Nation and that was the political debate that drove me to start thinking very seriously about what it meant to be Australian, and whether multiculturalism worked and these were very direct personal questions for me, because when I had fellow students in my high school talking about Pauline Hanson, how Australia was being swamped by Asians, these fellow students were of course talking about people like me, and about people like my family. So, there was an urgency to answering that question of whether one could consider oneself Australian if one didn’t have a family history here, or didn’t look like the majority of the population. And so it was that particular moment in time and those questions that made me think as a teenager about multiculturalism in the first place and I spent a lot of time at my local library in Cabramatta trying to find as much as I could read about multiculturalism and about Australian history and that was really the first time that I began encountering ideas about political theory, philosophy and multiculturalism.

**Robert Manne**

And you were drawn to that rather than history?

**Tim Soutphommasane**

For whatever reason. In one of my readings I came across for the first time the idea of the veil of ignorance that John Rawls put forward as part of his liberal political theory and that idea had a lot of resonance for me, hypothetically putting yourself in a situation where you didn’t know your characteristics, if you were to choose what kind of society you wanted, what would you end up with? And that has always been a powerful tool for me in thinking about the kind of society we should aspire to be. There are various qualities that none of us can choose when we are born into this world. None of us chooses our parents, none of us chooses what ethnicity or race that we have, and I think there’s value in having a liberal democratic society that judges its citizens according to their merits and their abilities as individuals, rather than ascriptive qualities that they inherit.

**Robert Manne**

And if I can just … I’m going to end on the personal soon, but you are clearly going to have if you wish to have, a stellar academic career trajectory, but I’ve always sensed in you a kind of worldliness which is a kind of, another temptation. And you decided last year to move at least temporarily from academia into the world through the position of … I don’t know what it’s called exactly, but the Race Commissioner in the Human Rights Commission. What led you to make that decision to apply, to be … to have such a kind of overt political role in the society.

**Tim Soutphommasane**

Well, I describe it really not so much as a political role but as a statutory role. For me, the challenge of ideas and of thinking about politics has always had implied in it a question of action and how you can translate ideas into policies or into good social behaviour. I took on this role because I felt that Australia was at an interesting juncture in grappling with questions about race and in forging its path as a multicultural society. I’ve been a champion of Australian multiculturalism as long as I’ve understood the phrase and for me, this was an opportunity to build on that work and to communicate to new audiences about questions of race, citizenship, and identity. Whenever someone experiences racism, in my view it diminishes the potential, not only of the individual who is the target of prejudice or discrimination, it also reduces the potential of Australian society more generally.

**Robert Manne**

And can I ask you then, you’re part of the Human Rights Commission. How do you see in a more specific way, the role? What role does both the Commission and the particular Commissioners, in your case, connected to race and ethnicity? What role do you think the Commission and your particular portfolio within the Commission, play?

**Tim Soutphommasane**

The Commission in one sense is a very legal institution. It exists to administer the human rights and anti-discrimination legislation that exists at the federal level. My own view is that laws have a social power as well. Our laws do set standards for us, and they do set the tone for our life in society, and also shape our social norms and behaviour, and my view is, certainly with my own responsibilities as Commissioner, it’s important to try and impart as much positive social change as possible. So it’s not just about interpreting the law, explaining legal principles, it’s about explaining the real social value of having human rights and having anti-discrimination legislation in place. So this is not … we’ll get into the details of the debate about the Racial Discrimination Act shortly, but this is not an academic exercise or something that should be discussed in abstract terms in a drawing room somewhere with a brandy in hand. These are issues that touch on people’s lives in a very direct way and we should not forget that.

**Robert Manne**

Is your role to communicate and to educate and to listen to community opinion? Is it also to connect to politicians and to as it were try and influence them and even educate them?

**Tim Soutphommasane**

It’s all of those things in part, and there’s one misconception about the Commission which I should try and clarify, which is that we sit as a tribunal, as a court. We don’t. So when we receive complaints at the Human Rights Commission, it goes through a conciliation process that is performed by staff and is adopted at arm’s length from all the Commissioners. That’s one thing we don’t do. But all those things that you’ve mentioned are part and parcel of the job that each of us as Commissioners and also the President, Gillian Triggs, has, at the Commission.

**Robert Manne**

And how do the Commissioners relate to each other? I mean, famously since the new government was elected, a Freedom Commissioner has been added to the other Commissioners. I don’t want to push you on that. It would be … it’s not right, but just how do the Commissioners relate to each other? Do you meet together to discuss the overall push of the Commission, or is each person for themselves.

**Tim Soutphommasane**

We’re a collegiate body, and that’s in our statute. The Australian Human Rights Commission is meant to work as a collegiate body and we indeed meet as a college of Commissioners on a regular basis to decide what the Commission does and to decide policy that’s taken in the Commission name. But at the same time each of us are appointed in our own right under, in many cases, different pieces of statute, so there’s always a balancing act between our individual responsibilities and our collegiate responsibilities, as members of the Commission.

**Robert Manne**

But in these meetings, you discuss the, as it were, mission of the Commission as a whole, with each other?

**Tim Soutphommasane**

Yes, is the short answer. As any other collegiate body would in its regular deliberations.

**Robert Manne**

And how do you, as it were, conceive of your precise relationship to government?

**Tim Soutphommasane**

We’re independent from government, although we do receive funding from government, but we do not report as a government department does, to a minister. We’re there to be an independent body to administer the various human rights and anti-discrimination laws that we have, and also to provide independent scrutiny and reporting when it comes to human rights. The Commission has enquiry powers. They’re currently being exercised with respect to children in detention and asylum seekers. This is all part and parcel of having a national human rights institution that is accredited at an international level as being independent.

**Robert Manne**

I’ve actually never thought about this before and I now do think about it. If you wanted to engage in a major enquiry, you’d need funding. How do you actually … do you then approach the government for a special fund or do you have to find it within your annual budget?

**Tim Soutphommasane**

Oh the best way to say would be that it’s the latter and then that’s very much part of this question of independence. But there are occasions from time to time when there are projects where the interests of the Commission as an independent body coincide with the government’s interests and there may be cooperation. It’s not always a black or white issue in terms of independence. In the sense that independence always mean you must take an adversarial stance on all things, I think there can be scope for cooperation and you see that in the work that the Commission does.

