

# The Roz Ward Case: Reflections on Social Media, University Management and Free Speech

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Now we just need to get rid of the racist Australian flag on top of state parliament and get a red one up there and my work is done. (Facebook post, 2016, Roz Ward)

**U**NIVERSITIES HAVE BECOME BASTIONS OF MANAGERIAL ARBITRARINESS.<sup>1</sup> THE TRENDS began some time ago, when money became the ultimate pursuit, and the Dollar became chancellor and chief. Bill Readings, Gary Rhoades and Sheila Slaughter have already penned works identifying this tendency in various manifestations. Readings had already noted in the 1990s the parting of ways between teaching and research, the latter distant, and getting more so, from the former. The university, he argued, has been detached from the nation-state, one no longer connected to 'its role as producer, protector, and inculcator of an idea of national culture' (Readings 3). The cultivated obsession with obtaining grants, grant awarding panjandrums, the siphoning of funds, underwriting projects, have all made the academy disposed to matters of a financial worth and notions of market share. Slaughter and Rhoades are particularly salient here in their aptly titled work, *Academic Capitalism and the New Economy* (See also Slaughter and Leslie). Since universities now obsess about having a 'marketing unit', the

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<sup>1</sup> The author acknowledges the highly constructive remarks of the anonymous referee and the sharp observations of the editor. Any errors are naturally my own.

idea of making education a matter of commercial viability rather than educational worth in of itself has become all important. This entails 'enabling individuals as economic actors' (Slaughter and Rhoades 20).

An important factor in this managerial revolution are the potential threats and opportunities posed by evolving forms of social media communications. The scope and interest of such managerial control over such 'enabled economic actors' has come to include channels previously unknown to the academic field. These are sometimes acknowledged as double-edged swords, important to promote the university's activities and research on the one hand, and dangerously public and provoking on the other. Such methods form a rapidly growing field that has itself become the subject of tertiary education and provision of certificates (Division of Continuing and International Education).

The use of social media to express opinions bypasses such control, punching a hole through orthodox forms of regulation. It keeps managers at arm's length; public relations personnel at a distance. (The useful illustration here is the way that the Donald Trump presidency has been functioning.) The universal nature of social media and communication platforms, made available through the Internet, potentially furnishes academic staff with the means to subvert the academic knowledge regime. The universal nature of the Internet, the ease with which social media can be deployed in disseminating information, potentially supplies academic staff the means to subvert the institutional culture of the 'academic capitalism knowledge regime' (Slaughter and Rhoades 29). This stance is far from nuanced, but has been accepted by corporations and universities as both an empowering and debilitating phenomenon. Content can be suggestive; viewpoints dangerous to those institutions as brands. There are no concessions to be made to private accounts, be they on Facebook, YouTube or Twitter. Tweet, it would seem, and be damned.

Australia, having an amorphous ragbag regime when it comes to freedom of expression and its boundaries, is more inclined towards policing and regulating, making expression and opinion secondary. Much of this is marked by the conspicuous absence of a Bill of Rights with an entrenched freedom of speech provision, a point that has also been held by the US Supreme Court to be central to academic expression (See discussion in Kirby 16; French). In the absence of such a bill in Australia are regulatory approaches to the assertion of rights that are deemed qualified in the broader social context, notably on the issue of harm. If views are deemed racist, the *Racial Discrimination Act* intervenes to target opinions that do not match the regulated order.<sup>2</sup>

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<sup>2</sup> *Racial Discriminatory Act 1975* (Cth), s. 18C, covering 'Offensive behaviour because of race, colour or national or ethnic origin'.

Even more important is the regulatory nature of the university environment itself: if the topic under consideration is deemed by institutions to be unduly sympathetic to ultra-left, progressive notions or suggestive of unpalatable views of the right, it is permitted only in so far as market ideals and the profit motive are not jeopardised. This is symptomatic of a thought process that privileges the administrator as the central figure over that of the professor, a process that diminishes, threatens and even destroys the place of traditional humanistic disciplines (Readings 3). A management consensus, one centred on the concept of the university as a *brand*, has been entrenched. The idea of the university as a brand was even stated in 1990 as putative fact, 'whether they like it or not' (Pearman). That view had to come from Ian Pearman, the CEO of the UK's largest advertising agency, Abbott Mead Vickers BBDO. Pearman has no interest in education other than as a profit-driven measurable, calculable and disseminated product. Products jostle for relevance, for appeal in the broader market place of which education is merely another competitive good. While universities were difficult to encapsulate 'in a single word' it was still 'instructive for them to be clear about their purpose and whether this answers to what applicants truly want' (Pearman). Since Pearman's articulation, Slaughter and Rhoades have noted the emergence of the university environment as 'redefined' in the context of a 'new/knowledge/information economy' awash with niche students, patents, commodified teaching materials, all backed by a neoliberal managerial system (Slaughter and Rhoades 256).

