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Race hate is so much more than words can say

David Knoll
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Do we believe sticks and stones will break our bones, but words will never hurt us? Of course not. The record is replete with cases of schoolyard bullying ignored, leading on to physical violence and, sometimes, serious injury and death. By getting away with it, bullies are only encouraged.

Do we believe that the big and strong have the same need to defend themselves as that of the small and weak? Surely not. We know there is usually an aggressor and a victim.

Do we believe the libertarian view that holds that the rich and the poor have equal rights to sleep under bridges in the dead of winter? No, we scorn those views, because we know that the rich have homes to go to, and in difficult economic times, too many poor people do not.

The test of a healthy democracy is not only allowing each individual the freedom to do as they please. It is also to have measures that protect the weaker among us from those who choose to abuse those very freedoms.

One of those measures is the protection against vilification. It is illegal in NSW to incite hatred or serious contempt for, or severe ridicule of, people on the basis of race or homosexuality. Victoria prohibits vilification on religious grounds, recently the subject of criticism by those who see it as restricting freedom of speech.

But vilification, intimidation and bullying all restrict victims from exercising their liberty, from, in effect, enjoying their rights of free speech and free expression.

We need to remember that there is a practical difference between words that may offend a majority group, faith or culture, one with social power and which can defend itself, and attacks directed at a less powerful minority, one fearful of the majority's reaction. Vilification degrades the humanity of members of the minority group in the eyes of the majority, whether that outcome is intended or not.

The English philosopher John Stuart Mill recognised that liberty does not licence individuals to do as they please in his famous "Essay on Liberty". That would mean the absence of law and of order, and ultimately the destruction of liberty. Liberty is measured not by the freedom exercised by one person, but rather by the freedoms exercised by us all. This idea is central to the Australian ethos of a "fair go".

The stolen generations were not given a fair go. They were intimidated and humiliated. As the Prime Minister, Kevin Rudd, said in his apology speech last year, we need a future of "mutual respect, mutual resolve and mutual responsibility". The Prime Minister rightly observed that "for the stolen generations, there

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was no fair go at all".

In 2005 a Sydney university lecturer, Andrew Fraser, described the resettlement of Darfurian Sudanese refugees here as part of "the ever-expanding refugee industry" and labelled their acceptance a "national suicide".

His hateful words received much media amplification. The refugees felt the reverberations; they were humiliated and intimidated.

Some people took a lead from Fraser's racist claims. They made statements to black colleagues such as: "Sudanese people are criminals", "You are the disease of Australia" and "You are colonising Australia". Sometimes they followed up with harassment, verbal and physical.

One black child was repeatedly taunted by one of his classmates who stated "You're black. Andrew Fraser says you're stupid". After the scuffle that broke out afterwards, only the victim was disciplined by the teacher.

The race-hate words led to sticks and stones. Fortunately, they had anti-vilification laws to rely upon. Fraser publicly apologised, and the employer and school have changed their practices.






In a case involving the Adelaide Holocaust-denier Frederick Toben the Full Federal Court accepted that Australia has a public interest in punishing dissemination of ideas based on racial superiority or hatred, and that there is no public interest in promoting them.

The court ruled that reasoned, fairly expressed, appropriately qualified policy debate is permissible, but sweeping, public derogatory generalisations about any racial group are impermissible.

That is the line that should be drawn. Last week, the court backed up its position by finding Toben guilty of contempt for defying earlier court orders to stop his continued vilification of Jewish Australians. It upheld the Australian ethos of a fair go. As Chief Rabbi Sir Jonathan Sacks once put it: "Free speech is one thing; responsible speech another; and a free and gracious society needs both."

David Knoll is a Sydney barrister.

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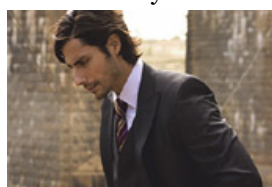
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