

SYDNEY

PEN magazine

November 2017

Liu Xiaobo: The Man Who Stayed



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Hate speech, women’s rights and linguistic diversity



The 2017 PEN International Congress in Lviv opened soberly with the honouring of long-time PEN case list member Liu Xiaobo. Afterwards came acknowledgement of PEN campaigners from across the world who had died in the previous year – Rosie Scott was, of course, among the writers honoured and remembered.

Twenty months after the horrific murder of 12 staff members at the offices of satirical French newspaper *Charlie Hebdo*, the Congress grappled with the tension contained in PEN’s charter between our core commitment to freedom of expression and our commitment as PEN members to dispel hatred. A legalistic paper generated out of the PEN International Peace Committee failed to secure immediate support, and a consultative group from across PEN’s membership has been formed to draft a paper for consideration at the 2018 Congress.

PEN International did do two historic things in Lviv: changes to the PEN Charter to increase the scope of PEN’s work in dispelling all forms of hatred – which passed with a large majority – by encompassing misogyny as well as racial and religious hatred. Coupled with this was the unanimous adoption of the Women’s Manifesto championed by PEN International President Jennifer Clement and fellow South African Board member Margie Orford. This manifesto will be used by PEN to address the historical and continued silencing of women – in some countries in very obvious ways such as women being denied personal safety, education or right to publish. I note that these issues have been taken up in Australia for some years now by the Stella Award and the Stella Count which analyses the amount of review space given to women authors.

Elections took place in Lviv and saw Iman Hamyadan of Lebanon elected. Her presence means that the Board has better representation from this region which sadly has a long representation in the PEN case list of imprisoned authors and laws that need changing. In a Congress alive with the idea of

recognising women’s voices, it was fitting that the other elected Board member was Margie Orford, returned for her second term.

In other elections Australia now has its first PEN International Vice President – Judith Rodriguez of PEN Melbourne. Judith has been working with PEN for over two decades, has served on the Board of PEN International for two terms, and as its Search Committee Chair has taken part in several PEN missions to countries in the Asia Pacific.

It may be familial pride, but I was overjoyed when both Judith and her long-term colleague from PEN America West, Eric Lax, each received overwhelming support for their candidacy. Vice-Presidents are nominated and elected on the basis of outstanding service to PEN at its highest levels. Along with the great honour of this position, Vice-Presidents are able to use this title to progress PEN International’s mission.

On the local front, Australia continues to have laws in place that effectively imprison asylum seekers on islands off the north of Australia. And we continue to have laws that seek to suppress media from commenting on the workings of government in the name of countering terrorism.

Our first partnership with Settlement Services Australia in which we co-hosted a debate on cultural appropriation at the Cell Block Theatre in July was successful. Sunil Badhami was an excellent compere, and for me the stand-out speakers were the indefatigable Tom Keneally and the wonderful and lateral-thinking Indigenous artist and activist Bronwyn Bancroft. It circled some of the same territory as the hate speech debate. As Tom Keneally says, “We can write from other cultures’ perspectives, but we can do so with respect and affection, and with permission.”

News that the NSW State Government is establishing a body with the aim of preserving 35 unique Indigenous languages of NSW is encouraging. Language is at the core of freedom of expression and these languages are a very significant part of the cultural heritage of their communities. PEN Sydney has long talked about our commitment to this area that sits in the remit of the PEN International Translation and Linguistic Rights Committee.

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Sydney PEN

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Liu Xiaobo. Picture: Liu Xia

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Liu Xiaobo: The Man Who Stayed

A special report by Ian Johnson



Liu Xiaobo.
Picture: Liu Xia

For gentlemen of purpose and men of benevolence, while it is inconceivable that they should seek to stay alive at the expense of benevolence, it may happen that they have to accept death in order to have benevolence accomplished.

—Confucius, *Analects*

In 1898, some of China’s most brilliant minds allied themselves with the Emperor Guangxu, a young ruler who was trying to assert himself by forcing through reforms to open up China’s political, economic, and educational systems. But opponents quickly struck back, deposing the emperor and causing his advisors to flee for their lives.

One, however, stayed put. He was Tan Sitong, a young scholar from a far-off corner of the empire. Tan knew that remaining in Beijing meant death, but hoped that his execution might shock his fellow citizens awake.

It wasn’t a modest decision. Tan was one of the most provocative essayists of his generation. He had published an influential book decrying the effects of absolutism. He had founded schools and newspapers, and advised other political figures on how to change the system. There was every justification for him to save his own skin so he could contribute to future battles. But these arguments also made Tan realize how valuable it was that he remain in the imperial capital: facing death proudly, at the hands of those resisting reforms, could make a difference; people might pay attention to China’s plight.

So as his friends boarded ships to Japan or fled to the provinces, Tan went to a small hotel in Beijing and waited for the imperial troops. They soon arrived and quickly condemned

Sydney PEN campaigned on behalf of Liu Xiaobo under its Writers in Detention program from the time he was imprisoned in 2008 for his participation in the Charter 08 manifesto calling for an independent legal system, freedom of association and the elimination of one-party rule.

him to death in the inevitable show trial that followed. The trial itself was interrupted only by an order from above to get on with it: Tan was to be executed immediately.

Before his decapitation at Beijing's Caishikou execution grounds, however, Tan was able to utter what today are some of the most famous words in China's century-and-a-half effort to form a modern, pluralistic state: "I wanted to kill the robbers, but lacked the strength to transform the world. This is the place where I should die. Rejoice, rejoice!"

I couldn't help but think of Tan these past few days as China's best-known democracy activist, Liu Xiaobo, lay dying of liver cancer in a hospital prison. Death comes to all people and cancer is not the same as an executioner's sword. But the deaths of the two seemed somehow to connect across the hundred and nineteen years that separate their fates. Like Tan, Liu threw his weight behind a cause that in its immediate aftermath seemed hopeless—in Liu's case, the 1989 Tiananmen Square protests. But with time, history vindicated Tan; I wonder if it will do the same for Liu.

When the Tiananmen protests erupted, Liu was abroad but chose to return. After the protesters were bloodily suppressed, many of the Tiananmen leaders who could left the country; Liu, too, after a brief stint in prison, had opportunities to leave. But like Tan Sitong, he chose to stay in China, where he mattered most. Even after a second, harsher stint in jail, Liu was determined to remain and keep pushing for basic political rights. He was risking not the immediate arrival of soldiers, but the inevitable and life-threatening imprisonment that befalls all people who challenge state power in China today.

This was not an active decision to die, but a willingness to do so.

The perversion was that his punishments grew even as his ideas became more nuanced and moderate. His only major biographer, the exiled essayist Yu Jie, writes that Liu began life as a typical product of the Mao era: prone to extreme, romantic positions—a "gangster" enamored with grand gestures and outrageously rude statements. In a way, the early Liu was like Tan Sitong, hoping to shock China awake.

But Liu's rigorous self-reflection changed his views and actions. Especially in the two decades that followed Tiananmen, he distilled his brazenness to what Yu calls "truthfulness, directness, and the courage to blaze new trails."

This didn't mean shunning protests or direct action,

but prioritizing the more realistic and—even though Liu often provocatively said he was in favor of complete westernization—very Confucian idea of promoting social change through one's own life and actions. He said Chinese should study "the non-democratic way we live," and "consciously attempt to put democratic ideals into practice in our own personal relationships (between teachers and students, fathers and sons, husbands and wives, and between friends)."

Liu's moderation culminated in Charter 08, a petition for political change that relied heavily on rights already enshrined in China's constitution and in internationally recognized UN treaties. He helped draft Charter 08's careful language, and he did much to persuade others to sign it. As a result, in 2009 he was sentenced to eleven years for "subversion of state power."

This wasn't the same as Tan's death sentence but it marked the end of Liu's freedom—and above all, for Liu, of his ability to speak out. At the time, Liu was fifty-four and it was conceivable that he could have been released at age sixty-five to live another decade or two. But even if he had left prison alive in 2020, it would have almost certainly been to permanent house arrest and removal from public life—no Internet, no telephone, no visitors—much the way his wife, the poet Liu Xia, has been made to disappear or the reformist Party secretary Zhao Ziyang vanished from public life for years until he finally died of old age.

But Chinese prisons are harsh, and house arrest was not to be his fate.

The exact sequence of events may never be understood. Unlike East Germany's Stasi, China's state security apparatus is unlikely to implode suddenly and leave us a trove of information that will make clear exactly who knew what when. But it is clear that Liu fell victim to circumstances that strongly suggest government malfeasance.

According to a friend of Liu's who has been in regular touch with the family over the years,

Liu's family was told he had cancer in early June. But this was only made public on June 26. I suspect what happened was that authorities suddenly realized that Liu was close to death and how bad it would look if he died in jail—immediately, people began pointing out that, previously, the only Nobel Peace Prize winner to die in state custody was the German pacifist Carl von Ossietzky, who died in a Nazi jail three years after winning the 1935 prize.

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China has not collapsed as the West forecast in the 1980s and 1990s, but has created a global economic miracle. A group of pro-democracy activists and dissidents lost a bet and ruined their lives. Although Liu was awarded the Nobel Peace Prize, he is likely to face tragedy in the end.

And so Liu's captors quickly sent him to a secure hospital—and decided it would be in their interest to make this public, issuing the misleadingly benevolent statement that it was granting Liu "medical parole" (when he fact he was simply under guard in a cancer ward).

Does this sequence of events imply neglect? Authorities have gone to great lengths to rebut these allegations. They took the unprecedented step of issuing fairly regular health bulletins about his condition, and of allowing foreign doctors to visit Liu. One of their favorite pit-bull media outlets aimed at foreign audiences, The *Global Times*, also wrote several articles attacking Liu and blaming him for his illness.

One, published two days after his condition became public, set the nervous and accusatory tone. The article implied that Liu would not be allowed to seek treatment abroad. The reasons given were purely political: if allowed abroad he might seek to use his position as a Nobel laureate to cause trouble for China. As for his illness, the article darkly said that Liu had himself to blame:

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After Liu died the newspaper predicted that Liu would be forgotten with time. It said that heroes are only created if their "endeavors and persistence have value to the country's development and historical trends."

In a way, this is in fact the crux of the issue: what is China's historic arc? China's authoritarian leaders justified their reign through mysticism: that the forces of history had chosen the Communist Party. Then, after thirty years of political upheaval and famines ended in the late 1970s, the Party adopted the role of a development dictatorship: it developed, therefore it ruled.

For about the past decade, however, this rationale has faded as growth has slowed and many Chinese grow used to prosperity. Now China's rulers use other justifications: they are helping to restore traditions destroyed during the twentieth century, and vow to create a more moral political and social order. This has been the promise of Xi Jinping, who is nearly halfway through what is expected to be a ten-year reign at the top.

But how to reconcile this new vision with the treatment of people like Liu? In one of his essays, Liu made a prescient point about dissent. He said that people today have become less willing to tolerate the government

locking people up for expressing their views.

I think this is right. People support the government for jailing or even executing terrorists or those accused of corruption. But for merely suggesting a course of political reform? People will shake their heads and

say that it's typical of the Communist Party to do this, but I've rarely met anyone other than an apologist who thinks it's justified.

Maybe this is because the idea of remonstrating—of offering constructive criticism—has been an accepted part of China's political system for thousands of years. China has a long history and many emperors have rejected advice and executed officials for daring to offer it. But they always went down in history as the bad guys. If Xi is trying to recreate some sort of traditional moral order then how can one justify such harsh treatment of people just for their ideas?

This is why Liu matters: his life and death stand for the fundamental conundrum of Chinese reformers over the past century—not how to boost GDP or recover lost territories, but how to create a more humane and just political system.