The Roz Ward case, which dominated discussions in the Australian university sector in May 2016, suggests the extent threatened university managerialism will go to remove an academic for something as elementary as a Facebook posting in a *private* capacity.<sup>3</sup> This mere fact raises assumptions from university management as to how academic expression, and activities associated with academic employment in the context of expression, are formulated. A discussion, to that end, of how technology relates with academic use, the expression of private opinions and the type of employment, is pertinent. Importantly, it requires discussion beyond mere academic engagement, considering the form it takes, and how it challenges traditional management practices. The suggestion made here is that greater foresight and understanding about the broader purpose of academic pursuits would benefit, rather than hinder the practice of universities. To that end, international and Australian examples are considered.

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<sup>3</sup> For another university case of dismissal in Australia for using social media, see that of Martin Hirst of Deakin University, sacked for allegedly threatening a student's academic progress on Twitter (Meade).

## The Ward Case

Ward's Facebook post, fuming at the Australian flag as 'racist', seemed a simple instance of opinion made in a private capacity as an activist and citizen, one arguably more of expression rather than academic opinion. 'Now we just need to get rid of the racist Australian flag on top of state parliament and get a red one up there and my work is done', was a statement made in the context of Victorian State Premier Daniel Andrews' apologies for previous state laws punishing homosexual practices. As one commentator noted, the 'last words in particular seem to denote some sort of tongue in cheek' (Joseph).

Various press outlets speculated about what would happen to Ward, most notably *The Australian*. This was considered the last straw for John Dewar, Vice Chancellor of La Trobe University, who had been a supporter of Ward's work behind the Safe Schools Project, run in schools to combat bullying of LGBTI individuals (Ward, 'Safe Schools'). There was, according to Russell Marks, an honorary associate within La Trobe's Department of Politics and Philosophy, a 'moral panic'. The banks would burst, and the tide would be ridden by Victoria's Sexuality Commissioner Rowena Allen, Jeff Kennett, founding chairman of national depression initiative *beyondblue*, and the Victorian government (Marks). But Ward's sarcastic jab could hardly have been a problem in and of itself. First, the capacity it was posted in could not have escaped anybody's notice: it was not made via a university administered Facebook page, or through any associated institute or faculty incidental to such functions. Nor was it directly associated, let alone linked to Ward's capacity as a La Trobe University employee.

This is where Ward's background and profile came into play, suggesting a broader, more elastic appraisal of employment duties and its impact on the university brand. According to Ward, La Trobe's attack was indivisible from that background. 'The move by management to suspend me earlier this year came after months of sustained attacks on the Safe Schools Coalition' (Ward, 'Standing Up'). With little surprise, it has been attacked by Christian groups and conservative politicians as unacceptably transforming, an effective directive in education. According to Kevin Donnelly, an education advisor to conservative governments over the years, 'While those students who identify as LGBTI should not be unfairly discriminated against or victimised it is clear that the Safe Schools Coalition is more about advocacy than simply making schools safer places' (Donnelly). In the alarmist words of the Australian Christian Lobby, such a program should not be funded as it promoted 'radical sexual experimentation' by accepting people of diverse gender and sexuality (Australian Christian Lobby).

The ACL's Queensland director Wendy Francis was more nuanced, claiming that teachers, in accordance with the program's aims, had to 'work out ways to

integrate gender diversity and sexual diversity across your curriculum' irrespective of subject (Remeikis). Some people, it was suggested, see sex and gender in everything; Francis did not. Of its own accord, that very debate could be said to be a constructive exercise of academic argument.