**Robert Manne**

And what, and I’ll stop there, but I keep on questions I didn’t intend to ask keep on coming to me. What’s the relationship to the Attorney General? I mean, I don’t mean personally …

**Tim Soutphommasane**

The Attorney General’s Department is the department under which the Australian Human Rights Commission falls in an administrative sense, but we are distinct from the Attorney General’s Department which reports directly to the Minister. While we work with the Department and obviously we’ll work with and liaise with the Minister, we do not have that line of accountability or reporting that the Department has.

**Robert Manne**

But he’s a presence in, as it were … Gillian Trigg, who’s the head of the Human Rights Commission, would be meeting with the Minister from time to time or …

**Tim Soutphommasane**

Yes, and the Commission’s members will meet with various Ministers from time to time as well depending on the work that we do and we have such a wide range of activities and interests that we naturally meet with a great deal of Ministers and other members of parliament.

**Robert Manne**

Good. Okay. Now, we’re going to turn to … I mean, the Act that you … you’ve almost, I think, described yourself as the guardian of the Act, but the Act which you have particular responsibility is the Racial Discrimination Act and obviously the reason for today’s meeting is to discuss the proposed amendment to it. But first of all, could you describe as it were, what you take to be the central focus and purpose of the Racial Discrimination Act and its kind of animating spirit?

**Tim Soutphommasane**

I’ve always regarded the Racial Discrimination Act as the legislative expression of Australian multiculturalism in one sense. It emerged out of that period after the demise of White Australia and the advent of Australian multicultural policy and the Act came into force in 1975, but in terms of its purpose, you’re really looking at a law that ensures that all Australians can participate in our life on an equal footing, free from discrimination on the basis of race, ethnicity, or skin colour. And the legislation outlines a number of specific domains in which racial discrimination is unlawful, for example in the provision of goods and services, in employment, in accommodation, in advertising, and since 1995, it has also made unlawful racial vilification, which is of course the subject of the ongoing debate at the moment.

**Robert Manne**

And can I just ask you, on that, before we get to the amendment, which I want to spend quite a bit of time analysing, partly because I asked you what you thought of it when it first came out and the email I got from you illuminated suddenly things I hadn’t seen, and I hoped we could get this before an audience, and on film, because it was so helpful. But first of all, if I could ask you, how you think since the 1990’s additions, which included protections against racial vilification, how you think in practice the Act has worked over the last twenty years or so?

**Tim Soutphommasane**

My view is the law has worked the way it was intended to work, and that’s to provide a civil and educative remedy for racial vilification. Now critics of the legislation will say, well, nothing has really changed in the past twenty years. We haven’t solved or eradicated racial vilification during that time but that’s a very high standard against which to judge any law. I mean, if we were to use that standard, we should also then be repealing our laws against murder and theft. Just because a law does not eradicate social behaviour of some kind, does not mean that it’s failing, and what it has done since 1995 is, this aspect of the law has resolved complaints of racial discrimination in hundreds of cases. It is not a criminal provision. You cannot be convicted or prosecuted under the Racial Discrimination Act. What it means is, if someone believes that they have been discriminated against, if they believe that they’ve been racially vilified in a public place, they can come to the Human Rights Commission and go through, or trigger a conciliation process where they can hold another person accountable for their behaviour, and that’s the basic function of this law. It’s to hold others accountable when they degrade and demean others on racial grounds. That last part I think is fundamental, Rob, if I can just emphasise it, that people believe that the law makes merely offensive or insulting speech unlawful. It’s not. It doesn’t do that. We’re talking about speech that … or acts that offend, insult, humiliate or intimidate on the grounds of race, and that’s a very different thing to something that’s merely offensive or insulting or humiliating.

**Robert Manne**

And again, because I’ve read your many excellent speeches I know the answer to this question but not everyone here will. What proportion of the cases are conciliated and what proportion end up in court? The Federal Court.

**Tim Soutphommasane**

Very few cases end up in court and this is what happens when the conciliation process fails and if a complainant believes that they haven’t been satisfied by the process and want to take the matter to court, but last financial year there were 192 complaints under Section 18C. Five reached court. We successfully conciliated in the majority of those cases. In about 53% of those cases, and the remainder of complaints were either vexatious or without substance and they’re ruled out in the first instance – they accounted for about 4%. And the remainder of complaints were withdrawn by the complaining parties. And when I say complaints are withdrawn, often what can happen is, a complainant comes forward with a matter. They talk it through with the Commission, and then they may decide that they don’t want to pursue it any further, one, because quite often because the point has already been made in actually contacting the Commission and bringing the matter …

**Robert Manne**

Feeling they’ve been heard in some way?

**Tim Soutphommasane**

Correct, correct. And that I think is the fundamental characteristic of this process that is often missed, it’s about ensuring that people can talk through their disputes or problems and ensuring that there’s something of a level playing field when someone of the receiving end of racial vilification brings a matter forward.

**Robert Manne**

Does anyone who’s been complained against, express remorse for what they’ve done?

**Tim Soutphommasane**

Quite often. And that’s often at the heart of a resolved complaint. The remedies that are provided through this process are voluntary, but quite often it will be in the form of an apology or a statement of acknowledgement of what has happened. If it involves an organisation that has committed an act that has been complained about, it may involve a change in the company’s policies. In some cases, there are monetary damages provided as well, but they’re not always part of the settlement, and indeed if the matter does go to court, quite often there are no monetary damages awarded. But these are the sorts of civil, in my view very modest, but nonetheless profoundly important remedies that are part of the law.

**Robert Manne**

Now, we’ll all be aware that there was a government elected last year called the Abbott government and it went to the election as I understand it, promising to amend the Racial Discrimination Act and everyone knows that there was a case involving Andrew Bolt, where he lost. And I wondered whether I could ask you, would there have been a suggested amendment in your view, to the Racial Discrimination Act, if the Bolt case had not existed, or indeed if Andrew Bolt had won that case?