Like Tan, Liu knew his place in history. Tan saw China plagued by a cycle of karmic evil that had to be broken. For Liu, his role as a public intellectual was to see the future and report back, whatever the costs. As he wrote in the 1988 essay *On Solitude*:

*Their most important, indeed their sole destiny...is to enunciate thoughts that are ahead of their time. The vision of the intellectual must stretch beyond the range of accepted ideas and concepts of order; he must be adventurous, a lonely forerunner; only after he has moved on far ahead do others discover his worth...he can discern the portents of disaster at a time of prosperity, and in his self-confidence experience the approaching obliteration.**

*From Geremie Barmé, "Confession, Redemption, and Death: Liu Xiaobo and the Protest Movement of 1989," in *The Broken Mirror: China After Tiananmen*, edited by George Hicks (Longman, 1990).

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Raising awareness about the plight of asylum seekers and refugees



120 Drops by Krystal Campbell

Debra Adelaide

The Empathy Poems project is designed to raise awareness about the plight of asylum seekers and refugees. It is a response in particular to the situation in Australia, where asylum seekers have been banished offshore and treated in the most inhumane manner, leading to despair, suffering and deprivation. Their treatment is almost unimaginable, coming as it does from a civilised nation.

But the Empathy Poems does indeed ask people to imagine and empathise with this suffering, and to show their support by offering a personal creative response.

The project was also inspired by Ian Syson's poem, 'Beach Collection', published in early 2016, which in itself was inspired by Kenneth's Slessor's famous poem about human suffering in World War 11, 'Beach Burial'.

The idea behind the Empathy Poems is simple: people choose a poem they have an affinity with and reimagine, rewrite or respond to it in any way, but with the broad themes of refuge and seeking asylum.

Why poetry?

Poetry is the perfect form to inspire empathy

amongst readers. We all learned poetry when we were very young, in the form of nursery rhymes and songs: poetry was probably our first introduction to literature, it is that fundamental to our culture.

Poetry also has a long tradition of political purpose, and of responding to and offering insight into, crises and dramas of a major, national and global nature. Poets as diverse as Adrienne Rich, Langston Hughes, William Blake, William Butler Yeats, and, in Australia, Oodgeroo (Kath Walker), Bruce Dawe, Kate Jennings, and Graham Rowlands — to name a few — have all written political poetry.

And poetry, like all great literature, has a habit of reinventing itself: from Homer's *Odyssey*, through James Joyce's *Ulysses*, to the Coen Brothers' *O Brother Where Art Thou?*, poetry demonstrates its endless capacity for adaptation, for reimagining itself and speaking across the generations, and across the world.

Anyone may contribute to the Empathy Poems. They only need to be sympathetic to the plight of people who seek refuge due to displacement, oppression and persecution. Contributors may choose any poem that inspires them to compose their own, and any

of the Empathy Poems already on the website will show how that is possible.

Contributors have been inspired by poems that they are personally attached to, or to a childhood favourite, or by a poet whose work they love and admire. The website accepts contributions from anyone, and features poems from well-known as well as not so well-known people, from poets and non-poets, from students and even first-time writers. But it has been an extra pleasure to receive poems from people in the public eye whose voice adds extra weight to the cause; people such as Benjamin Law, Linda Jaivin, Professor Ross Gibson, Carmel Bird, and Dr David Isaacs.

The poems include a button at the bottom of each page, directing the reader to the original poem of inspiration on another website, such as Poem Hunter or Poetry Foundation.

The Empathy Poems website (www.empathypoems.com.au) is sponsored by the Faculty of Arts & Social Sciences at the University of Technology Sydney, as part of its commitment to social justice issues, and to demonstrate its particular concern for the treatment of asylum seekers.

120 Drops design

The design for the Empathy Poems was created by UTS student artist Krystal Campbell. The piece features watercolour paint dripped over a hand-drawn map of the world. The 120 drops, invoking imagery of water and tears, each symbolises 50,000 people, representing the more than 60 million people currently displaced globally by conflict and persecution.

Submitting poems

Poems may be submitted here: submissions@empathypoems.com.au

Beach Collection

Ian Syson

Softly and humbly to the Edge of Europe
The convoys of dead Syrians come;
At night they sway and wander in the waters far under,
But morning rolls them in the foam.
Beneath the sombre pathos of the rhetoric
Someone, it seems, has time for this,
To pluck them from the shallows and lie them on a blanket
To clean the sand from their nakedness;

And each death certificate, the driven prerogative
of bureaucratic finality,
Bears the last signature of men,
Written with such perplexity, with such bewildered pity,
The words choke as they begin –
"Unknown refugee" – the ghostly pencil
Wavers and fades, the purple drips,
The cold of impending autumn has turned their inscriptions
As blue as drowned men's lips,

Dead refugees, gone in search of the same
landfall,
Whether as Christians or Muslims,
Or, God forbid, atheists; the sand joins them together,
In a waiting room for some kind of heaven.
(2016)

Inspired by Kenneth Slessor

Beach Burial

Kenneth Slessor

Softly and humbly to the Gulf of Arabs
The convoys of dead sailors come;
At night they sway and wander in the waters far under,
But morning rolls them in the foam.

Between the sob and clubbing of the gunfire
Someone, it seems, has time for this,
To pluck them from the shallows and bury them in burrows
And tread the sand upon their nakedness;

And each cross, the driven stake of tidewood,
Bears the last signature of men,
Written with such perplexity, with such bewildered pity,
The words choke as they begin –
'Unknown seaman' – the ghostly pencil
Wavers and fades, the purple drips,
The breath of the wet season has washed their inscriptions
As blue as drowned men's lips,

Dead seamen, gone in search of the same
landfall,
Whether as enemies they fought,
Or fought with us, or neither; the sand joins them together,
Enlisted on the other front.
(1944)

The Wounded Refugee

Abdul Karim Hekmat

Australia is preoccupied with refugees and asylum seekers who come by boat and who have been continuously dehumanised and demonised. The refugees are damaged figures. They are marooned on islands in out-of-sight and out-of-mind locations. Many more are suffering in plain sight in the community with increasing mental health problems. In *The Invisible*, five artists come together to transform their refugee experiences through art. In this state of transformation, refugees are given voice and are able to heal the wound in the narrative gap that silences them.

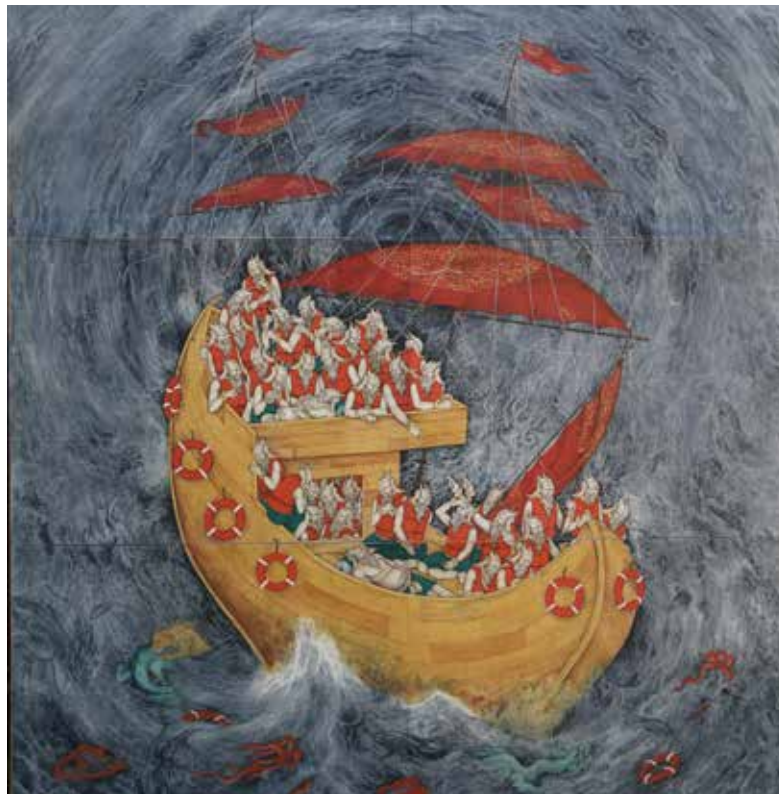
There was no clear plan as to who should be included in the exhibition at the beginning; or what has brought us together is our collective pain, trauma, suffering and aspiration. *The Invisible* offers a counter narrative to the dominant and dehumanising discourse on refugees. The art works include installation, painting, video and documents in which each artist charts a sense of displacement, loss and trauma to reflect upon the journey between homeland and host-land. The exhibition takes its subtitle, ‘See what is not seen’ from an 18th century poem by Hafez Esfahani whose works are concerned with love, compassion and the journey of the soul. The world of Persian poetry is imbued with stories of love, often in allegorical and human forms.

The artists in the exhibition belong to two of the world’s most persecuted ethnic groups, the Kurds and the Hazaras. Both groups have established a sizeable community in Australia. The Hazara population arrived here after fleeing persecution by the Taliban in late 1990s and they now number some 40,000. The Kurdish population is smaller, around 7000, and arrived earlier after fleeing persecution in the Middle East. These communities are still searching for a home.

A quarter of refugees seeking asylum in Australia — either being held in the community or marooned in offshore centres — are from the Hazara and Kurdish communities. The artists represented in the exhibition are survivors of violence and terror. We are fortunate to live in peace and security, and to have the opportunity to share our experiences through art and storytelling.

Rushdi Anwar and Avan Anwar are Kurdish artists who survived Saddam Hussein’s chemical weapons attacks on Halabja in 1988. They survived because they left Halabja six months before the chemical attack but their families did not. They lost 14 members of their families and their entire town was razed. In the background of each artist’s work there is a site of pain; they carry the wound of displacement and the wounds of their generation of refugees. They translate the physical and psychological wounds of this violence into art. Refugees are absent and present; they dominate the news, yet their true stories are hidden. For the most part, they are suppressed, silenced and punished.

At the end of 19th century in Afghanistan, Khadim Ali’s



Khadim Ali
Untitled (from The Arrivals series)
Gouache, ink and gold leaf on wasli paper

grandparents survived the oppression and massacre of the Hazara population, in which 62 per cent of them were killed. Fearing for his own life in Pakistan, Khadim fled Quetta in 2009 and arrived in Australia on a distinguished talent visa. His family home was destroyed by a bomb blast in 2012.

Elyas Alavim, who was displaced as a child from Afghanistan and lived in Iran for many years before resettling in Australia in 2007, says “While other artists deal with the condition of home, my artwork is mostly centred on the refugee experience in Australia because, unlike them, I have gone through a detention centre and the uncertainty of life on a Temporary Protection Visa, conditions that still afflict many.”

Despite displacement and loss, the artists in this exhibition try to reconnect with the past, presenting work that speaks of two cultures and, most importantly, deals with their traumas.

Avan Anwar engages us with her work on the level of language, transforming Kurdish poetry into a visual image, an object to be seen, with a beauty to be appreciated. By changing the order of the letters, she renders the text incomprehensible, a sign of a person linguistically displaced.

As somebody who was displaced from the bed of her rich culture, Avan says she finds inspiration in the work of poets to deal “with despair and nostalgia.” For the installation work, she selects the poem of 19th century Kurdish poet Nali, who lived in exile and whose poetry deals with the estrangement of exile and the longing for home.

The Invisible takes us beyond Australian sovereign ego to the places from which refugees flee, where violence is part of everyday reality. Rushdi Anwar produced new work from a four-month trip to his home in Kurdistan,



Rushdi Anwar
The Notion of Place and Displacement
Paint, UNHCR tent fabric, safety pins, wood frame, and HD video one channel.



Avan Anwar
Dancing Letters. Paper

Iraq, where 1.5 million refugees were displaced by the Islamic Group and now live in camps. The notion of place and displacement is a tent reconstructed from the raw materials of a standard issue UNHCR tent, in which eight people would live in the camp. He worked with school children in the camp to inscribe their names on the tent fabric. In contrast to refugees identified as numbers in Australian detention centres, he has given them a name, thus an identity and a face.