The letter from La Trobe University sent to Ward claimed that she had been suspended from work for 'engaging in misconduct'. Her suspension was clumsily justified on the following grounds: Firstly, it supposedly undermined public confidence in the very program that she had promoted—the Safe Schools program—'by undermining public confidence in [her] as a researcher and as a person associated with the Safe Schools program'. Secondly, her conduct damaged the reputation of the Safe Schools program by aligning it 'with views which have nothing to do with the program and its message and content'. Thirdly, it drew resources and time from the Victorian government to 'take up their time in defending the Safe Schools program, rather than be positive advocates' for it. Fourthly, it 'required senior staff at the University to take up their time in defending the Safe Schools program rather than be positive advocates' for it, or undertake other duties had by such staff. Finally, the action drew negative publicity to the Safe Schools program and her colleagues, something which 'impacted on their ability to continue with their research in a safe environment'.<sup>4</sup> The post thereby had the effect of generating protest among specific news outlets, notably those associated with the News Corp bloc. Threats were also issued from Jeff Kennett, the founding chairman of *beyondblue*, that funding would be withdrawn from the Safe Schools program if Ward persisted in being involved in the program (Joseph).

What followed was concerted union action and public protest. Legal action against the university was also considered (Cook and Jacks). The campaign in favour of Ward's case, involving a petition with over 10,000 signatures in 49 hours and an active Facebook page—'We Stand with Roz Ward'—garnering 5,000 'likes', saw her reinstated and return to work on 6 June 2016 (Ward, 'Standing Up'). The National Tertiary Education Union (NTEU) instructed its legal representatives to contact La Trobe Vice Chancellor John Dewar on 3 June, explaining that Ward needed to be reinstated by the following Monday. Threats citing possible contraventions of the University's Enterprise Agreement, the Fair Work Act and Victoria's Equal Opportunity Act were also noted (MacDonald). The NTEU saw the attack on Ward as disproportionate ('hysterical coverage of the flag comment') and directed at the Safe Schools Program.

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<sup>4</sup> The outlines are available in Graham.

### **Commercialisation and Brand Labelling**

The Ward case has to be seen in the broader background of risk management and fears of the academic brand label associated with the modern university. In 2001, a study on the subject by the Australia Institute surveyed Australia's changing academic environment with regards to its increasing monetisation and market driven emphasis (Kayrooz et al.). The growing, industrialised focus on the awarding of grants, raising of funding and the generation of income less in an academic way but more in an entrepreneurial sense, has seen universities alter their character. The study's findings were all too aligned with Readings' assessment, with government incentives being provided to universities to 'play a more direct role in responding to industry needs and to demonstrate direct economic benefits to Australian society' (Kayrooz et al. 45). If the university can be seen as, to use Jacqueline Scott's term, an 'integrated industry', then conduct such as that posed by Ward might be seen to encourage potential disintegration (Cited in Readings 11).

As Victoria's NTEU secretary Colin Long opined, the obsession with 'reputations' and 'brands' in the Ward dispute suggested a direct attack on intellectual freedom. Good brands, it seemed, came with a proviso of no dissenting views. 'Universities should care about scholarly endeavour, fearless research and truth seeking. Businesses care about their "reputations" and "brands"' (MacDonald 7). Already, in the Australian academic environment of the 1980s, Brian Martin would be noting how the 'maintenance of profits and growth' entailed corporations operating on principles inimical to dissent. 'Many of those who dissent from accepted policies and practices and thereby threaten profits, corporate image, or commercial prospects, become potential targets for suppression' (Martin 186). But for Martin, understanding bureaucracy as a political system was fundamental to appreciating the management style adopted towards contrariness. 'A bureaucracy is analogous to an authoritarian state in its hierarchy, its imposed uniformity of perspective, and its intolerance of dissent' (Martin). Michael Herriman, also writing in the 1980s, argued that two kinds of academic freedom were becoming pertinent in the discussion of the Australian education sector. Personal academic freedom, by far the more theorised and discussed, is to be distinguished from institutional academic freedom. The latter, he argued in the early 1980s, was the more relevant notion, being threatened by 'current structural and governmental constraints' (Herriman).

By the middle of the next decade, Bruce Ross, Vice-Chancellor of Lincoln University in New Zealand, expressed his worries at a 1996 graduation address about how a commercially minded council or board:

might exert at least subtle pressures to ensure that the university staff or students did not in some way offend the major donors. Having already seen some major potential donors walk away from university after failing to prevent the publication of some research work, I do not make this suggestion merely as a piece of idle speculation. (Kayrooz et al.)