**Tim Soutphommasane**

Well subjunctive history. I think it’s fair to say that we wouldn’t be having this debate at this point in time were it not for the Andrew Bolt case. That really has been the only reason that has been put forward for why the current law should be changed. When the law was put into place, the racial vilification provision, it was in response to a number of major enquiries and reports which recommended that there be remedies for racial vilification. The Royal Commission into Aboriginal deaths in custody, the national enquiry into racist violence conducted by my predecessor, Irene Moss, the report from the Australian Law Reform Commission into multiculturalism and the law. I haven’t seen any systemic enquiry that has preceded the call for an amendment to the law. There has been no case in my view that has been established for changing the law. The only reason that has been put forward has been the Andrew Bolt case, a case that was never repealed in that case by the defendant.

**Robert Manne**

I feel I’m asking a silly question – why is Andrew Bolt so important to the government?

**Tim Soutphommasane**

That’s a question that the government is best placed to answer I guess. I don’t feel qualified in my office to answer that question. What the Andrew Bolt case and judgment did do was it did spark a debate and it did see a section of the Australian community express concern about the law unduly restricting free speech. I think on this we can all agree that that’s a characterisation of how things played out. Now, without getting too much into the substance of the legal matters just yet, it’s important to note that the law does not prevent people from discussing matters of racial identity or matters of race. We can do that under the law, but there are certain requirements that must be met for fair reporting or fair comment on a matter that is protected under the law, and there are requirements of acting reasonably and in good faith, and in the Andrew Bolt case, the Federal Court held that Mr Bolt in a series of articles about fair-skinned Aboriginal people, had combined errors of fact, distortions of the truth, and had used inflammatory and provocative language which meant that he could not claim the protection of free speech because he could not … or he was found by the Federal Court not to have acted reasonably and in good faith. And that is central to the debate about the Andrew Bolt case. The Federal Court did not rule that a newspaper columnist cannot comment about matters of race. The court ruled that in that particular case, all those factors, not just one, but a combination of those factors, meant that the defendant could not have been deemed to have acted reasonably and in good faith.

**Robert Manne**

And just … I want to turn very soon to the amendment, but before it get there, could you outline for people here, the two sections of the Act which kind of balance each other, 18C and 18D, just so that we have what it is that is going to be removed, before we get to the amendment which is ...

**Tim Soutphommasane**

Okay. I didn’t see that. It’s important to understand that sections 18C and 18D are read together by the courts. A lot of attention has been devoted to Section 18C but not so much attention has been devoted to the protection of free speech provided in 18D. But 18C makes it unlawful for an act in public, for there to be an act in public that is reasonably likely in all the circumstances to offend, insult, humiliate, or intimidate another person or group of persons on the grounds of race. Section 18D exempts a number of categories of behaviour from being in contravention of 18C and that includes anything that’s artistic expression, scientific enquiry, or fair reporting or comment on a matter of public interest provided that one acts reasonably and in good faith. Now the way that the courts have interpreted these sections is very important to understanding how the law operates. Merely offending or insulting someone, even on the grounds of race, has been held by the courts as not being of the standard required to involve a contravention. So the courts have made it absolutely clear and it has been followed in precedent, that only those acts which cause serious and profound effects, not to be likened to mere slights, constitute a breach of the law. And in terms of the exceptions or protections under 18D which apply, I can point you to a number of examples of cases where there have been complaints about racially offensive speech, but which courts have deemed to be protected speech. So during the years of Hansonism, Pauline Hanson wrote a book and this was the subject of a complaint by an Aboriginal defendant who claimed that it was offensive and insulting to Aboriginal people because it suggested that Aboriginal people were entitled to special privileges. The court in that case found that this was fair comment, done on a matter of public interest, and done in good faith and it was protected speech.

Another example. You had a comedian, who put himself in a black face, called himself King Billy Cokebottle and represented a character who was constantly drunk, ill-educated, dirty and smelly. There was a complaint from an Aboriginal person who claimed that this was racially offensive and humiliating and that it breached the law. The court in that case found that this was an act done in the course of artistic expression and not done with malice, done in good faith, and that was protected as free speech.

So if you put things in context and look at how the law has in fact operated, you’ll find that courts have been very sensitive to the question of freedom of expression and have interpreted the law in a manner which doesn’t unduly impinge on freedom of speech.

**Robert Manne**

But in reading your public talks on this matter, I wonder whether you think … you often have to answer the question that the Act is about people’s hurt feelings and as you’ve done this afternoon, explained that that’s not what it’s about at all. Would you be in favour in fact of a very minor amendment, which put the words ‘extreme’ and ‘serious’ into the Act so that it becomes clear that the court is interpreting the Act with a very high standard and it’s not about hurt feelings.

**Tim Soutphommasane**

The standard of the case law is very clear and that’s the statement offered by then Justice Kiefel in the Creek case which I mentioned earlier which is that only acts which cause serious and profound effects, not to be likened to mere slights, constitutes a contravention. Now, if we are talking about codifying the law as it currently exists, if we are talking about strengthening the current Section 18C through an elaboration of that kind, I would have no objection to that. But that’s not what’s being proposed.

**Robert Manne**

I know that.

**Tim Soutphommasane**

That’s not what’s being proposed at all, and that should not be interpreted in any way as suggesting that the current words of Section 18C require changing. I don’t believe they do require changing for the very reason that the case law means that courts have interpreted it in a very fair and reasonable way.

**Robert Manne**

Okay. Now, I’d like to go through the amendment. We can’t see it but everyone here … it will help to be looking at the wording as we go along. The amendment makes it unlawful to vilify or intimidate in public a person or persons of a racial or ethnic group. However the meaning then comes in the next sentences and I’d like to hear the way you interpret these sentences.

What do you make of the definition of ‘vilify’, namely to quote, ‘vilify means to incite hatred against a person or group of persons’.

**Tim Soutphommasane**

Yeah, sure. So the definition of vilification. If we were to open a dictionary and look up the meaning of ‘vilify’, you would find something along the lines of a description that says anything that demeans or degrades another person. I have serious concerns about defining vilification strictly in terms of the incitement of racial hatred, because that would shift the focus away from the impact of behaviour on a target of vilification, to the effect that it has on a third party or public audience, and they’re two different categories of things here.