The exhibition also brings to light the perils faced by refugees on Nauru, who fled violence and terror in their home countries only to face daily terror and violence on the island. The virtual blackout imposed by the Australian Government has made it difficult for the general public to grasp what was happening.

For over a year, I have worked with refugees on Nauru, interviewing them by long distance, obtaining some video footage to break the silence. Many are psychologically broken and physically distraught. Refugees in this situation are victims of state-sanctioned violence (and) when this violence enters the public realm it is rendered banal.

Included in the exhibition is a selection of poetry from *The Empathy Poems*, a project supported by the UTS Faculty of Arts & Social Sciences, which asks people to take a famous or much-loved poem and rewrite it in order to express the experiences or concerns of refugees. For example, inspired by John McCrae’s ‘In Flanders Fields’, Danny Vendramini writes about Alan Kurdi, the Syrian

toddler washed up on the shore of Turkey in 2015.

As UTS academic and novelist Debra Adelaide says, poem by poem, drop by drop, *The Empathy Poems* speak of the power of empathy that poetry creates. “Compassion fatigue is all around us. Indeed the current refugee crisis, in which it is estimated that one in 113 people around the world is now a refugee, surely means that compassion should guide policies and help find solutions.”

The Invisible allows the visitor to enter the space of refugee trauma, and invites them to join in suffering, sorrow, joy and compassion with others to form a shared human community.

Abdul Hekmat, curator of the exhibition at the UTS Gallery, October 3 to November 24, is one of the exhibiting artists.

On Bodrum Beach

Danny Vendramini

On Bodrum Beach my body lies
Washed ashore, amid the cries,
Of strangers strolling by; and in the sky,
As seagulls squawk and sound alarm
A policeman takes me in his arms.

I am the Dead. Short days ago
I lived, felt dawn, saw sunset glow,
Boarded the boat, and now I lie
On Bodrum Beach.

Show my photo to the world:
That all may know, my little dreams
To play with toys and go to school,
Become a man and live in peace
Were ended here, on Bodrum Beach.

Inspired by John McCrae’s ‘In Flanders Fields’

Beached Dreams

Andy Kissane

Silently and gladly to the reefs of Christmas Island
the convoys of asylum seekers come;
at night they cling to the boards of wooden boats that roll
and list in heaving seas.

Between the fob and mincing of the sound bite,
no-one, it seems, has time for this —
to pluck them from a watery grave, wrap them in blankets
and raise a glass to honour

their remarkable courage, their very ordinary dreams
and their right to be proudly Australian. Instead,
we drive shards of broken tidewood into their beating hearts,
sealed by the signature

of our feckless leaders, written with such pragmatic
cowardice, with such unfeeling stubbornness
that the words choke as they begin — “Unknown human” —
the ink bleeds and fades

in a sea strewn with the wreckage of decency,
the withdrawal of compassion, the failure
of a nation to face its fear, to understand that, like all of us,
they come in the hope of a better life.

Nauru/Papua New Guinea
Inspired by Kenneth Slessor’s ‘Beach Burial’

A white man called her kids the n-word. Facebook stopped her from sharing it



Francie Latour was picking out produce in a suburban Boston grocery store when a white man leaned toward her two young sons and, just loudly enough for the boys to hear, unleashed a profanity-laced racist epithet.

Reeling, Latour, who is black, turned to Facebook to vent, in a post that was explicit about the hateful words hurled at her 8- and 12-year-olds on a Sunday evening in July.

"I couldn't tolerate just sitting with it and being silent," Latour said in an interview. "I felt like I was going to jump out of my skin, like my kids' innocence was stolen in the blink of an eye."

But within 20 minutes, Facebook deleted her post, sending Latour a cursory message that her content had violated company standards. Only two friends had gotten the chance to voice their disbelief and outrage.

The *Washington Post* got rare access inside Facebook's headquarters to talk to the people behind the Facebook Live platform about the challenges of policing sensitive and violent material. Experiences like Latour's exemplify the challenges Facebook chief executive Mark Zuckerberg confronts as he tries to rebrand his company as a safe space for community, expanding on its earlier goal of connecting friends and family.

But in making decisions about the limits of free speech, Facebook often fails the racial,

religious and sexual minorities Zuckerberg says he wants to protect.

The 13-year-old social network is wrestling with the hardest questions it has ever faced as the de facto arbiter of speech for the third of the world's population that now logs on each month.

In February, amid mounting concerns over Facebook's role in the spread of violent live videos and fake news, Zuckerberg said the platform had a responsibility to "mitigate the bad" effects of the service in a more dangerous and divisive political era. In June, he officially changed Facebook's mission from connecting the world to community-building.

The company says it now deletes about 288,000 hate-speech posts a month. But activists say that Facebook's censorship standards are so unclear and biased that it is impossible to know what one can or cannot say.

The result: Minority groups say they are disproportionately censored when they use the social-media platform to call out racism or start dialogues. In the case of Latour and her family, she was simply repeating what the man who verbally assaulted her children said: "What the f--- is up with those f---ing n----r heads?"

Compounding their pain, Facebook will often go from censoring posts to locking



Two weeks after Donald Trump won the presidency, Zahra Billoo, executive director of the Council on American-Islamic Relations office for the San Francisco Bay area, posted to Facebook a line from a handwritten letter mailed to a San Jose mosque: "He's going to do to you Muslims what Hitler did to the Jews." Photography by Nick Otto for *The Washington Post*

users out of their accounts for 24 hours or more, without explanation — a punishment known among activists as "Facebook jail."

"In the era of mass incarceration, you come into this digital space — this one space that seems safe — and then you get attacked by the trolls and put in Facebook jail," said Stacey Patton, a journalism professor at Morgan State University, a historically black university in Baltimore. "It totally contradicts Mr. Zuckerberg's mission to create a public square."

In June, the company said that nearly 2 billion people now log onto Facebook each month. With the company's dramatic growth comes the challenge of maintaining internally consistent standards as its content moderators are faced with a growing number of judgment calls.

"Facebook is regulating more human

speech than any government does now or ever has," said Susan Benesch, director of the Dangerous Speech Project, a nonprofit group that researches the intersection of harmful online content and free speech. "They are like a de facto body of law, yet that law is a secret."

The company recently admitted, in a blog post, that "too often we get it wrong," particularly in cases when people are using certain terms to describe hateful experiences that happened to them. The company has promised to hire 3,000 more content moderators before the year's end, bringing the total to 7,500, and is looking to improve the software it uses to flag hate speech, a spokeswoman said.

"We know this is a problem," said Facebook spokeswoman Ruchika Budhreja, adding that the company has been meeting



Being put in “Facebook jail” has become a regular occurrence for San Diego photographer Shannon Hall-Bulzone. Photograph by Shannon Hall-Bulzone

with community activists for several years. “We’re working on evolving not just our policies but our tools. We are listening.”

Two weeks after Donald Trump won the presidency, Zahra Billoo, executive director of the Council on American-Islamic Relations’ office for the San Francisco Bay area, posted to Facebook an image of a handwritten letter mailed to a San Jose mosque and quoted from it: “He’s going to do to you Muslims what Hitler did to the Jews.”

The post — made to four Facebook accounts — contained a notation clarifying that the statement came from hate mail sent to the mosque, as Facebook guidelines advise.

Facebook removed the post from two of the accounts — Billoo’s personal page and the council’s local chapter page — but allowed identical posts to remain on two others — the organization’s national page and Billoo’s public one. The civil rights

attorney was baffled. After she re-posted the message on her personal page, it was again removed, and Billoo received a notice saying she would be locked out of Facebook for 24 hours.

“How am I supposed to do my work of challenging hate if I can’t even share information showing that hate?” she said.

Biloo eventually received an automated apology from Facebook, and the post was restored to the local chapter page — but not her personal one.

Being put in “Facebook jail” has become a regular occurrence for Shannon Hall-Bulzone, a San Diego photographer. In June 2016, Hall-Bulzone was shut out for three days after posting an angry screed when she and her toddler were called lazy “brown people” as they walked to day care and her sister was called a “lazy n----r” as she walked to work. Within hours, Facebook removed the post.

Many activists who write about race say they break Facebook rules and keep multiple accounts in order to play a cat-and-mouse game with the company’s invisible censors, some of whom are third-party contractors working on teams based in the United States or in Germany or the Philippines.

Others have started using alternate spellings for “white people,” such as “wypipo,” “Y.P. Pull,” or “yt folkx” to evade being flagged by the platform activists have nicknamed “Racebook.”

In January, a coalition of more than 70 civil rights groups wrote a letter urging Facebook to fix its “racially-biased” content moderation system. The groups asked Facebook to enable an appeals process, offer explanations for why posts are taken down, and publish data on the types of posts that get taken down and restored. Facebook has not done these things.

The coalition has gathered 570,000 signatures urging Facebook to acknowledge discriminatory censorship exists on its platform, that it harbors white supremacist pages even though it says it forbids hate speech in all forms, and that black and Muslim communities are especially in danger because the hate directed against them translates into violence in the streets, said Malkia Cyril, a Black Lives Matter activist in Oakland, California, who was part of a group that first met with Facebook about their concerns in 2014.

Cyril, executive director for the Center for Media Justice, said the company has a double

standard when it comes to deleting posts. She has flagged numerous white supremacist pages to Facebook for removal and said she was told that none was initially found to have violated the company’s community standards even though they displayed offensive content. One featured a picture of a skeleton with the caption, “Ever since Trayvon became white, he’s been a good boy,” in reference to Trayvon Martin, the unarmed black teenager killed by a volunteer neighborhood watchman in Florida in 2012.

Like most social media companies in Silicon Valley, Facebook has long resisted being a gatekeeper for speech. For years, Zuckerberg insisted that the social network had only minimal responsibilities for policing content.

In its early years, Facebook’s internal guidelines for moderating and censoring content amounted to only a single page. The instructions included prohibitions on nudity and images of Hitler, according to a trove of documents published by the investigative news outlet ProPublica. (Holocaust denial was allowed.)

By 2015, the internal censorship manual had grown to 15,000 words, according to ProPublica.

In Facebook’s guidelines for moderators, obtained by ProPublica in June and affirmed by the social network, the rules protect broad classes of people but not subgroups. Posts criticizing white or black people would be prohibited, while posts attacking white or black children, or radicalized Muslim suspects, may be allowed to stay up because the company sees “children” and “radicalized Muslims” as subgroups.

Facebook says it prohibits direct attacks on protected characteristics, defined in U.S. law as race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender, gender identity, serious disability or disease.

But the guidelines have never been publicly released, and as recently as last summer Zuckerberg continued to insist Facebook was “a tech company, not a media company.”

Unlike media companies, technology platforms that host speech are not legally responsible for the content that appears.

The chief executive has shifted his stance this year. At the company’s “Communities Summit,” a first-ever live gathering for members of Facebook groups held in Chicago in June, Zuckerberg changed the mission statement.

Earlier, he said the company would become, over the next decade, a “social infrastructure” for “keeping us safe, for informing us, for civic engagement, and for inclusion of all.”

The company acknowledged that minorities feel disproportionately targeted but said it could not verify those claims because it does not categorize the types of hate speech that appear or tally which groups are targeted.

In June, for example, Facebook removed a video posted by Ybia Anderson, a black woman in Toronto who was outraged by the prominent display of a car decorated with the Confederate flag at a community festival. The social network did not remove dozens of other posts in which Anderson was attacked with racial slurs.

Benesch, who herself has tried to build a software tool to flag hate speech, said she sympathizes with Facebook’s predicament. “It is authentically difficult to make consistent decisions because of the huge variety of content out there,” she said. “That doesn’t, however, excuse the fact they sometimes make some very stupid decisions.”

As for Latour, the Boston mother was surprised when Facebook restored her post about the hateful words spewed at her sons, less than 24 hours after it disappeared. The company sent her an automated notice that a member of its team had removed her post in error. There was no further explanation.