Globally, examples abound that situate the Ward case in a troubling, institutional context affirming the thesis advanced by Readings that the university has been unleashed from its moorings to the national-state. A consumer-market model invariably requires defending in cases where threats might be made to profits and 'bottom line' concerns. Critics of that very model of university operation have been threatened, suspended and subject to protracted disciplinary proceedings in environments of exploited anxiety (Hall and Bowles). Professor of English and comparative literature Thomas Docherty received such treatment from Warwick University in 2014 for having ostensibly undermined the authority of former head of the English department, Catherine Bates (Morgan). Docherty, who had been suspended for almost nine months, was subsequently cleared by an internal investigation. For Dennis Leech, president of the University and College Union branch at Warwick, the case proved to be an instance of 'obtrusive managerialism' undermining academic freedom (Morgan).

The Liz Morrish matter furnished even more blatant evidence of obtrusive managerialism. It involved an academic of linguistics who was subjected to disciplinary measures by her university for blogging on matters of mental health in the academy. The issue was triggered after the *Times Higher Education* republished a blog entry by Morrish in March 2016 detailing issues of stress and threats to mental health in the academy. Concerned about the ample coverage being received for the piece, including its trending on the *THE* website, Morrish was pressed to remove it. Her refusal precipitated disciplinary proceedings that stifled frank discussion about the topic with students and her writing. 'So I decided to reclaim my academic freedom—outside the academy' (Morrish). Morrish's overview of university decline, control and auditing is seminal, entailing the intensified commodification of academic culture characterised by the notion of 'research grant "capture"'; the weaponisation of metrics covering funding targets within a 'research excellence framework'; the program of 'anticipatory performance management' directing academic staff to publish in high-impact factor journals at the expense of 'preferred research areas' (Morrish. See also Morrish and Saunston).

Defending the consumer-market model does not merely entail the curbing of expression, but a suppression of unconscionable conduct and review processes. To that end, a parallel can be made with various forms of behaviour and

practices which are concealed for fear of damaging the commercial branding side of a university's operation. Discussions that might redress such defects, in other words, need to be controlled, monitored and restrained. Avenues of complaint and support for grievance procedures are similarly limited, if not avoided altogether, in the name of avoiding damage to the brand. The resignation of Sara Ahmed at Goldsmiths, University of London over failings to address alleged sexual harassment by staff supplies a case in point. 'The personal', explained Ahmed, 'is institutional' (Ahmed). Inquiries into claims of sexual harassment were stymied. Her means of coping initially involved boycotting staff events, and refusing to be involved on supervisory panels, effectively removing her from situations where abuses might have been witnessed. 'I began to realise too my own complicity with that system'. Resignation was the natural order to follow. It 'worked' and 'broke a seal' (Ahmed).

### Unclear Academic Autonomy

The vulnerability of academic expression in the Australian context has been further complicated by the essentially inchoate nature of academic autonomy. The attack on Ward certainly had little to do with *direct* academic freedom, though it was arguably expressed as part of a broader political opinion that has modest protections under the Australian constitution, and is also acknowledged in international law.<sup>5</sup> These constitutional principles remain poorly sketched, incidentally linked to the implied right to communicate on subjects of political importance.<sup>6</sup> Nor is the distinction between free expression and academic freedom always clear. An argument is often made that 'requirement to adhere to the norms and standards of scholarly inquiry differentiates academic freedom from freedom of speech' (Schwartz). The Higher Education Support Act (HESA) 2003 (Cth) makes it clear that universities 'must have a policy that upholds free intellectual inquiry in relation to learning, teaching and research'.<sup>7</sup> The NTEU acknowledges a range of documents and statements of international character (the American Association of University Professors 1940 Statement of Principles on Academic Freedom and Tenure, the 2005 Academic Freedom Statement of the first Global Colloquium of University Presidents and the International Association of Universities Statement on Academic Freedom, University Autonomy and Social Responsibility) (National Teachers Education Union). None of these, however, have been directly incorporated or applied in consistent fashion.

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<sup>5</sup> For these protections, see Human Rights Committee, 'Article 19: Freedoms of opinion and expression,' General Comment No. 34, 102nd sess., CCPR/C/GC/34, Geneva, 11-29 Jul, 2011; *Unions NSW v New South Wales* [2013] HCA 58, *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1, *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

<sup>6</sup> *Nationwide News Pty Ltd v Wills* (1992) 177; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Coleman v Power* (2004) 209 ALR 182; Griffiths.