We have a number of state provisions concerning racial vilification which in fact about the incitement of racial hatred and the experience in those jurisdictions suggests that that requires a very high level of incitement for there to be a breach in the law. So I would have concerns that vilification has been defined extremely narrowly, in a manner that isn’t consistent with the ordinary meaning of the word and which also shifts the focus away from the …

**Robert Manne**

The impact on the individual.

**Tim Soutphommasane**

Correct. That the harms or the evils of racism to its effect on a public audience.

**Robert Manne**

Again, I’d like you to say how you interpret the definition of ‘intimidate’. I’ll read the words. ‘Intimidate means to cause fear of physical harm’. Can you parse that?

**Tim Soutphommasane**

Well, again, it’s a very narrow definition of what intimidation involves. It doesn’t account for, for example, emotional harms or intimidation that can exist. The scenario that I feel best captures what’s missing in that definition is of say, a five foot one white supremacist, who may begin to berate a young teenage boy of another racial background, but who may happen to be six foot tall. Now if you define intimidation in purely physical terms, that sort of behaviour could not be captured but that doesn’t obviate the fact that there may still be an intimidatory element to that behaviour because the young boy in a hypothetical example may well feel intimidated by an albeit smaller person, dishing out to them racial abuse. But that would not be captured under the law and I think if we are to have a definition of intimidation, we should remain true to the essence of the word.

**Robert Manne**

But it seems to me, and see if you agree, that saying physical harm means explicitly to rule out, let’s say psychic, emotional, spiritual harm. Is that …

**Tim Soutphommasane**

Yes. And this is part of the impact of racism when it occurs. You don’t need to necessarily threaten someone with physical harm, or inflict them with physical harm in order to reduce them to the status of a second class citizen, or to inhibit them in some way. If we’re talking about intimidation, you can think of someone who is on the receiving end of abuse, who may not feel that they want to endure verbal physical abuse on their street and therefore does not go out in certain hours of the day. Does that count as physical intimidation? I’m not sure it does, but nonetheless there’s a very serious harm that we’re talking about.

**Robert Manne**

We go now to the sentence 3. And I’ll read it out and again get you to analyse it. ‘Whether an act is reasonably likely to have the effect specified in sub-section 1a is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.’ What do you take that to mean?

**Tim Soutphommasane**

Well, I have some concerns about this section as well, because we have to ask who the ordinary reasonable person of the community is. Is this someone who is free from racial prejudice, or is this someone who may well have certain racial prejudices? Because if it’s the latter and that person is to be regarded as an ordinary reasonable person, then the law may well be entrenching racial prejudice and protecting racial discrimination. There is a harm with racial vilification that may not necessarily be appreciated by some people in the community, particularly if they’ve never witnessed or let alone experienced, racial vilification, and the law as it currently stands, ensures that the perspective of the target or the target group, is taken into account in considering whether vilification has occurred and that in my view is a very important thing to have in any piece of legislation that deals with racial discrimination. We can’t forget the people that these laws protect, and quite often the people who are most vulnerable or susceptible to racial discrimination, are people from minority backgrounds.

**Robert Manne**

There was a very interesting article I thought, in the *Age*, by Waleed Aly, about this particular sentence and I just wondered whether you agreed with him. Essentially what Waleed Aly argued in that is that in academia it’s called whiteness studies, that the idea that the one group that’s not thought of as it were, in any way distinct, is the dominant white group. And he did a little translation of that into this sentence, by saying that the assumption of the ordinary member of the community is an assumption really of a Anglo-Irish-descended ordinary Australian, and that it’s sort of saying that if you’re an indigenous or Chinese or Jewish, you’ll be over-sensitive, and we the ordinary people, the whites, are the ones that will arbitrate as to what counts as racial vilification. What do you think of all that?

**Tim Soutphommasane**

There’s a lot there that I would agree with in that power and privilege are essential components to the dynamics of racism, and it may be one thing for someone who is in a position of social power or privilege to say, well, being called x or y is surely just sticks and stones, but if you are from a different group and you do not wield the same level of social power or social privilege, then those words will wound you in a very profound way quite possibly. I always say to people, if there are people like Adam Goodes or Ben Barba, or you can name another sporting figure who’s been the subject of racial vilification, who feels wounded by certain words, imagine how a young boy or young girl in a playground would feel by that, and I think that captures some of the particular wounding effects of racial vilification that some people may not necessarily understand or appreciate.

**Robert Manne**

Can I push a bit? But do you agree with Waleed Aly that there is a sort of whiteness assumption behind that sentence?

**Tim Soutphommasane**

As I framed it I think it’s a question about social power and social privilege and that’s the terminology I’d use.

**Robert Manne**

Okay. In the email you sent to me when I first read the Act and didn’t quite get it, the one that your next explication kind of convinced me utterly and that’s the sentence 4, or whatever it’s called in the Act but it reads ‘this section does not apply to words, sounds, images or writing, spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, academic or scientific matter’. And when you forced me to think about those words, and I’d like you to force everyone to think about what those words in fact mean within the Act.

**Tim Soutphommasane**

Perhaps the best way is to compare that with what currently exists in Section 18D of the Racial Discrimination Act, which says that anything that’s done in the course of artistic expression, scientific enquiry or fair reporting or comment on a matter of public interest, provided that it’s done reasonably and in good faith. What the sub-section 4 you’ve just mentioned provides is a very broad category of exception which does not contain any requirements of reasonableness or good faith. As long as something is done in the course of participating in public debate, it cannot be deemed unlawful, according to the exposure draft, so what that means is that you can be free to act unreasonably, act in bad faith, indeed act dishonestly, create falsehoods, but if you are doing it in the course of public discussion, then that is to be protected free speech. The effect, if enacted, of this section would be to obliterate the dividing line that currently exists between free speech and hate speech. My view is that freedom of speech serves certain ends. It’s not clear to me what ends racial abuse that is conducted dishonestly, in bad faith, would contribute to in a liberal democracy. So this exception clause is the clause that basically means that any of the preceding sections if they were to be enacted, would have very limited force.