The initial censoring of Latour’s experience “felt almost exactly like what happened to my sons writ large,” she said. The man had unleashed the racial slur so quietly that for everyone else in the store, the verbal attack never happened. But it had terrified her boys, who froze, unable to immediately respond or tell their mother.

“They were left with all that ugliness and hate,” she said, “and when I tried to share it so that people could see it for what it is, I was shut down.”

This story by Tracy Jan and Elizabeth Dwoskin is republished courtesy of The Washington Post

Freedom of expression: United States and Australian perspectives

Donald Trump's attack on the media as 'the enemy of the people' is one disturbing aspect of the US President's leadership. Barrister Justin Gleeson, who was Solicitor-General until he resigned a year ago following a showdown with Attorney-General George Brandis, believes we should be worried by current events overseas, and how they relate to freedom of speech at home and globally. Justin delivered the Free Voices lecture during the 2017 Sydney Writers' Festival about the threats to freedom of expression that lie primarily in governments and big business using power, surveillance and the law to silence legitimate criticism.

Firstly let me place my remarks in some context. One of the key reasons that freedom of expression is so hotly contested in Australia, as elsewhere, is that it can be viewed from so many different perspectives.

For some, free speech is a personal right, never to be abridged, no matter how offensive or dangerous the speech may be to others.

Another view is that free speech is more of a structural or community value, capable of limits where its benefit to the community is outweighed by community harm. Sometimes again, it is helpful to think of free speech as a privilege, to be responsibly used.

However free speech is viewed, I think it is important to recognise that most of the time the limits on free speech rest in personal morality, taste, and judgment. The role for the law to step in, to regulate free speech, should be limited to those cases where it is really necessary.

My second point of context will take a little longer to develop, but it is crucial to my argument. It seems to me that we can better understand many of our current dilemmas about free speech in Australia, by drawing on the *political* and legal context of the United States.

Politically, it is impossible for many Australians not to have watched with increasing trepidation the events unfolding across the Pacific since 20 January 2017. Donald Trump, unfortunately, is seeking to do many of the



Justin Gleeson

destructive things that he promised to do, in that nation and beyond.

Republicans in Congress, with a few notable exceptions, enthusiastically cheer him on. His base still supports him, even if the majority of Americans are said to remain unconvinced. Democrats seem to be still reeling from the shock that last year they lost so badly the Presidency, the Congress and many State legislatures.

Where then is the functioning opposition to Trump and the dangerous path down which he leads America? What implications do these matters have for freedom of expression in Australia?

To answer these questions, we need to appreciate some of the *legal* landscapes of the United States. America is the land of the First Amendment. The First Amendment provides that Congress shall make no law abridging the freedom of speech, or of the press.

The United States Supreme Court has repeatedly held that the First Amendment creates a personal right of every citizen, and the ability of the U.S. Congress or a State Legislature to restrict that right is very limited.

The First Amendment influences US politics in some very different directions.

On the one hand, both the act of making a donation to a politician, and the act of spending money to help promote that politician's campaign, are regarded as forms of protected speech. Political donations can only be limited to stamp out narrow quid pro quo corruption (money for direct favours). More recently, the US Supreme Court has held, in cases like the 2010 decision in *Citizens United*, that Congress cannot pass laws restricting expenditure by the wealthy and the powerful to support their favoured political candidates' cause. Thus if we want to understand why any viable candidate for elected office must amass a vast war chest, we find the answer in the First Amendment's protection of free speech, indeed as a right extending beyond individuals to corporations.

On the other hand, the First Amendment's guarantee of a free press has traditionally placed the media at the heart of the democracy. The media is protected so that it can bare the secrets of government and inform the people.

The extent of this protection can be seen from the famous Pentagon Papers case in 1971, where the U.S. Supreme Court (by a 6:3 majority) rejected the attempt by President Nixon to stop *The New York Times* and *The Washington Post* from publishing the contents of a classified study revealing how the U.S. got into the Vietnam War.

Returning to the present, the media is again operating as perhaps the most functioning form of opposition to the conduct of the Trump Presidency. By 'media', I mean the media in all of its traditional and modern social forms.

What is concerning is that Trump is seeking, by Executive order as much as by Twitter, to disturb particular aspects of the media's traditional First Amendment protections so as to weaken the potential scope for critique and accountability of the Executive. He remains happy to accept a large flow of funds from those who wish

The two High Court challenges under way at the time the PEN lecture was given have since been decided in favour of striking down the laws. On 7 September 2017, the Court in the matter of *Graham* in [2017] HCA 33 held invalid a law preventing the Court seeing the evidence on which the Minister acted on the ground that the law compromised the ability of the Court to perform its basic function of holding the Executive to the law. And on 17 October 2017, the Court in *Bob Brown's case* in [2017] HCA 43 struck down Tasmania's anti-forestry protestor laws on the ground of the Lange principle.

to influence and benefit from his policies, happy to use his own speech to critique, humiliate, ridicule, condemn and attack the public and private conduct of those who don't support him, but then seeks to shut down the freedom of the press that critiques his actions in Office.

The media, by which he means some outlets like *The New York Times*, CNN and MSNBC – but not others like Fox – are now "the enemy of the people". Note, not his enemy, but somehow a force seeking to bring down the people themselves. Disliked journalists, or news organisations, are banned from White House briefings. He refuses to engage on the merits with negative reporting; instead branding it as "Fake news". He threatens to jail journalists who publish the very type of information that founded the Pentagon Papers case.

The media is not alone in suffering Trump's attacks. He disparages any other institution that plays its role in a way he dislikes. In February 2017, the Ninth Circuit Appellate Court gave a cogent judgment upholding an injunction against his poorly thought out Migration Ban; he tweets that the judges are being "political", that they are abandoning their judicial oaths.

His Acting Attorney-General Sally Yates had earlier advised him that she could not in legal conscience uphold his position in Court; he sacks her. Never mind that the Appellate Court's decision demonstrated the probity of her advice, and Trump was not game enough to appeal to the Supreme Court. In another instance, he potentially compromised the fair trial of a US soldier by publicly calling him a traitor. In general, public speech in the United States has been much coarsened by his actions.

Let me bring these observations closer to free speech in Australia.

It would be tempting to think that what is occurring in the United States is merely a passing phase, no more than an American excess that we can safely ignore. Perhaps we need not worry that the media and basic public institutions in the U.S. are under direct attack. Self-correcting mechanisms may win the day. Or again, perhaps the importance of the U.S.-Australia alliance means that we should not be too precious over the niceties of Trump's behaviour. Perhaps we should just be transactional with a transactional man. I beg to differ.

My thesis is that the Trump attacks on the media and on basic U.S. institutions should be exposed for what they really are: part of a larger attempt by some in power in Western liberal democracies – including in Australia

– to shut down one of the critical aspects of freedom of expression; that is the central part played by the media in the legitimate analysis and criticism of the work of governments, including work done in tandem with big business, lobby groups and vested interests.

We need to be vigilant. We need to defend and strengthen those institutions within our society that seek to hold those who exercise public power to account. And we need to identify and reform those laws that are the real impediments to that freedom.

Fundamental considerations in Australia bearing on freedom of expression

To advance my argument further, I need to identify three key features of our Australian legal landscape which set the framework for legitimate freedom of expression in Australia.

First, unlike in the United States, our Constitution has no express parallel for the First Amendment. What we do have is something lawyers love, namely an implication. In 1997, in a defamation suit brought by the former New Zealand Prime Minister David Lange, our High Court ruled that, when you read together a range of express provisions of our Constitution, and you understand the system of government provided for in our Constitution, there is an implication that there are some forms of speech that no Parliament in Australia can restrict. This is not a personal right of citizens, but rather a structural guarantee for the benefit of the community as a whole. We call this ‘the Lange principle’.

So what are the forms of speech that our Parliaments cannot restrict? Well, the Lange principle has two broad limbs, as well as a lot of refinements that I cannot go into now. The first limb is that the only types of speech that are protected are those which involve communications on matters of government or politics, not speech more generally.

The second limb says that, even if a law burdens free speech on a matter of government or politics, it will be still be permitted if it is a reasonable way of advancing some other legitimate interest within our system. The result of the second limb is that our High Court has found a different balance between free speech and other societal interests to that prevailing in the U.S.

For example, in 2015 in the *McCloy* decision, our High Court upheld NSW laws which capped the amounts of political donations individual persons could give candidates, and banned donations from some classes of persons, such as property developers, altogether. Our High Court held that Parliament can validly impose broad ranging campaign finance restrictions to achieve any of the following purposes:

- to prevent narrow quid-pro-quo corruption, money for direct favours, (as can be done in the US);
- to prevent the buying of access to politicians that might easily, yet undetectably, slide into influence or actual corruption; or
- to prevent some candidates or parties building up “war-chests” that drown out the voices of others in the system.

Because the Lange principle strikes a different balance to the First Amendment between free speech and other societal interests, only 2 laws, federal or State, which

impact on free speech have been struck down under the Lange principle. Bob Brown has an outstanding challenge in the High Court at present over Tasmania’s anti-protest laws.

The second key feature of our landscape is that where speech is not protected under the Lange principle, we fall back on the common law, which regards freedom of expression as an important value to be protected by the law where possible. However, our High Court has made clear that an Act of Parliament can always override the common law protections of free speech if the Act uses sufficiently clear language to do so.

The third feature follows from the second. Unfortunately, we now have such a raft of statutes that place direct or indirect burdens on freedom of expression that it is almost impossible for a skilled lawyer, let alone an ordinary conscientious law-abiding citizen, to know where the freedom begins and where it ends. Further, many of these statutes burden the form of speech which I identified above as one of the most fundamental forms of free expression in a liberal democratic society: legitimate analysis and criticism of the work of governments, including as governments interact with big business, lobby groups and vested interests.

My point here is simply a frank factual assessment of where we now are. This state of affairs has come about at both Federal and State levels, under governments of varying political persuasions, and has been exacerbated by the demands of national security.

If we are to strengthen and protect legitimate freedom of expression in Australia, a key part of the exercise should be to identify those statutes which various Parliaments have passed which pose the biggest threats to the freedom; to expose the related administrative practices tolerated by the law which also threaten that freedom; and ultimately to lobby for political change, even if that means persuading those in power to wind back laws which protect their own actions from scrutiny.

Where do we start then with such a large exercise? Let me clear away first what I regard as two red herrings.

Two red herrings

First, if we are to have a society in which there is scope for robust criticism of the actions of government, some would argue that the solution lies in a total opening up of all the workings of government and its web of connections with the powerful forces in society. Should we be winding back all laws protecting the secrecy of government decision-making? Equally, should we find a way that the Julian Assanges or Edward Snowdens of this world receive full immunity under law for their interception and publication of vast tracts of government information? I would argue ‘no’.

Our common law, as well as statute, has traditionally recognised that good decision-making by governments, businesses and other collective bodies is often aided by the confidence and secrecy of collective deliberations. The common law has developed principles of private law, such as equitable doctrine of confidence, and of public law, such as the balancing test involved in the public interest immunity doctrine, to protect such deliberations.

No doubt, sometimes over-zealous claims are made to protect so-called confidential information. Courts are



Should the Julian Assanges or Edward Snowdens of this world receive full immunity under law for their interception and publication of vast tracts of government information?

Picture credits: Edward Snowden by Robert Douglass, Julian Assanges by Cancilleria del Ecuador

scrupulous to reject such claims when they come before them. Administrative decision-makers should apply those same high standards when assessing claims where they are often effectively the final word.

These parts of our law are broadly sound, and equally I see no case to offer the Assanges or the Snowdens immunity for their actions. Their wholesale publications can threaten the lives of loyal government employees and their families, and, as we are now seeing from the United States and Europe, potentially influence and corrupt electoral processes. We do not want to encourage these forces in Australia.