<sup>7</sup> *Higher Education Support Act* (Cth) 2003, Subdivision 19-G.

A survey of such literature suggests the paltry nature, not merely of how academic freedom is treated in Australia, but the poor institutional protections associated with it. Be it the broad application of sedition laws, or restrictions covering the communication of findings that may fall within the ambit of anti-terrorism laws, protections are few and far between.<sup>8</sup> Even the Senate has been used as an avenue to test whether the humanities in the Australian academy is unduly slanted to the political, socially progressive left, attempting to turn the issue of academic freedom on its head by claiming prejudice against conservative academics. In 2008, the Senate Standing Committee on Education, Employment and Workplace Relations (SSCEEWR) was engaged in an Inquiry into Academic Freedom (Senate Standing Committee). It was dismissed as a 'shameful waste of parliamentary and public resources' (Gelber).

### **Social Media and Employment**

The problems of the Ward case have been further compounded by the instances of extensive social media use that, as yet, lack suitable legal or policy exegesis in Australian employment practices. As the Fair Work Commission Deputy President Sams explained, 'It was inevitable with the seismic shift to the phenomenon of social media as a means of widespread instantaneous communication, that it would lead to new issues in the workplace'.<sup>9</sup> The use of social media, in its work context, has become a matter of international concern. No less a figure than the President of the United States, Donald Trump, has decided to make tweeting an indispensable feature of his administration (Alang 271). 'My use of social media,' he boasted, 'is not Presidential—it's MODERN DAY PRESIDENTIAL.'<sup>10</sup> Tweets or Facebook posts, when submitted in an employment capacity as distinct from a personal one, have resulted in termination of employment. (This distinction, evident from the way the Ward case played out, is not always clear.) Disparaging remarks about an employer's products on a private Facebook account became the grounds for fair dismissal in *Crisp v Apple Retail*.<sup>11</sup> In that case, an opinion was directly expressed about such products as the iPhone (a 'Jesus Phone') while also mocking the company's slogans. The extent of control over the person's views even outside work was emphasised as a valid point, with reference to training provided by the company.

Some legal deliberation focuses on whether the employer in question actually breaches the code of conduct or the employment contract. In the case of *Judith*

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<sup>8</sup> For a range of discussions, see Hocking 229; Tham 238-9; Gelber.

<sup>9</sup> *Little v Credit Corp Group Limited* [2013] FWC 9642 at [67], noted in Pen (271).

<sup>10</sup> Donald J. Trump, Twitter, 1 July 2017, <<https://twitter.com/realDonaldTrump/status/881281755017355264>>.

<sup>11</sup> *Crisp v Apple Retail UK Limited* [2011] ET/1500258/11.

*Wilkinson-Reed v Launtoy Pty Ltd*, the court held that private messages sent from a social media account yet not made public on 'the wall' did not breach the social media policy of the employer.<sup>12</sup> The commissioner in that instance did take into account the degree of access in terms of how broadly available the Facebook conversation in question would have been.<sup>13</sup> In conclusion, a 'warning' would have sufficed.<sup>14</sup>

Cases have struggled about squaring the impact of an employee's opinion with the controlling powers of the employer. Matters of degree are considered as important, as is the content of the message and the forum it stems from. The Danish Industrial arbitration tribunal, for instance, found that a comment made on a private, closed Facebook account did not mean that the user should have ignored the reality that harm might be caused to the bank of her employ. The statement, in all its colour, was posted on the last banking day in 2012: 'Holiday! Damn people who come to think of children's savings account and pension savings on the last banking day of the year. We have fucking 364 other days in the year where you can call us about that!'<sup>15</sup> On a closer consideration of her case, the Tribunal proved lenient to the employee, considering her state of frustration, the fact that her links to the bank were not mentioned on either her profile or in the comment, that it was not directed at specific customers or the managers of the bank, and that the bank was unable to document any harm because of the comment. Two further grounds were noted: her service with the institution had been an enduring one (nine years in total), during which she had received no warnings, and her swiftness in removing the remarks after being requested to do so by the manager.