**Robert Manne**

And it seems, one of the readings is, I think, correct me if I’m wrong, but I think the government promised after the Bolt case, that it would get rid of this whole part of the Act, and it decided not to do that, but I read sentence 4 as de facto, like 99% getting rid of everything preceding, and getting rid of the idea that racial vilification should be unlawful. So the question arises to me and I think on *Lateline* Emma Alberici actually asked the Attorney General this question ‘What then would fall under the new amended Act?’

**Tim Soutphommasane**

It’s really hard to see what if any behaviour would be prohibited.

**Robert Manne**

I mean, if you say that the Jews are inventing the holocaust to swindle money and so on and so forth, and under the earlier Act it seems to me that’s arguably unlawful, if done in a certain way, blah, blah, blah. But it’s clearly part of a public discussion. It can be completely without the slightest merit, in utterly bad faith, dishonest etc, but it certainly is part of a public discussion. So it’s very hard, when I read, under your tuition, sentence 4, to see that anything almost would be regarded as vilification.

**Tim Soutphommasane**

I concur with that reading, and that’s been the reading that just about every legal and human rights expert has provided on the potential scope of sub-section 4. It just simply is not clear what kinds of behaviour would in fact be prohibited if that clause were to be in effect.

**Robert Manne**

So then let me ask a question that is a little bit outside the words of the … it is still very much an open question as to what the government will do. None of us know what eventually the Cabinet will decide and I might ask you later to speculate a bit about that, but I won’t yet. But let’s say this amendment that is on display were passed without a change, and that’s theoretically possible, what do you think would be the effect in the medium term, let’s say, on Australian society?

**Tim Soutphommasane**

I’d have very grave concerns that you would be licensing racial hostility and racial hatred in the name of free speech. My view is that our laws and our leadership send important signals in society about what’s acceptable and unacceptable behaviour. Given the very broad nature of sub-section 4 and given that the call for, or the case for repealing section 18C has been accompanied by statements about Australians having a right to bigotry, I do worry that an enactment of this sort would empower in particular a small minority of Australians with bigoted views to believe that they can harass and abuse people on racial grounds with impunity. And there are many good reasons for us not to be complacent about this. The evidence suggests that racial discrimination is on the rise. If you were to look at the Scanlon Foundation report that has been conducted annually since 2007, that report found a rise in racial and religious discrimination last year. If you were to look at the Australian Human Rights Commission’s own complaints in racial hatred, last financial year we received a 59% increase in the number of racial hatred complaints, concerning section 18C. These are all pieces of evidence which suggest to me that we should be very careful about this issue.

**Robert Manne**

Now I’d like because I was a bit alarmed when I looked at my watch to see how much time has already gone, but there are some more general questions which I really would like to ask you to respond to, and to some extent more difficult questions. We may agree, less, I don’t know. Clearly almost everyone regards freedom of speech as fundamental to our kind of society. So that’s not in dispute. I’d like you to think a little bit about the difference between the United States and Australia, indeed there was an editorial on this matter you drew my attention to in the Australian today. In the United States, there is more or less, since Brandeis and Holmes, there is more or less completely unfettered free speech, and in Australia there’s not. There are many … United States has defamation laws so it’s not entirely unfettered, but it’s generally speaking the Fifth Amendment to the US Constitution has been interpreted to more or less guarantee unfettered free speech. What’s wrong with that?

**Tim Soutphommasane**

That’s the American experience. The Australian experience has been different. We have put in place laws which are to express our commitment to racial tolerance. My view is if we are committed to racial tolerance and social cohesion and civility, then the law can play an important role. There’s been a great deal of debate about the role of social sanction or social debate in this, but it’s important for us not to see this as an either-or equation, having just the law, or having just social values, simply because the law can often precede and guide the creation of sentiments in civil society. I mean, are to wait for example, until people will start loving each other, until we actually legislate for laws that protect the vulnerable? So I think what we have here is a question about the social achievement of a diverse, modern Australia and what we’re prepared to do about it. The evidence suggests to me that an overwhelming majority of Australians do believe that it’s perfectly reasonable and logical to have laws that set civil standards for our behaviour. I mean, if we’re talking about free speech, we currently in Australia have standing orders in our state and federal parliaments which restrain our politicians from using offensive words and offensive language. We have criminal summary offence laws in the majority of our jurisdictions which mean that you can be imprisoned or fined on the spot for using offensive language in public, and indeed we have defamation laws which mean that you can be liable for six figure monetary damages if you were to use words that offend people’s reputations. If we’re prepared to accept that our politicians in the course of exercising their freedom of speech now, great deliberative bodies, should refrain from offensive language, if we accept that we can imprison or fine people for using offensive language in public, if we accept that people can be liable for paying 2 or 300 or 400,000 dollars for calling someone silly, then why isn’t it acceptable for us to hold people accountable if they should abuse, harass and degrade others, not because of their ideas, but because of race?

**Robert Manne**

And the case that the *Australian* put this morning, which I’ve also thought about independently, is the very interesting case that came up recently in the United States where Sterling, the owner of a basketball team, was outed for racially abusing African Americans and advising his girlfriend not to meet with them or to bring them to the game, and he was dealt with incredibly harshly without any law. He lost his team by the Association and is not able to even attend games any more, and was utterly humiliated because of his behaviour. The *Australian* argued in that editorial I looked at before, that there you see you can have a Fifth Amendment, almost unfettered freedom of speech, and still social sanctions will operate very effectively to defend racial groups against abuse. How do you respond to that argument?

**Tim Soutphommasane**

Well, let’s look at the full circumstances of this case and let’s make sure that we learn the right lesson from the case. What we have is an NBA owner who indeed said some very nasty things about not welcoming African American people but you’re talking about an owner in a basketball league with three quarters of the players African American. You’re talking about a situation where this arose during the middle of the playoff or finals season of the NBA. My view is that circumstances count and that the power of those speaking matters. I mean, if Sterling had not been dealt with in some way by the NBA, the NBA may well have found themselves in a situation where their star players were threatening to go on strike. Now, I think … I welcome the fact that the NBA has taken such strong action against Sterling and that is an instance of repudiating racism that hasn’t involved the law but think about a situation where the circumstances are different. What if the person dealing out racism or expressing racist sentiments does not have public prominence? What if those expressing their voice is not a millionaire or billionaire NBA basketball player? What do you do then? What resort do you have then? And this is the fundamental flaw with relying only on free speech. Social power has to accompany the exercise of speech if you are to achieve change. And what the law does, in my view, in Australia, is it empowers the vulnerable and those who may not necessarily be able to speak with the same power as an NBA star or player. You know, it goes back to that point I made earlier about privilege. It’s easy to say that you can just speak out or fight back, but if you’re someone who’s punching up against your opponent, it’s a lot harder than if you are to be someone with a megaphone or someone who can punch down.