Second, others would argue, from the opposite direction, that the primary statute burdening free speech is Section 18C of the Racial Discrimination Act. If only 18C could be repealed, or at least watered down, the heavy pall of “political correctness” – that singularly uninformative term – would lift from our nation. A disgusting racial insult can always be countered by other speech pointing out its vice. The community will be all the more enlightened from witnessing the interchange. Some would go further and argue that the Australian Human Rights Commission (AHRC) should be gutted.

To understand whether Section 18C is an angel or a devil, or perhaps something in-between, we should recall that the law has always recognised some limits on free speech. Precisely where those limits are to be drawn can vary between societies, and vary over time. But all proper limits have two things in common:

- Speech is restricted only where the speech endangers some sufficiently important countervailing societal interest; and
- That danger cannot readily be remedied merely by others engaging in their own free speech.

Section 18C is a modern example in this larger tradition. It was inserted into the Racial Discrimination Act in 1995

with the express purpose of protecting vulnerable minority groups. It is an implementation of Australia’s international obligations under a Convention which Australia ratified some 20 years earlier.

Section 18C serves to civilise a particular form of debate, not for the sake of shutting it down, but because those most harmed by the insults it targets are those in society least able to protect themselves merely through their own speech.

Some public commentators in modern Australia wish to debate whether immigrants of particular races or religions are properly assimilating to Australian society, or are taking local jobs (or conversely social security benefits) when they shouldn’t. Bill Leak wanted to use his ample skills as a cartoonist to suggest that there is a widespread problem in Indigenous society of fathers neglecting their children’s well-being.

Free speech affirms that there should be an ability to express, to hear and to debate such views. The primary limits on free speech rest, as I mentioned at the outset, in the good judgment and conscience of the speaker. However, the role for a provision like Section 18C is to recognise that some forms of speech may cause such harm to vulnerable others, harm which those others cannot readily avert by their own speech, that the matter should not be left merely to the speaker’s conscience.

It also follows that we should be proud that we have a body such as the AHRC in this county. We should be proud of the many ways, of which Section 18C is only one, in which it assists in applying the law to the plight of the more vulnerable amongst us. And when the history comes to be written after a mature passage of time, I am confident that it will be shown that Professor Gillian Triggs, as its former President, amply upheld the role of the Commission. Moreover, by calmly and intelligently explaining over and over again, under sordid criticism and

attack, why the Commission was doing what it was doing, she helped to educate all of us on Australia's domestic and international obligations to the more vulnerable. How richly Professor Triggs deserved the prestigious Voltaire Award recently bestowed on her by Liberty Victoria.

The real threats to freedom of expression in Australia

Let me come to what I see as the more pressing issue of the law being used to suppress legitimate criticism of those who govern us.

In May 2015, the Commonwealth Parliament passed legislation going under the unassuming title of The Border Force Act. One of the things it did was to make it a crime, punishable by up to two years jail, for any person who was contracted to supply services to the Border Force to make any public disclosure of anything learnt in the course of that work. Virtually no defences were allowed.

It soon became clear publicly that the Government intended this legislation to silence doctors, teachers, community workers, or indeed anyone else working in the offshore processing camps, from revealing anything they learnt there, even if it involved a human rights abuse or conduct which was unconscionable by any standard, including under Australia's international obligations.

The legislation put conscientious professionals into a grave predicament.

Presumably, some took their chance and privately relayed their concerns to journalists: we saw stories based on such disclosures in outlets such as The Guardian. Others must have remained silent, a prudent legal course, but perhaps at a cost to their consciences and indeed their psychological wellbeing. Few who work in the frontline in any traumatic environment benefit from a culture of enforced silence.

It took until mid-2016, when a group of pro-bono lawyers acting for a group called Doctors for Refugees launched a High Court challenge to this draconian legislation, for the Government to execute a partial back-down. The Secretary of the Department used a power under the Act to exempt doctors and health workers from the risk of future criminal liability, but did not exempt other professionals or cause the Act to be repealed.

The challenge remains in the High Court in re-formulated terms. We will learn later from the High Court if the law breaches the Lange principle. If it does, it should never have been passed. Even if it does not, in my view it is still not a good law. Why are our politicians – of both major parties here – silencing this important speech? Why are we the community banned from knowing what is really going on in our offshore processing centres?

Other things are going on within our law that also create real threats to legitimate speech. The broad subject of what I am now going to deal with can be described as the excessive use by Parliament of the delegation of overly wide-discretions to Ministers.

It is a feature of our Constitutional arrangements, based on the Westminster model, that the separation of powers between the three branches of Government is neither strict nor absolute. Unlike in the United States, and probably

a good thing, our Executive Ministers are Members of Parliament.

Parliament can confer discretions on Ministers that are administrative in character, such as where the Minister, or his or her further delegate, has the ability to decide how a general rule should be applied or modified to the facts of a particular case. For example, a discretion to relieve from a strict obligation on grounds of individual hardship. Obviously it makes sense that each and every decision of this kind does not have to go to Parliament.

It is also well established, but far more wide-reaching, that Parliament can delegate to a Minister part of its legislative power. A raft of the rules that now govern our modern life lie in "subordinate legislation", rules made by Ministers (or the Governor-General on their advice). There are mechanisms for Parliament to consider and overturn such rules, but in reality this occurs rarely.

What our Parliaments have done increasingly over the last 20 years, is to delegate more and more functions to a Minister. I say "functions" because the line becomes blurred between delegating mere administrative discretions and delegating law making powers.

The free speech issue arises this way. How do we as a community get to know what decisions Ministers are making? Or why? Should we even be concerned about those decisions?

Earlier this year, newspapers reported that a mother and practising doctor who had been here for eight years faced deportation with her autistic child. When first reported in the media, the Minister said he would do nothing. As pressure built the next day, he stepped in and reversed his decision. A good result for the individual case, and well done by the media, but how many other cases slip by, with an unfair or harsh decision made and no effective way for the community to know about it or to protest?

These problems are not unique to Australia. The United Kingdom faces them on a massive scale with Brexit. The May government plans to pass a Great Reform Bill, which will import all current European Law into English law, but then allow the UK Executive the ability, by regulation, to amend or modify any such law. A conscientious UK citizen will not be able to know what UK law is for the future, let alone examine the propriety and wisdom of what the government is doing, without a study of any and every regulation made over time modifying the law imported by the Great Reform Bill. A rather impossible task.

What has made these problems worse in Australia is the current trend for discretions to be conferred on Ministers using one or more of these techniques:

- framing the discretion in the broadest of terms (such as "the national interest" or "public interest");
- relieving the Minister of any duty to even consider whether to exercise the discretion;
- sometimes, denying the subject a fair opportunity to be heard on the decision or reasons afterwards;
- sometimes, preventing a court asked to review the decision from seeing the evidence.



Professor Gillian Triggs, former President of the Australian Human Rights Commission, amply upheld the role of the Commission.

Indeed there is currently a challenge before the High Court to a law which allows the Minister to cancel a person's visa in reliance on information that cannot be seen by a court.

The result of all these devices is that:

- the Parliament escapes having to take real responsibility for the exercise of power;
- it becomes difficult for Courts to exercise their judicial review function; and
- it becomes very difficult for the community to know what has gone on, or why, and to engage in informed commentary or criticism of Government action.

Remedies

So I have identified a range of threats to legitimate free speech exposing the actions of governments. Are there remedies? I suggest there are, and it is not too late to implement them.

First, Parliament should not pass laws gagging public officials or persons working for the Government without the greatest prior scrutiny of the laws and the clearest justification for the silencing of speech. If there is any risk that the law contravenes the Lange principle, the Parliament should have before it, and expose for public scrutiny, the constitutional advice on which it is asked to act.

In this regard, I note that the 82nd World Congress of PEN International meeting in Spain in October 2016 called upon the Australian government to repeal the provisions of the Border Force Act I have mentioned, together with other laws I will come to below.

Second, Parliament should cease delegating core legislative functions to Ministers unless the case to do so is overwhelmingly compelling. Delegation should not be the norm. At the same time there should be a wholesale review and repeal of current delegations. The norm should be that the law is found in statutes passed only after they

have been openly tested and argued over in Parliament, and subject to community and media comment. If that means Parliament has to sit more weeks in a year, or spend more time debating laws and less time on other activities, so be it.

Third, where Parliament does confer discretions on Ministers, it should always err in favour of defining the discretions as tightly as possible, and preserving the common law right of the person affected – whether the person be a citizen, a resident or an alien – to be given a real and fair hearing before his or her interests are affected.

There should be clear legal standards around the power so that the Courts can conduct meaningful judicial review. There should be a general obligation to give reasons for any decision, so that the person affected can know why he or she missed out, and can prosecute any legal or public challenge, and the wider community can know and comment on how public power is being exercised. The withholding of any part of the evidence or reasons on the ground that it would involve a matter of national security or public interest should be confined to the absolute minimum.

The values that I am espousing are not some new-fangled or leftie concern. They are core values of a liberal democracy.

Surveillance

The issues that I have highlighted above have particular bite in the area of surveillance.

Australia has three intelligence agencies. ASIO, meant to deal with domestic intelligence; ASIS with foreign intelligence; and something called the Australian Signals Directorate, which sits in the Department of Defence.

The origins of our security agencies go back to the immediate post Second World War period. They work in close co-operation with MI5 and MI6 in the United Kingdom, and with the various intelligence agencies in the United States, Canada and New Zealand, who complete "the five eyes".

So far, so good. Few would challenge that intelligence is necessary, sometimes, and that an intelligence agency must operate in secret, usually. Equally, the threats to national security, and the safety and well-being of our citizens seem to be on the increase, in number, scale and diversity. The horrific recent events in Manchester only confirm this. Our leaders should respond, but proportionately so.

Where does freedom of expression come in? Spy agencies must be governed by law, and must act within that law. Regrettably, Australian Parliaments have chosen to give an extraordinary range of powers to individual Ministers to sanction activities of spy agencies. What our spy agencies are doing, what our Ministers know of what they are doing, and what our Ministers are permitting agencies to do, remain largely inscrutable.

The Rudd Labor government realised there was a problem. It came up with the half-way house of a National Security Monitor. The theory was that an eminent lawyer as the Monitor would have access to the secret operations of the spy agencies and could report to Parliament and the community on how our laws are operating and whether more needed to be done to reign in the agencies.

The first Monitor was Bret Walker SC, an eminent and fiercely independent lawyer. His reports, and the then

Labor government's evasive responses to his substantive recommendations, make depressing reading.

The Abbott government had even less enthusiasm for a Monitor, leaving the post vacant for a while. Eventually the equally eminent, if not more pugnacious, Roger Gyles QC was appointed, an excellent choice. His reports show he was starved of adequate funds to do the job properly. His final report in February this year concluded, with a lawyer's penchant for understatement, that Australia's current security laws contain the "potential for oppression".

In the meantime, we have had the metadata debacle, funny except it is so serious. Information is collected and stored for two years on the activities of every Australian. It can be shared with a whole variety of agencies for a whole variety of purposes, many of which seem to have little to do with national security or protecting Australian lives. Warrants from a judicial officer are generally unnecessary. There is no legal mechanism for a person to find out – ever it would seem – whether their data has been shared with government agencies, if so which agencies, or why.

Making things worse, in 2014 Parliament passed a law enabling the Attorney-General, without going to a court, to authorise a spy agency to intercept actual communications if he thinks it is necessary for something called a "special intelligence operation". This is defined as an operation carried out for a purpose relevant to the performance of one of ASIO's functions that may involve an ASIO employee affiliate in conduct which would otherwise be unlawful. A journalist or any person who discloses wrongdoing or that the power has been used illegitimately may be jailed for up to five years.

The head of ASIO admitted to the Senate this year that a number of warrants have been issued under this power. He wouldn't say how many or against whom, other than assuring us the number was "small".

PEN International condemned such laws at its conference in October last year.

One of the dangers of the operations of our security agencies is that, when you read the statute book, you cannot find any limit on the length of time that intercepted intelligence will be kept or any mechanism by which you can ever find out whether you have been wire-tapped.