The instance where an employee forgets his or her station, launching into a personal remark is something that is particularly sensitive in media organisations. Fronts of objectivity, however illusory, have to be maintained. Octavia Nasr, a CNN journalist, was dismissed in 2010 after expressing respect on Twitter for a Hezbollah cleric, Mohammed Hussein Fadlallah, on his death (Bauder). The argument made by CNN was that the tweet had breached the news company's editorial standards and compromised her position as senior editor for Middle Eastern Affairs.

Another, even more conspicuous Australian example was provided by the sacking of sports journalist Scott McIntyre for critical tweets on Australia's

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<sup>12</sup> *Judith Wilkinson-Reed v Launtoy Pty Ltd* [2014] FWC 644.

<sup>13</sup> *Judith Wilkinson-Reed*, at para 57.

<sup>14</sup> *Judith Wilkinson-Reed*, at para 78.

<sup>15</sup> *Basisbank A/S v A*, (FV 2013.0022), noted in Angermair and Holck.

commemoration of Anzac Day.<sup>16</sup> Commenting on Anzac Day had little to do with his usual job prescription, but that hardly mattered. The case is interesting in its inadequacy in charting the lines as to how public and private domains interact in the context of social media expression. What mattered was merely the purpose for which the journalist was dismissed. McIntyre subsequently appealed his dismissal arguing that his employer had breached the ‘general protections’ for workplace rights according to the *Fair Work Act 2009* (Cth). He subsequently changed tack to an unlawful termination application on realising that any s. 351 application in expressing a political opinion was ‘doomed to fail’ given the lack of protections for political opinion offered under NSW law.<sup>17</sup>

As Justin Pen observes, there must be a relevant connection between misconduct on the part of the employee and their employment relationship. The forerunner to the Fair Work Commission, the Australian Industrial Relations Commission, noted that ‘only in exceptional circumstances’ could an employer exert a right to supervise ‘the private activities of the employee’.<sup>18</sup> The hall mark case here about identifying a nexus between conduct outside the workplace and ‘exceptional circumstances’ warranting employer interference in Australia remains *Rose v Telstra*.<sup>19</sup> Objectively viewed, such conduct would have to damage the employment relationship, damage the employer’s interests, and prove incompatible with the employee’s duty as an employee. The transforming nature of the Australian labour market has, however, loosened the grounds for such interference, given the demise of ‘time-service’ labourers in favour of ‘task-performance’ workers where work flexibility, and out-of-hours activities are more the norm (Pen 271; Thornthwaite; Renda).

The relevant section there, and one similarly valid to the case of Ward, is that, ‘An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person’s race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin’.<sup>20</sup> Dismissal and demotion are considered adverse actions, while the onus is placed on the employer to show that the act was not motivated by an impermissible reason (s. 361). That said, the FWC has also gravitated towards a less accommodating view on the division between work engagement and private activities (Renda 28).

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<sup>16</sup> Riley; *Scott McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation* (C2015/3039) [2015] FWC 6768,

<<https://www.fwc.gov.au/documents/decisionssigned/html/2015FWC6768.htm>>.

<sup>17</sup> Discussed in *Scott McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation*.

<sup>18</sup> *Appellant v Respondent* (1999) 89 IR 407, 416.

<sup>19</sup> *Rose v Telstra Corporation Ltd* [1998] AIRC 1592 (4 Dec 1998), noted in Pen (271).

<sup>20</sup> *Fair Work Act 2009* (Cth), s. 351.

What constitutes permissible expression and approved behaviour in the workplace in so far as it is influenced by private considerations remains a continuously contentious point. Australian law had also considered in its early years that a person was entitled to wear, worship or believe anything of one's choice as long as it did not impair the pursuit of work.<sup>21</sup> But the scope of such a provision has been dramatically circumvented by the acceptance on the part of courts that employers may well have other 'legitimate' reasons in employment regulations to terminate employment.<sup>22</sup> An employee might be a member of a union and protest against the employment of non-union labour with placards, yet be dismissed on a basis separate to engagement in industrial activity. Conduct unbecoming of an employee may still be cited as a valid, non-prohibited reason.<sup>23</sup> Nor do certain anti-discrimination provisions specifically cover instances where an employee might be targeted at state law (notably South Australia and New South Wales) for having certain political or religious opinions.<sup>24</sup>

### Forms of Communication

Another way of appraising the Ward case, one directed to a more nuanced awareness of modern expression and opinion, is understanding the evolving concept of spheres of communication, where sophisticated forms of engagement have taken place across converging areas. The emergence of various technological platforms has seen a collision of these spheres and fields of communication pertinent to employment in question, of which the academic discipline has not been exempt. The current concept of a Habermasian public space involving public communication and deliberation has been replaced by a more complex fragmented environment of communicative communities. As Habermas explains, this concept of *Öffentlichkeit* is a space where traditional print and broadcast media provide a form of 'mediated political communication' which is 'carried on by an elite' (Habermas 416). The journalists, along with the relevant media organisations, are the mainstays of this system, while the public tend to be mere spectators to what amounts to a 'virtual stage of mediated communication' (Habermas 415).