**Robert Manne**

Yeah, and presumably a lot of the cases that come to you, come to the Commission, are those that would never get into a newspaper, that is, it seems the overwhelming majority are not like … our examples would be Adam Goodes, the abuse that he suffered or Eddie McGuire’s consequent, perhaps inadvertent but incredibly insulting remark on radio. Those are the things that come to attention and that seems to me now the case where social sanction really kind of does work, and whether the Act is probably not needed and is not used. But it’s I’d say 99.9% of cases are not those that come to the attention via the media, to public opinion. Would you …

**Tim Soutphommasane**

Yes, correct. And the law is ultimately there to provide a means of redress for people who do experience racial discrimination and not everyone’s going to have the wherewithal to pursue actions that someone in a powerful situation may be able to pursue. I mean, you know, a powerful person may well choose to file a defamation suit against someone, but if you don’t have the money to pay for lawyers, or to go through a litigation process, what’s available for you if you don’t have a process like this that it instituted in the law? And that does aim to provide you with quick and efficient access to justice?

**Robert Manne**

I have to … there are some people including one of the people I most admire, but don’t always agree with, Guy Rundle, argued in regard to the Bolt case that all of those people that took Bolt to court should have individually sued him for defamation and I’ve rarely seen a comment that struck me as more silly than that comment. The idea that individuals with no resources, can go to defamation actions against News Corp with its billions of dollars … anyone who’s been in a position of thinking about defamation actions knows the incredible disincentive, the cost of a defamation action, and so I agree with you. I’m really interested in what you said about the increase in the number of complaints that have come and maybe I’ll ask a question that’s connected to that. It seems to me that over my years I think that there’s much more public awareness and public kind of concern with racial comments than there used to be, and I think they’re much more, you know, the kind of thing that Eddie McGuire did, or was done to Adam Goodes, etc etc, is fallen upon my the media more than it used to be, twenty years ago, say. On the other hand, I think there’s much more racial … cases of racial abuse than there used to be, mainly via the internet. So I think you have a sort of a contradictory trajectory of racism in society. Again, I’d like you to comment on that.

**Tim Soutphommasane**

In terms of our increase at the Commission in complaints, a lot of it has indeed been generated by activity on the internet. So, social media and video-sharing websites have been two particular areas where you’ve seen an increase in racist abuse. And I suspect that there’s a generational challenge here that we should be very mindful of. The last thing we’d want to do is have a generation of Australians grow up and believe that behind the cloak of anonymity they can dish out abuse through social media or that they can post videos humiliating others without being held to account. It’s a lot easier in my view to do these sorts of anti-social acts when you do not have to do it face to face, when you do not have to actually see another person in front of you or be exposed to resistance. The ability to be sitting at a computer and just be typing away means that the cost of being a racist if you like, is a lot lower.

**Robert Manne**

And there is evidence from the Commission that the kind of complaints are generated by social media and internet …

**Tim Soutphommasane**

Well, in terms of that increase in complaints, a lot of that is being driven by complaints concerning the internet. I should note that it’s always difficult to read trends into our data because the number of complaints we do receive is not necessarily reflective of what’s happening out in Australian society but there’s enough there to suggest to us that this is an emerging problem.

**Robert Manne**

Now I want to ask what I actually … the next question I want to ask is one that I haven’t seen you, I don’t think, talk about, and also for me is quite a difficult question. So …

**Tim Soutphommasane**

I’ve had no warning about this by the way folks.

**Robert Manne**

The present Racial Discrimination Act which you’re defending makes it unlawful to offend, insult, humiliate and intimidate on the basis of race. And I want you to think about this carefully. Do you think it should also be unlawful to offend, insult, humiliate, and intimidate on the basis of let’s say, gender, religion, mental capacity, sexual preference? In other words, why should it only be race? I know it’s not, but let’s say that you’ve been defending this Act on the basis of racial vilification. Should there be laws to make unlawful similar kinds of acts in relation to religion, gender, sexual preference, mental disability, mental incapacity and so on?

**Tim Soutphommasane**

Well, I should note that the provisions of the Racial Discrimination Act on this question were in fact borrowed from the Sex Discrimination Act and its provisions concerning …

**Robert Manne**

Word for word?

**Tim Soutphommasane**

More or less, yeah, I believe so, word for word. So if not word for word, then very close to word for word. But they’re borrowed from the sexual harassment provisions of the Sex Discrimination Act. In principle, if there is an established case for addressing social harm, then I think it is important to consider the legal sanctions that you can take, but the process is important in establishing that the harm exists and that it requires addressing through the law. I mentioned earlier that before these vilification provisions on race were introduced, it was in a response to mounting community concern in the late ‘80s and ‘90s about racist violence. You had fire-bombings of restaurants, you had desecration of cemeteries and you had those major reports and inquiries that called for some legal means of redress in cases of vilification. Now I think if you were to expand the category, or if you were to introduce laws which aim at vilification based on other attributes which aren’t currently covered, I think in principle I wouldn’t have an objection to that provided that you can demonstrate the harm that’s being caused and provided that there is a proper process of legal reform or law reform, that demonstrates that there is a social harm that is profound enough, or that is prevalent enough to justify the introduction of those laws. There’s one point I’d make very quickly in addition. That’s concerning religion. Many groups have argued that the racial vilification provisions should be extended to include religious attributes. I have my reservations about that simply because I think it’s important that you can debate belief and doctrine but where it does involve more ascriptive qualities, then I would see that of a different order.

**Robert Manne**

It’s a tricky thing isn’t it? Because if there’s a certain kind of attack on Islam, it wouldn’t fall under … it couldn’t possibly fall under racial and yet you can see that in that context it might be equally damaging both to society and to individuals who are the subject of that abuse. I think it is quite a tricky issue, but then if I list all the things that I did, then at least I would begin to wonder whether or not free speech might be to some extent under threat. I think it’s actually a very complicated issue.