We saw a worrying instance of this intelligence gathering in NSW in late April this year when Police were caught filming protestors at a rally to defend science. Hardly subversive radicals one might think. The NSW Police, when questioned, assured the public that the film was taken only in the event the march turned sour, that no facial recognition was used on the film, and that as the march proved peaceful they would destroy the film. We have their word for it. But we as a society have no evident law to regulate this decision of the NSW police.

In November 2016, I visited the former Stasi archives in a rundown part of the old East Berlin. After the Berlin Wall fell in late 1989, the remnant Stasi tried to destroy the archives to hide their misdeeds. With great courage, locals of East Berlin, including some who had been held and interrogated by the Stasi, rose up to secure the archives from destruction.

The museum has a powerful sense of history and of

misuse of State power. It is also about partial redemption: those spied on – and there were many – can now inspect their file.

I left troubled that the various Australians who have been and are being spied on cannot, ever it would seem, hold their government to account. Recall that East Germans were shocked when they learnt after 1991 that hundreds of thousands of citizens had been spied on, and many more took part in the spying. What is the truth in Australia?

Spying is not just an invasion of privacy. A climate of spying, ungoverned and unknowable except in its pervasiveness, has a chilling effect on speech (all the more so where we have no First Amendment as in the US).

Conclusion

Surveillance is but one of the many areas where our Parliaments have given too sweeping powers to individual Ministers or public servants. They have left us with inadequate protections against possible misuse of power, and inadequate means to find out how these powers are being exercised, rendering public critique of that exercise next to impossible. Legitimate speech is thereby silenced.

How can these problems be addressed? First, it is necessary for us as the citizen body who elect our leaders, whatever be our individual political views, to recognise that this is a problem, which should be brought out in the open, and which our leaders, federal and state, of whatever political persuasion, should be called upon to address.

The most senior public servants in this country should provide wise advice to politicians that things have gone too far, that we have lost essential parts of the freedoms that the common law bequeathed to us and on which our written Constitution is silent.

The ultimate solution may then lie in the drawing up for Parliament's consideration of Australia's own "Great Reform Bill", not a Brexit-type Reform Bill, but rather a bill which winds back State power to a core minimum which remains respectful for the freedom of speech and other property liberties of the community.

Will this happen? Where is the impetus for any politician to take on any of the suggestions I have made? I can only answer that I believe the issues are sufficiently important to debate, to exercise our legitimate free speech over, that one day their time will come and perhaps sooner than we expect. The valuable work of PEN will assist in the process. We will share in a much richer, fuller and ultimately fairer society when across all areas of government power:

- Parliament does its job of debating and making the laws rather than passing the job down to Ministers;
- Parliament only gives powers to Ministers which are properly confined so their limits can be fully tested in the courts; and
- Powers of gagging or surveillance of the community are cut back to the absolute minimum.

Ultimately, one of the core propositions of a liberal democracy is that all public power is held on trust for the citizen-body. That public trust is best enforced by the most liberal possible scope for public knowledge of and discussion on how those powers are exercised.

A privilege bound with a responsibility for accuracy

A love of biography is driven by the universal hunger to better understand other human lives, according to Dr Peter Cochrane. "It provides us with that sense of how things are for each of us, or indeed for the lives of people we could not begin to imagine but for the biographer's capacity to recreate the otherness of such people and their social world."

Dr Cochrane, speaking at the announcement of the 2017 National Biography Award at the State Library of NSW on July 31, described biography as a prism of history. The Senior Judge, a Fellow of the Australian Academy of the Humanities and an Honorary Associate in the Department of History at the University of Sydney, he also pointed out that candidates for biographical treatment don't always agree that biography is an unqualified literary and social good.

George Eliot called it a 'disease of English literature'. Vladimir Nabokov described it as 'pseudo-plagiarism'. Auden called it 'always superfluous' and 'usually in bad taste'. T.S. Eliot ordered that no biography be sanctioned by his heirs and Carlyle said, rather meanly, 'that a well-written life is almost as rare as a well-lived one'.

Peter Cochrane said, David Cornwell, better known as John Le Carré, employed a heavy legal barrage against circling biographers. 'I didn't want them gum-shoeing around my children, my ex-mistresses, my everything,' Cornwall said. Dr Cochrane added, "Clearly these eminent people – notably all writers - worried that biography was an invasion of privacy – and didn't want biographers rummaging around their private lives."

But good biographies are not about that sort of rummaging. Dr Cochrane said that in their modern form, they transcend all that in their pursuit of a rich, full account of their subject, of the inner life and the outer life, the concealed self and the revealed self.

"The art of biographical writing today is a high literary calling. The best biography is scintillating literature," he said.

In announcing the winner, he said it's been a big year for biography with 71 entries of exceptional quality. And the richest national prize for biographical writing in Australia of \$25,000 went to Tom Roberts for his book *Before Rupert: Keith Murdoch and the birth of a dynasty*.

The judges – Dr Cochrane, Associate Professor Richard White and editor and literary critic Rosemary Sorensen – said Roberts' biography of Keith Murdoch reveals how a critical engagement with a life that has been much written about, and richly mythologised, can yield new perspectives and insights, thus liberating the reader from the realm of myth. The author gives readers a new understanding of Keith Murdoch and the genesis of the family dynasty. The subject is thoroughly yet fairly interrogated, and even unmasked.



Tom Roberts, winner of the 2017 National Biography Award

Tom Roberts' doctoral research at Macquarie University, and membership of its Centre for Media History, laid the groundwork for his writing of *Before Rupert*. Following its publication, Dr Roberts acted as the historical consultant and featured in the BBC's landmark documentary investigating Keith Murdoch's actions at Gallipoli.

As he acknowledged, writing about the Murdochs can be a tricky affair.

Tom Roberts tells of how, in 1965, Rupert and his mother Elisabeth commissioned Charles Sayers, a journalist who had had success with his biography of David Syme, to write the first full-length book on Keith Murdoch.

"Sayers' Murdoch manuscript won the Victorian Government's prize for biography in 1970 and William Heinemann was all set to publish. But my research turned up the pitiful letters that tell the story of how Rupert, despite having promised Sayers a completely free hand at the outset of the project, refused to agree to its publication," Tom Roberts said.

Not surprisingly, the author decided his biography would be unauthorised. The result was that the Murdoch press completely ignored it on publication. No reviews or author interviews appeared. "In contrast, copies of a family-commissioned biography of Keith were handed out as a Christmas gift to the entire staff of the *Herald Sun*. Another approved biography was treated to a full week of serialisation in *The Australian*," he said.

As a biographer, Tom Roberts is committed to the right to free speech and freedom of expression. "It's a privilege that is bound with a responsibility to accuracy. I was keenly mindful throughout the writing of the book that the best way of protecting my rights was to be utterly rigorous in checking not only the information I used but also the way in which it was presented.

"My whole motivation in researching Keith's life was to delve beyond the approved and authorised accounts. Beneath the polished myth of Keith Murdoch – the Gallipoli letter writing hero – I found an intensely complicated man of contradictions, riven by internal conflict," he said.

"Writing an unauthorised biography without a commission or sanction from the family was a great risk but one that allowed me freedom of inquiry and ultimately freedom of expression."

Dr Roberts' latest book, co-authored with Peter Osborne, is *How Trump Thinks: His Tweets and the Birth of a New Political Language*.

Sandra Symons

When asylum seekers are turned into non-people



In 2004, Australian award-winning novelist Tom Keneally and writer and academic Dr Rosie Scott (who died in May and was featured on the cover of the Sydney PEN magazine published during the 2017 Sydney Writers' Festival) published *A Country Too Far*, a collection of fiction, poetry, memoir and essays by some of Australia's acclaimed writers exploring the treatment of those seeking asylum in Australia. *A Country Too Far* won the 2004 Human Rights and Equal Opportunity Community Award. Ten years later they produced *Another Country*, a Sydney PEN anthology that includes writings by refugees and former asylum seekers.

At the time he and Rosie Scott were working on *A Country Too Far*, Tom Keneally, in a conversation with journalist Joyce Morgan, referred to the unrelenting pursuit by the Australian Government of the need to stop the boats by which many refugees sought asylum in Australia and the way in which Australians were "hoodwinked" into supporting the 'stop the boats' policy. He asked why the Australian people did

not stand up against it. He said writers in particular must stand up to what he called a "policy of torment".

He continues to examine how the literary world responds to the refugee crisis and argues that the policy of detention harms not only those held behind the wire but everyone.

Echoing the PEN anthology, *Another Country*, in 2014, a group of Australian writers and editors set up a special oral history project, named *They Cannot Take The Sky*, to bring a new perspective on mandatory detention: the reality of the people who have lived it. It was led by journalist Michael Green and writer Andre Dao, assisted by Angelica Neville (freelance writer), Dana Affleck (founding director of Road to Refuge) and Sienna Merope (human rights advocate and lawyer).

The purpose was to document the stories of men, women and children who have been detained by the Australian Government after seeking asylum in Australia. The result is a book of the same name, published this

year by Allen and Unwin under the imprint Behind The Wire, and a website.

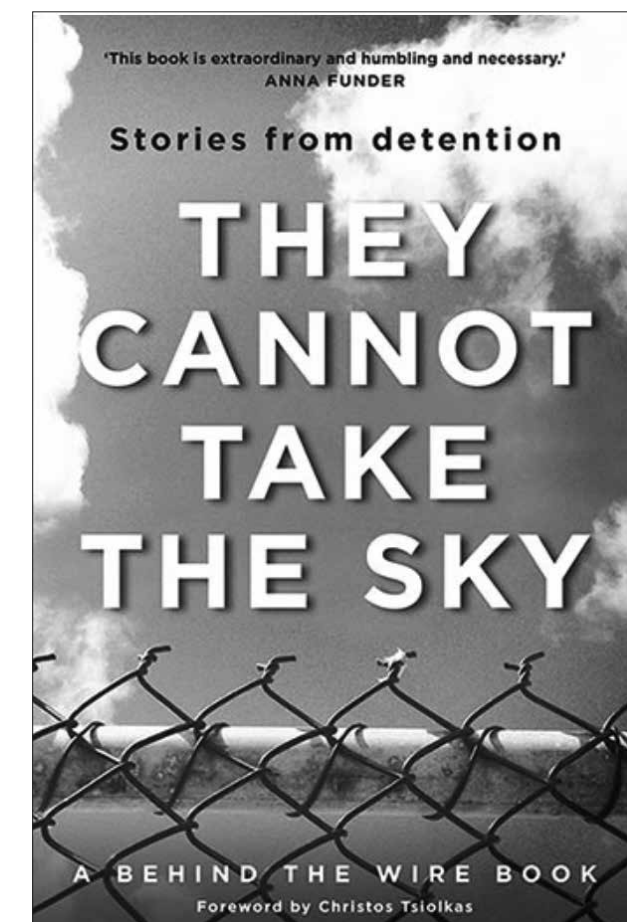
As the editors say, their aim was to reveal a nuanced picture of seeking asylum and life in mandatory detention – a reality that goes beyond queue jumpers on the one hand and passive victims on the other – and show resilient, suffering human beings.

Nobel Prize winner J.M. Coetzee describes the asylum seekers – both those who made it past all obstacles and those still imprisoned in hell holes in the Pacific – as telling of their hopes and fears in the book, of the horrors they fled from and the soul-destroying tedium of living in the limbo of detention, of the deliberately inhuman treatment they have suffered in the camps, and the many kindnesses of individual teachers and volunteers.

"They emerge as brave and resourceful people who ought to have been welcomed with open arms but instead have become pawns in an obscure game played between political parties," he says. "As a matter of policy they have been turned into non-people, their names erased, their images blanked out, their voices silenced."