This formulation remains strictly relevant to a hierarchical envisaging of society when Habermas wrote his thesis. Information engagement is strictly confined to elites, who produce the content; and the public, which consumes it. This binary

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<sup>21</sup> *Australian Tramways' Employees Association v Brisbane Tramways Co Ltd* (1912) 6 CAR 35.

<sup>22</sup> *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32; *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* [2014] HCA 41.

<sup>23</sup> *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* [2014] HCA 41.

<sup>24</sup> Comment on *Anti-Discrimination Act 1977 (NSW)*, in *Scott McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation*, Para 29. In similar fashion, see the *Australian Human Rights Commission Act 1986* (Cth).

has been complicated, featuring multiple environments of information sharing in the Web 2.0 setting, generating spaces of often noisy engagement authorities have found difficult to regulate. This has engendered a new form of reader and spectator, what has been termed by Zygmunt Bauman to be an interactive process of consumption and production of material taking place in one act. The creation and engagement with a Facebook post can be taken as an example. This necessarily diversifies the participatory dimension (Bauman). The emergence of new generations of news producers and commentators has also seen the environment of communication transformed to become the instantaneous and volatile space of engagement we now know as the blogosphere (Barlow).

Other moves also suggest greater interaction of such citizens in engaging social content, along with facilities that further such discussion. Facebook has a series of emotive registers that can be demonstrated for each post or article that is shared. Twitter permits users to comment and further distribute postings through circles of 'followers'. Reddit provides a social news aggregation site that ranks and discusses submitted material. These areas of engagement have generated digital communities where discourse, often of a fiery sort, take place.

The scholarship on understanding types of public spheres is also illustrative. Hartley and Green suggest the dimensions of a 'cultural public sphere'; Dahlgren and Webster posit the notion of a 'political public sphere' (Dahlgren; Webster). What matters is that such spheres show greater scope for engagement, and, most significantly for organisations, greater scope for effect. 'Unpacking the traditional public sphere into a series of public sphericules and micro-publics, none of which are mutually exclusive but which co-exist, intersecting and overlapping in multiple forms, is one approach to understanding the ongoing structural transformation of the public sphere' (Bruns and Highfield). Added to this are the Hashtag worlds that have emerged with the use of Twitter, or Facebook users (Weller et al.). To that end, a more sophisticated appraisal of such communities is required, not merely for those who engage them, but for those attempting to understand their forms of interaction. The administrative wing of university relations sees threats when it should also see options and opportunities. It also follows that such individuals in a university's employ will continue to ponder and engage their intellectual work outside specified work settings.

The university fit in these discussions has been unclear, though statements abound in the United States over the continuing importance of free academic expression despite the emergence of such networking technologies. The American Association of University Professors has argued through its Council that one 'overriding principle' prevails in academic freedom and electronic communications:

Academic freedom, free inquiry, and freedom of expression within the academic community may be limited to no greater extent in electronic format than they are in print, save for the most unusual situation where the very nature of the medium itself might warrant unusual restrictions—and even then only to the extent that such differences demand exceptions or variations. Such obvious differences between old and new media as the vastly greater speed of digital communication, and the far wider audiences that electronic messages may reach, would not, for example, warrant any relaxation of the rigorous precepts of academic freedom. (American Association of University Professors)

Internationally speaking, the trend towards using, yet noting the risk in using such social media technologies deemed ‘dynamic and unlimited in scale’, is being acknowledged by numerous entities, including universities (See, for instance, Hounsell). Monash University’s policy statement makes it clear that social media can be used by ‘staff, students and associates to connect with each other and a broader community of researchers, business partners, alumni, supporters and colleagues as an important tool of academic, community and business engagement’ (Director). A closer look at the detail of the policy make it clear that staff and associates ‘are required to understand their obligations as representatives of the University and that their actions can impact upon the University’s reputation’ (Monash Univeristy). The language of caution is severe and a forewarning. ‘Recognise that online content can and will live forever’. The policy then makes the stark assumption that separating the personal from the professional is a no easy matter. ‘Separate the personal from the professional: there is no clear line between a staff member’s or associate’s work life and personal life. One should always be honest and respectful in both capacities’ (Monash University).