**Tim Soutphommasane**

Oh, it is, it is, and the reason I’d point to those particular major reports and inquiries that preceded this law, is to say that these laws were put in place to address a well-established concern about social cohesion and these laws are arguably in a category that’s tied to our destiny or our welfare as a multicultural society, which gives it a peculiar character, which is not in any way to downplay the harms that accompany those other forms of behaviour that you’ve identified, but just to highlight the very peculiar history behind these laws.

**Robert Manne**

I’m going to ask only two or three more questions and then … oh actually, I’ll only ask one more, because I can see that time is slipping away and I do what there to be chance for people to ask questions of you. It’s sometimes said that Australia is a racist society. Sometimes it’s said that we have a problem with racism. Which of those … I mean, how do you respond to those very large claims?

**Tim Soutphommasane**

I think the question of whether Australia is a racist society can often be interpreted as a question about whether Australia is fundamentally or essentially or immutably racist and if that’s the question, then my answer is no, I don’t believe that Australia is immutably racist. The fact that you have a country today where almost half the population is either born overseas, or has a parent who was born overseas. The fact that we’ve done the multicultural project without the kind of social fragmentation you’ve seen elsewhere suggests very clearly that this is an accepting and tolerant society for the most part. So if you were to force me to choose between those questions I might choose the latter for the simple reason that too often I think the debate gets … and the conversation gets derailed because people jump to that conclusion that what you’re really asking about is whether Australians are essentially or fundamentally racist. And bound up with that question too is a judgment about each and every single Australian. And I don’t think that’s very helpful and it’s not the case that we should be bashful or have reservations about calling out racist behaviour or racism for fear that we would be labelled as un-Australian or unpatriotic because we’re accusing and somehow impugning each and every fellow Australian person. But the reality is just this though. Racism does exist. We know it exists and affects a great deal of Australian citizens and residents. About 20% of Australians have experienced verbal racism of some kind. 5% of Australians have been physically assaulted on the basis of race. This is not a marginal social concern.

**Robert Manne**

I wonder if I could now open discussion up. There’s a roving mike, so if you could wait for the microphone.

**Questioner**

Thank you. Well, thank you very much for what you’ve said about questions like vilify. I’ve looked that up in the dictionary myself and I felt that this is a very narrow definition and I wonder, is the court bound by what the Act says the word means or what the dictionary says the word means? One definition of vilify is to deduce, or misrepresent and as I read it, Andrew Bolt could get hooked on that anyway, from this Act itself. And I think I read the other day that the Institute of Public Affairs thought the Act was not satisfactory because it wouldn’t clear him entirely. I think that was a day or two, in the paper. And also I was troubled about that third clause. I would have thought that it’s up to a judge in a court to decide whether it is a person’s offended under these definitions and well, I’m just asking how far the court is bound by what things mean or what they try to say they mean in an Act like this.

**Tim Soutphommasane**

Thank you for your question. When a statute defines a term in such a clear and unambiguous way, then I would imagine that a court is bound to interpret a term as stated in the statute. Compare what’s in the exposure draft to what’s in the current section 18C which is to say that the current law just says that something is unlawful if it’s reasonably likely in all the circumstances to offend, insult, humiliate or intimidate on the basis of race. Courts have interpreted that to mean something that causes serious and profound effects, not to be likened to mere slights. That’s an example of judicial interpretation. What you have here though I think precludes a great deal of judicial interpretation because there’s nothing to interpret.

**Questioner**

Thanks Tim and Rob. I think this proposal is appalling and I’m not going to defend it in any way. But, I wonder whether there is a middle option in that you talk about that the current Act can’t … you can’t be in breach of it for merely offending and insulting. Why is ‘offend’ and ‘insult’ in the Act then, and can’t we just have a slight amendment that gets rid of’ offend’ and ‘insult’ because it’s too much of a breach of freedom of speech.

**Tim Soutphommasane**

Well, the history of the words have to do with the words of Sex Discrimination Act and the sexual harassment provisions which is where the language is drawn from. As to the form of 18C and its interpretation, my view has been consistent, which is that the laws work well, they’re interpreted by the courts in a manner that is fair and reasonable, which is confined to those acts which cause serious and profound effects, not mere slights. My view is that that is a good reason for retaining the laws, rather than changing it, and for sending signals about what is acceptable and unacceptable behaviour. The last thing you’d want to do is to signal to people that it’s all right for you to offend and insult people on the grounds of race, because that may well contribute I fear, to a rise in prejudice and discrimination. If you are to codify the law and retain the law, that’s one thing, but to then excise words from the legislation and then send those social signals, is another, in my view.

**Questioner**

So my question is a little bit off the wording, exactly, but the exposure draft has been open to community consultation. I was just wondering as to what your opinion was as to the reasons for and consequences of the fact that the government won’t be publishing any of the community consultation that they’re receiving.

**Tim Soutphommasane**

It’s certainly rare for a government to embark upon consultation, however defined, and yet not make those consultations public. What the Attorney General’s Department did say, was that you needed to, if you were to put in a submission, the author needed to make clear that they would consent to it being published, so what you end up seeing is, you’ll end up seeing a selection of the submissions being published, but not all of them. But I do believe that many organisations that have made submissions have published their submissions. The indication I’ve received informally is that the Department has received thousands of submissions, so a great number of submissions. I would welcome making as many of those submissions public as possible, but because of the way the call for submissions was made, that may not necessarily be borne out. But it’s important I think that we have an open debate about this.

**Questioner**

Thanks. Hi, I thought Pauline Hanson was pretty good at inciting hatred. Does the current law catch her in … catch the, well, former policies now of One Nation in any way?

**Tim Soutphommasane**

That’s a hard question to answer given how general it is. What I can say is that if you’re talking about criminal behaviour or behaviour of any kind that involves violence, then it’s not really covered by this law. This is a civil law that is really aimed at nipping racial hatred in the bud rather than dealing with the violent end of racial hatred. But what we do have is a series of state and territory laws concerning the incitement of racial hatred, some of which include criminal provisions, but we know from experience that to meet the tests of inciting a third party to racial hatred, serious contempt or severe ridicule, which are the words for example in the Victorian legislation, that’s a very, very difficult standard to meet.