Writer Anna Funder, winner of the Miles Franklin Prize in 2012 for her novel *All That I Am*, says the book is testament to the resilience and honor of human beings. "How is it that people – sometimes teenagers alone – who have fled persecution and mortal danger only to find torture at Australian hands can react with humour, humanity, insight, concern for those they've left behind, and even sometimes for their guards," she asks. "Australia has gone rogue at international law. Behaving illegally, our politicians have the nerve to call people fleeing persecution 'illegals'. This must stop. As one of the contributors, Amir Taghinia, puts it, in words that might apply to our sense of what it is to be Australian, as well as to an individual being persecuted: 'There might not be a reset button'."

Christos Tsiolkas, author of *The Slap*, described the book in his Foreword to *They Cannot Take The Sky*, as "necessary". "For nearly two decades now, Australian politics has been corrupted by a toxic and destructive national debate about asylum seekers and refugees. The issue of asylum has become inexorably entwined with our security and



existential fears arising from the threats of international terrorism," he says.

"That great leveller, history, will ultimately judge us on what kind of country we have created for ourselves at the beginning of the twenty-first century. We know that the detention centres we have built on our continent, on Nauru and Manus Island, are not places we would ever countenance imprisoning Australians. We know what we have done. We don't need history to instruct us on that."

Human rights barrister Geoffrey Robertson instructs everyone to "read this book". "It will make you ashamed to be an Australian but proud to be part of a humankind that can cope so imaginatively with unjust imprisonment." He describes the authors whose words appear in *They Cannot Take the Sky: Stories from Detention*, as "witty, sometimes hilarious, always insightful, loving and even, mirabile dictu, forgiving – and boy, do we need forgiveness for mandatory detention".

Sandra Symons

What I learned about love and writing in refugee detention

As Australia's offshore detention centre on Manus nears closure, 22-year-old Imran Mohammad describes his four years there, where he learned English and fell in love with writing, while confronting a future without his first love – his childhood sweetheart in Myanmar.

Imran Mohammad is a Rohingya refugee who has been held in Australia's offshore detention centre on Papua New Guinea's Manus Island since 2013.

Born in Myanmar, Mohammad faced persecution as a member of the Rohingya minority and took perilous boat journeys to Malaysia and Indonesia as a teenager. Facing continued dangers and an uncertain future, he eventually tried to reach Australia by boat. Australia intercepts refugee and migrant boats and prevents their passengers from ever settling in the country, instead sending them to offshore detention centres it operates on Papua New Guinea and Nauru. Mohammad has been held on PNG's Manus Island since 2013.

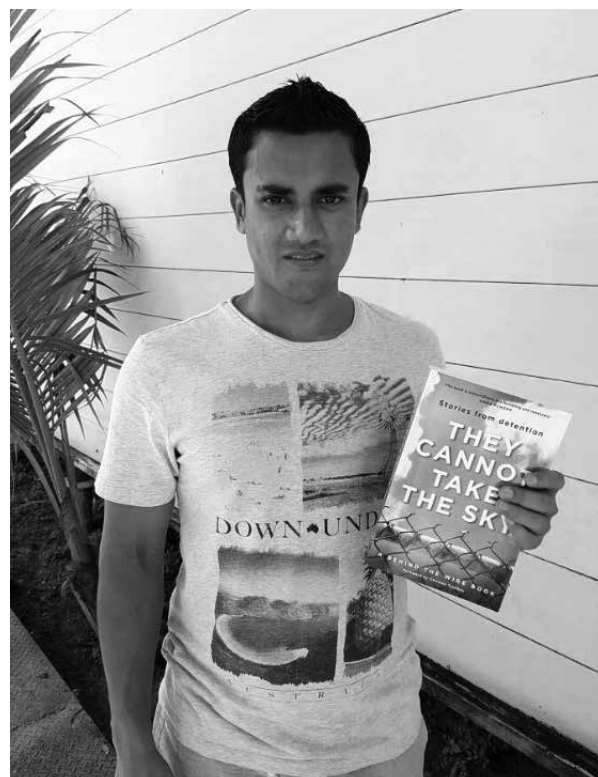
After PNG's supreme court declared the facility unconstitutional, its inhabitants, who face an uncertain future despite an Obama-era deal for resettlement in the U.S., have been transferred to the Australian-built East Lorengau Refugee Transit Centre (ELRTC) on the outskirts of the Manus province's main town, Lorengau. In this excerpt from *They Cannot Take the Sky*, he tells his story to the book's editor Michael Green, who travelled to Manus to interview Mohammad in 2016, and Behrouz Boochani, a journalist and refugee currently held in detention with Imran.

"In our garden, there were many trees: fruit trees, flowering trees, trees with colorful leaves. My mother didn't let me go out because it wasn't safe for the Rohingya boys, especially the ones who are young. So I would spend my evenings with my mother in our garden, and we always talked about her family.

We were born in Myanmar, and our parents and our grandparents were born in Myanmar. But in Myanmar, they don't accept us as their own citizens.

When I was 16 I had to flee my country. I left my village during the night. I caught a boat with my friend. We spent around 20 days in Bangladesh before taking another boat to Malaysia. I was on that boat for 15 days. After four days things started to get harder and harder because we were running out of water, food. After nine days people started to die.

I wanted to come to Australia because I heard that Australia was a country in which I would receive my



Imran Mohammad

fundamental human rights. I was 19 when I arrived on Manus Island in 2013.

It was a horrible experience. There were many people in my compound; it was really crowded, people were very depressed and they didn't know what they were doing or what they were saying, but I didn't lose my mind.

I made up my mind that I needed to get something out of this place, which will help me in the future. I started thinking: How can I improve my knowledge?

So every morning I woke up at 4 a.m., because it was quiet and everyone was sleeping. I used to sit in front of my room and I started teaching myself English. I had no dictionary, no nothing. I just got some English papers and I taught myself.

You can explain things about this place for years and years and it will never end.

After two weeks, I went to a class. There was a teacher whose name was Judith. She told me to write. "If you write something every day it will help you. It will improve your English and also it will help you to cope in this environment, because you are not keeping your anger in your heart, you are letting it out," she said.



A group of asylum seekers hold up their identity cards after landing in Manus Island. Photograph by Eoin Blackwell

The first piece I wrote about my mother. And I wrote about my girlfriend. I had no notebooks, so I grabbed a request form from the guardhouse. I wrote eight lines on the back of this form. There were 24 mistakes.

I used to write 14 hours a day. It's crazy, really – 14 hours a day. I didn't have any privacy. There was a table in front of my room, so I was writing on one side and there were other people who were playing cards at the same time. They always interrupted my writing or reading. But you know what? The noise was really annoying, but it helped me to write more, because I was getting angry, then I was putting all my anger on the paper.

I started writing, but I had no idea what to write. There were no novels that I could read to help myself. I woke up every morning thinking: What can I write today?

I have written a lot of things. I have written 23 chapters – it's a complete book. This place is so strange. You can explain things about this place for years and years and it will never end.

The other day you asked me, "Do I fear death or not?" I don't fear death because I have experienced death many times in my young life. I have been tortured and I have been loved. By experiencing both things I have learned something else: I know how to count my blessings.

We have been traumatised for the past three years. We have forgotten so many things, we don't know how to live normally. This is a place that was set up intentionally to torture vulnerable people, but I was blessed with an angel. One of them was Rebecca, my caseworker for a long time. She was not allowed to give me anything. However, she got me blank paper every day, and gave me pens and pencils. One day she gave me a dictionary. Oh, it was so amazing! I felt like I had been given the whole world, because I needed a dictionary so much. I cried for a dictionary.

When I was back home I had a girlfriend, but I didn't know it was love. My girlfriend's house was next to my

house and she used to come over with her mother, because her mother and my mother were friends. It was like ... family. I spent a lot of time with her, but we didn't know we loved each other. Because we were too young, we were just friends. As soon as I left my country I realized: Oh ... It is love. Because I was missing her all the time. She was my first love.

Love means let someone live their life, not keep them for yourself.

Since I left my country I talked to her a couple of times, and we knew that we loved each other. I didn't talk to her after I came to the Manus prison, because it was becoming harder and harder for her, and for me too. In our culture, women can't wait for a man for long, so I didn't want to ruin her life. I loved her – love means let someone live their life, not keep them for yourself.

So, I told her: "Forgive me and just live your life, because my life is stuck in a political limbo and I don't know what will happen in the future. And I'm a person who is stateless and I can't go back to our country, so you'll never see me again. There is no point waiting for me."

I don't talk to her on the phone because I don't want to ruin her life, but I can talk to myself. And people ask me, "Hey, are you crazy? Why are you laughing by yourself?" I say, "I'm not crazy. I'm talking to myself, but I have someone in front of me who you can't see, because she is not here."

I try to find a peaceful place where I can be myself. I sit on the ground so that I can feel the earth. I place my hands on my chest and bend my legs and keep them close to my chest. I look up at the sky and then recall the memories.

This is an edited excerpt from They Cannot Take the Sky, an oral history book made up of the stories of 35 people in Australian immigration detention collected by the Behind the Wire project and collaboratively edited into first-person narratives.

Unwelcome visitors: Challenges faced by people visiting immigration detention



In recent years, people who visit immigration detention have expressed concerns about changes to rules and practices that have limited access for people visiting in detention. The Refugee Council of Australia (RCOA), through its Detention Research Project, has interviewed visitors from across Australia to identify and record those challenges, and presented a new report that records the significant role people who visit immigration detention make to those in detention. The report outlines the critical role they play in supporting people in detention, the value they bring to these most vulnerable people, and the challenges they face in doing so.

Every day, ordinary Australians visit people detained in Australia's onshore immigration detention facilities. This is an important and often under-appreciated role. These visitors provide emotional support to people in detention, advocate on their behalf and fill in the gaps that exist in provision of services and information in immigration detention facilities.

It is not easy to visit people in immigration detention, to hear their stories and to speak up for those who are the victims of Australia's current punitive approach to people seeking asylum. Visiting immigration detention facilities takes time, energy and commitment, and often has a significant impact on the wellbeing of visitors. Yet, all too often, some politicians and media outlets falsely blame these visitors and advocates for encouraging people to harm themselves or to disobey rules.

Over the past year, the Refugee Council of Australia (RCOA) has increasingly heard from these visitors that security conditions in immigration detention facilities are being intensified and it is now more difficult to visit people in immigration detention. Correspondingly, people in immigration detention are becoming increasingly isolated from the wider community, with negative impacts on their mental and physical wellbeing.

These concerns led the Council to conduct a national study to explore these issues further. This report is the result of its extensive research and consultations with detention

visitors and people previously held in detention. It explores the challenges faced by people when trying to access detention facilities, including:

- constantly changing rules and their inconsistent application
- difficulties in arranging a visit, including searches and drug tests
- lack of adequate space in visitor rooms in some facilities
- arbitrary rules and intensified security conditions that make visits less friendly
- specific challenges faced by religious visitors.

The RCOA report identifies the impacts of those difficulties on both visitors and people detained and puts forward a number of recommendations to address those challenges.

It showcases the spirit of volunteerism in Australia, presenting the accounts of many volunteers who continue visiting detention facilities despite difficulties, so they can bring people hope and get their voices and concerns heard.

People who visit immigration detention often provide the only public information about what is happening in our immigration detention facilities. This is because Australia does not have an official national body that publicly and regularly reports on visits to immigration detention facilities.

The Refugee Council of Australia, which welcomes the Australian Government's commitment to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by the end of 2017, hopes that this will result in greater scrutiny of immigration detention and ultimately better treatment of those in detention.

The report was made possible by Alicia Rodriguez and Moones Mansoubi, RCOA's detention research volunteers, who committed over 300 hours of their time conducting interviews, collating information and drafting the report.



Its recommendations include:

Recognise their role and engage

The Department of Immigration and Border Protection (DIBP) and the Australian Border Force (ABF) should recognise the important role of detention visitors. They should engage in more effective dialogue with the visitors, inform them of proposed future changes and seek their feedback. This should include institutional channels of communication as well as more flexible forms of dialogue.