La Trobe University also insists on a social media policy governing ‘people representing the University through social media channels’. They must ‘adhere to this procedure in order to advert problems that may arise from engagement in this space’ (La Trobe University). Section 2.1 is broad in its application, making it clear that employees, in using Web 2.0 technologies, are ‘personally responsible for all content you publish and any comments you make’. Injunctions exist on posting material deemed inflammatory, racist sexist or offensive, while comments contrary to La Trobe’s statutes should not be posted. This very fact insinuates a degree of control over opinion, and, by implication, dissent.

One neglected perspective on the subject of social media use in universities is the self-regulatory nature of the debates that unfold in that space. The use of Facebook entails restricted views to communities, a Facebook sphere specific to

its users and often mediated by users. Restrictions can be placed upon use and access. Comments can also be restricted to such circles. The idea of seeing Facebook as a pure public area of untrammelled engagement is also fraught with difficulties. Unexamined, the Facebook world seems like a global, unmediated medium. But within its functions exist controls and privacy protocols. While the organisation has unnecessarily complicated such settings, and been criticised for inappropriate monetisation of data from users, its protocols require a more nuanced understanding about how that particular sphere functions (See Caers et al.). Another point missed by university management and its appraisal of public relations is that such communities also act as counteracting forums of debate and discussion. Ward may well have expected her views to be affirmed by supporters; she might just as well have expected similar communities to counter with rebuttals, a point that would suggest debate rather than damage to the university's name.

### **Meditations on Reform**

As Watson has cuttingly noted, academics failed to see the various transformations to the modern university, be it the predations of administrations or the dictates of economic rationalism. Nor did 'the monks in that quaint little abbey on Lindisfarne... see the Vikings coming' (Watson). That abbey, in hindsight, was a true utopia of aims, allocations and expression, the pre-brand world. Donald Meyers has suggested in *Australian Universities: A Portrait of Decline*, that previous university administrations had much to merit them (Meyers). They gave greater returns for less money; academics were permitted to teach and research with a smaller load of administrative responsibility. 'Academia', argues Morrish, 'badly needs a manifesto for academic citizenship to counteract the project of managerial colonisation' (Morrish). The modern university needs reform, but not along a business model that values pure matters of logo, brand and image rather than accompanying thought and deliberation. Not least of all, this requires a return to basic roots, the true radical sense that it be an educational rather than business institution. The corporates have the upper hand, and through their public relations and human resources arms within universities, exert control over how academics behave in the public sphere. A first step would be ensuring that the profit driven hand of management is lessened to permit academics to engage in acts of public and intellectual debate in ever changing spheres of the information environment. The only market place permitted should be one stocked with the currency of ideas, rather than that of image.

The general regulations that exist on communicating such ideas, be it through Facebook, Twitter and other applications, should be more a case of policies relevant to those platforms and the public rather than the institution employing

academics. Universities have, at the very least, acknowledged the reach of such media in spreading ideas and concepts. They have only done so in the now traditional commercial-corporate paradigm that sees the university as a body that has ceased, in Readings' words, to participate 'in the historical project for humanity that was the legacy of the Enlightenment: the historical project of culture' (Readings 5). What management has sought to do is merely harvest aspects of the technological fruit, rather than the whole bounty, which is vast. Ward's behaviour should never have led to the reaction it precipitated. With its bureaucratically bungling approach, it typified the errors and dangers of an ill-considered strategy reconciling the use of social media platforms with commercial branding. Without further exegesis about the phenomenon of branding, the workplace will continue to expand its influence into the private domain of views which, when publicly expressed, can be duly used against employees without due protection. Well it might be, in the words of market analyst for Randstad, Steve Shepherd, that 'the old adage of what happens in Vegas stays in Vegas is no longer true' (Mello). But not permitting some semblance of it will invite a chilling, de facto form of continued intrusive censorship, one most critically felt in the commercialised, metric-driven academy.

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