Questioner

Thank you Tim and Robert for such a provocative and stimulating discussion. I have both a comment and a question. My comment is, I wonder if there actually has been a rise in racism or are we just actually getting better at asking about racism and in terms of research available in Australia. So that’s I guess a comment. With regards to my question, I’m wondering about your thoughts on the … and another form of racism being institutional racism. And given some of the legal decisions in our judiciary system that have come about recently that you talked about today, I’m wondering about your thoughts on the possibility of elements of institutional racism that have influenced some of those decisions. Is our law racist? Potentially.

**Tim Soutphommasane**

I’ll take the first question initially. There will always be an argument that social scientists will make about how good your data is or how reflective it is. My view is we will always have imperfect data but what we do know from longitudinal studies such as the Scanlon Foundation research into social cohesion is that we are seeing something that the data shows to be an increase in people’s reporting of racial and religious discrimination. So in 2007 when asked, when respondents were asked and it’s a nationally significant sample we’re talking about of a few thousand, when people were asked ‘have you experienced racial or religious discrimination at some point in the past twelve months?’ in 2007 that number was 7%. Last year it was 19%. The number has hovered between 10 and 12% for much of that period. Evidence such as that suggests to me that it is likely, very likely, that there’s been a rise in racism.

As for institutional racism and how that’s shaped particular judgments, I guess I’m not entirely sure which judgments you were referring to specifically, but if we are to talk about institutional racism, I think diversity of people in decision-making positions matters a great deal, because perspectives that are taken in whatever role will always be coloured, as it were, by people’s experiences. When it comes to the judiciary, and this is not aimed … this is not meant to be a pointed criticism of the judiciary, but just an observation about fact, you have very limited diversity in the Australian judiciary. It doesn’t reflect Australian society as it exists today. That criticism could also be made of a number of spheres of our public life, including our parliaments and including our media, to name but a few.

**Questioner**

Thank you. I was … hadn’t thought this through properly, so I apologise. But it occurred to me that the effects upon refugees who are constantly called ‘illegal’ when they’re nothing of the sort, they’re constantly being sent to places where clear and obvious harm will occur to them, and I read these first three clauses and I think that perhaps you could have some claim, and then of course I get down to the bottom clause and it seems that any good that might have been done by the first three sections of those amendments, assuming any of it’s good, would clearly be undone by the last, which I think you said at the opening or maybe Robert made the comment that number 4 seems to negate anything that might be in the first three.

**Tim Soutphommasane**

Yes. Well, I agree with what you’ve said. The current protection of free speech means that you can say anything in fair comment or fair reporting provided it’s done reasonably and in good faith. The question we should be asking those who are putting forward the case for appeal, is what is it exactly that you want to say that isn’t currently protected? That is the concerning bit of all this and that’s what’s especially concerning with subsection 4. In terms of … you mentioned refugees at the start, if I can link it in with the earlier question about the prevalence, or about racism as it exists today, I think that a lot of it is being driven by the negative sentiment that does exist around asylum seekers and people don’t necessarily make a distinction between an asylum seeker, refugee, international student, a first or second generation Australian, or indeed an Aboriginal Australian, when it comes to saying that people are illegal. And I’ve had many people who work with Aboriginal communities tell me that they have Aboriginal people who get told on the streets that they should go back to where they came from, and that they’re illegal. And that’s an example of the sorts of spillover effects of using highly hostile and adversarial language towards those who are seeking asylum here.

**Robert Manne**

There’s one last question and then we’ll have to …

**Questioner**

Hi Tim, thanks for your work so far. I just have a question that’s going to relate back to the public consultations and also institutional racism. I asked this question to your fellow Commissioner when he was talking about this issue, why is it he had failed to talk about Australia’s human rights obligations, like with the international convention on the civil and political rights as well as the international convention on the racial discrimination. So why has he been framing that issue of free speech without talking about that? And I’m aware that the Commission had organised a public consultation on the national strategy on racism a couple of years ago. Why hasn’t the Commission actually done that as well on this issue? Thank you.

**Tim Soutphommasane**

Well, the Commission leads the national anti-racism partnership and strategy. We in effect own that policy, so it made sense for us to consult on that particular issue. We don’t own the exposure draft and I don’t support the exposure draft and I don’t support the case for repealing 18C. If there is to be public consultation, I believe that the government should be doing it, and it should be doing it extensively. And it should be doing it in a way that pays particular attention to those communities whose members are most vulnerable and susceptible to experiencing the harms of racial discrimination. And as you will have detected from the various things I’ve said, if there is to be a case made for changing the law, let’s have a process attached to that, and I would like to see a systematic enquiry that establishes just where the law is currently deficient, because I don’t think the case has been made so far. But you know, I would welcome further consultation and further systemic enquiry from the government if it is determined to go ahead and change the law in some way.

**Robert Manne**

We’ll have to conclude now. I said at the beginning how impressed I was when I first encountered Tim’s work and the clarity and I think maturity and wisdom of his thinking. I think we’ve seen it in action today. I’m absolutely delighted Tim that you were able to come along. I think anyone who was here and who heard the discussion will have learnt an enormous amount and so I hope this is not the last time you’ll grace us with your presence.

It’s sometimes said that this Act has a chilling effect on free speech. Well, I’d just say, turning off the heating certainly has a chilling effect. So I thank you all very much for putting up with the cold which has been extreme, but I believe and hope you also believe that the discussion has been worth the freezingness of the lack of heat. So can I ask you to thank Tim very much …

[applause]

And in two weeks’ time there will be another event. I would strongly urge all of those interested to come. It’s on the question of whether science can be communicated and the Chancellor of the university, Robin Williams, a very distinguished ABC science journalist and Elizabeth Finkel, the editor of *Cosmos* magazine will be along to discuss that, the sub-text being the issue I take to be almost the most important of our age, which is how is the public to be convinced in general about climate change and whether that can be communicated.

So I would urge you all to come. I hope the heating is on by then. And even though it’s about global warming and if you could pass the message on to others about these occasions, I’d be grateful as well. Thank you very much for coming.