Rules should be revised to better reflect and mitigate risks

In developing and managing rules on visits, DIBP and ABF should give greater weight to the administrative nature of immigration detention, to past compliance by visitors and those they are visiting, and to whether the perceived risks can be mitigated in other ways.

Rules should be consistent and public

DIBP and ABF should ensure consistency in how the rules around visiting processes are applied in each centre and across the network.

Improve processes for drug testing

DIBP and ABF should work with Serco to improve processes for drug testing, including better training for staff and appropriate procedures for ensuring visitors are informed of their rights and processed in timely way.

More relaxed visits

DIBP and ABF should ensure there are more opportunities for less structured and more relaxed community visits and gatherings.

Revise arbitrary rules

DIBP and ABF should revise the arbitrary rules that are putting unnecessary pressure on people in detention and the visitors (for example, the rules requiring people in detention in Melbourne ITA to apply to visit each other, and rules in Brisbane ITA preventing people sitting at different tables from speaking with each other or sharing food).

Changing population needs should be considered in planning

The change in detention population and their needs should be considered in future developments of detention facilities.

Train frontline officers in reception process

DIBP and ABF should work with Serco to develop training for frontline officers to ensure the reception process is organised and streamlined.

Support religious service providers

DIBP and ABF should better support religious service

providers to deliver their services and the entry process should be relaxed for them.

Improve translated information on visiting
DIBP and ABF should improve the availability of translated material on visit booking system and the reception process.

Improve public information

DIBP and ABF should improve the availability of public information. Currently there is no public information on the capacity of visitor rooms and the number of people one can visit in each detention facility. This information should be released and made available on the Department's website as a matter of urgency. The availability of this information will reduce the likelihood of frequent changes to those numbers.

Establish independent review of detention

DIBP should establish a transparent and independent process for reviewing detention.

The Refugee Council believes many detention issues would be better addressed through fundamental reform of the detention system, including critically the right to independent review of detention. Further it suggests all decisions to detain an individual on account of their unresolved migration status should be reviewable by an independent administrative body at each decision to detain or extend detention, regardless where such detention occurs.

People in detention should have a right to attend reviews and challenge the purported necessity for their detention at each review.

It is really important that visitors play the role of witnesses in a system where there is no independent scrutiny. By making it hard for us to get in, we are placing people at risk.
— A detention visitor from Victoria

The Australian legal framework that applies to asylum seekers and refugees is rather complex and continuously amended, making it challenging for individuals to understand their rights and the options available to them, without assistance. Lawyers and human rights advocates who assist refugees and asylum seekers in immigration detention in Australia face many barriers. They include situations when detainees are not allowed mobile phones; when telephone calls and visits are hard to arrange to detention centres (particularly Christmas Island Immigration Detention Centre); and detainees are frequently moved and without notice; interpreting services are limited and procedures are frequently changing.
— Michel Forst, the UN Special Rapporteur on the situation of human rights defenders

Turning a good idea into reality

In 2012, Ravi Prasad and his wife Della bought a house in King Street, Erskineville. Three years later, they turned their front room and kitchen into a café. Their intention was to give asylum seekers an opportunity to work, develop a skill and rediscover dignity.

They say they were fulfilling a dream to own a bookshop, cafe and bar. Ravi worked in advertising for 20 years but wanted to do something with meaning and purpose. “I have always been interested in social justice and racial inclusion and I couldn’t help thinking the most vulnerable people in the Australian community are refugees and asylum seekers.” So he and Della decided to take action.

Their enterprise, which they called Parliament on King, is now a popular café offering work skills and hope to asylum seekers. Ravi and Della, born in China, understand the situation of refugees in Australia. Ravi explains that his Indian father came here from Fiji in the 1960s at the end of the White Australia Policy (which sought to effectively bar people of non-European descent from immigrating to Australia). So he says he knew first hand what this country could be like.

With great imagination, Ravi and Della conceived a project that would offer refugees and asylum seekers a hospitality training program that they called the International Shift. They contacted asylum seeker centres for advice and support in letting arrivals know about the training program in hospitality skills, such as coffee making.

Although the café is small, it enables a roster of refugees to work as baristas, floor staff and chefs at the café’s regular community dinners. And it provides hundreds of hours of paid work and training each month through its social enterprise catering. Ravi and Della do not see the enterprise as a solution to the difficulties faced by refugees in seeking work but they say they have seen some amazing transformations in the lives of those who volunteer to work at Parliament on King – from traumatised, fearful people who find it difficult to communicate to people who enjoy sharing their culinary skills with other staff members and the public.

Ravi and Della receive no funding to run the International Shift project which now undertakes many catering jobs a week, sometimes serving over 1000 meals. Over the last year it’s become Ravi’s focus to the extent that he no longer takes on so many freelance assignments.

Refugees and migrants come to Australia with a wealth of skills, experience and aspirations. They are committed to pursuing employment as a means of ensuring economic security and contributing to their new country. Often they have been forced out of their homes in their country of birth due to war and unrest, and many have experienced persecution, unemployment and interrupted schooling.

However, they face multiple barriers in applying their

skills and experience, and in fulfilling their aspirations within the Australian labour market, according to the Refugee Council.

A new report, *Not Working: Experiences of Refugees and Migrants with Jobactive*, co-authored by Fairfield Multicultural Interagency (FMI) and the Refugee Council (RCOA), focuses on the barriers faced by refugees and migrants imposed by the main federal employment program, Jobactive. The report’s findings are based on 102 case studies collected by FMI and supplemented by national consultations conducted by RCOA.

The term ‘refugees and migrants’ includes those who have been recognised as refugees or have come here under Australia’s Refugee and Humanitarian Program, as well as those who have come on other visas (for example, as family members, skilled workers or students).

The term ‘migrant’, as it is used in the report, does not refer to all migrants on non-humanitarian visas, as they will not all face similar disadvantages. In particular, those who come from English-speaking countries with similar cultural norms (for example, English migrants) are unlikely to face the kinds of barriers outlined in the report.

The first part of this report focuses on barriers caused or made worse by the introduction of the Jobactive program, including:

- Lack of specialised service
- Choosing between learning English and looking for work
- Streaming and the Job Seeker Classification Instrument (JSCI)
- Compliance measures and implications
- Limited support with resumes and interview skills
- Job Plans and lack of understanding of rights and responsibilities
- Under-use of interpreters and lack of translated materials
- Inappropriate Work for the Dole placements
- Over-reliance on, and lack of support for use of, technology to look for work
- Being treated with disrespect.

The second part identifies some longstanding barriers to employment. These include:

- Lack of opportunities to attain relevant Australian work experience
- Difficulties in the recognition of prior qualifications and experiences, and
- De-skilling than upskilling.

The report describes some of the innovative and specialised employment initiatives designed to address the employment needs of migrants and refugees, including integrating Australian work experience; strengthening



Parliament on King, a small café that offers hope and dignity to asylum seekers and refugees seeking a place in Australian society

on-arrival support and post-employment support; collaboration; and personalised assistance such as casework and mentoring. While the list is not exhaustive, it contains useful examples of specialised and needs-based initiatives that take a targeted approach.

However the Refugee Council makes four key recommendations:

- Develop a national multicultural employment strategy
- Review the effectiveness of the Jobactive program for refugees and migrants, and improve the program accordingly
- Invest in targeted employment programs, and
- Build and share knowledge about what works.

A national multicultural employment strategy

The Australian Government should develop a national multicultural employment strategy that incorporates a whole-of-government approach. This strategy should ensure the appropriate linking and collaboration between settlement, education and training and employment services. It should identify areas for targeted investment in employment transition programs for refugee and migrant jobseekers.

Review and improve Jobactive program

The Australian Government should commission an independent review of the effectiveness of the Jobactive program in meeting the needs of refugee and migrant jobseekers, and develop a plan to address key areas for improvement identified in this review.

Invest in targeted employment programs

The Australian Government should review their funding of employment transition programs with a view to increasing investment in targeted employment programs.

Learn and share knowledge

The Australian Government should invest in research and platforms for sharing knowledge about effective employment programs that result in better outcomes for refugee and migrant jobseekers.

Ravi doesn’t pretend that what he and Della are doing can fix all of Australia’s problems when it comes to employment opportunities and community integration for refugees. But he believes they do offer positive hope and dignity, and an opportunity to have a voice.

During the day the cafe serves, often with help from refugees and asylum seekers keen to take part, what he calls a simple ‘student’ menu, typically salmon and avocado on sourdough, homemade baked beans, cakes and biscuits.

However, on community dinner evenings, Parliament on King makes the most of the skills of its volunteer chefs in offering authentic meals from places like Pakistan, Sri Lanka, Malaysia, Somalia, Nigeria. Ravi says they make and show everyone else how to make and serve their food, all beautifully prepared in a traditional manner.

“Food is a wonderful way to connect people and cultures together in an effortless way,” he says. He mentions a chef who arrived in a traumatised state having nearly drowned in a boat before ending up in detention on Christmas Island stripped of hope. From being a man who could not effectively communicate, who could not look anyone in the face, there came a gradual change as he found his place at Parliament on King. He now takes charge of the kitchen and is adopting Australian slang!

Ravi and Della agree that “food is a wonderful way to connect people and cultures”. They say of their small enterprise, “It’s small but it’s real.”

Sandra Symonsw

The pro-free speech way to fight fake news

Most cures for fraudulent news threaten to be worse than the disease. There's at least one exception, reports Suzanne Nossel, executive director of the PEN America.

After the gunfire ended, false claims that the Las Vegas carnage was the work of Islamic State terrorists or left-leaning Donald Trump opponents flooded Facebook pages, YouTube searches, and news feeds. Again, we saw how so-called “fake news” can fuel chaos and stoke hatred. Like most fraudulent news, those deceptive articles are protected speech under the U.S. First Amendment and international free expression safeguards. Unless they cross specific legal red lines — such as those barring defamation or libel — fake news stories are not illegal, and our government does not have the power to prohibit or censor them.

But the fact that fake news is free speech does not nullify the danger it poses for open discourse, freedom of opinion, or democratic governance. The rise of fraudulent news and the related erosion of public trust in mainstream journalism pose a looming crisis for free expression. Usually, free expression advocacy centres on the defence of contested speech from efforts at suppression, but it also demands steps to fortify the open and reasoned debate that underpins the value of free speech in our society and our lives.

The championing of free speech must not privilege any immutable notion of the truth to the exclusion of others. But this doesn't mean that free speech proponents should be indifferent to the quest for truth, or to attempts to deliberately undermine the public's ability to distinguish fact from falsehood.

Both the First Amendment and international law define free speech to include the right to receive and impart information. The power of free speech is inextricably tied to the opportunity to be heard and believed, and to persuade.

Fake news undermines precisely these sources of power. If public discourse becomes so flooded with disinformation that listeners can no longer distinguish signal from noise, they will tune out. Autocrats know this well and thus tightly control the flow of information. They purvey falsehoods to mislead, confuse, and — ultimately — to instil a sense of the futility of speech that saps the will to cry foul, protest, or resist. On social media, the problem is not one of control, but of chaos. The ferocious pace with which false information can spread can make



Suzanne Nossel, executive director of PEN America

defending the truth or correcting the record seem like mission impossible, or an invitation to opponents to double down in spreading deceit.

The problem of fraudulent news right now is compounded by social and political divisions that undercut the traditional ways in which truth ordinarily prevails. Investigations, exposes, and studies fall short in a situation where a significant portion of the population distrusts a wide array of sources they perceive as politically or ideologically hostile — including sources that traditionally commanded broad if not universal respect.

The debate over solutions to fraudulent news has centred on what the government, news outlets, social media platforms, and civil society actors like fact-checking groups can do. Each has an important role to play, but they also must respect sharp limits to their interventions. Of course, no president should routinely denigrate legitimate news that he dislikes — as Donald Trump continually does. But Trump's misuse of his authority merely reminds us that it's for good reasons that the Constitution forbids the government from adjudicating which news is true and which is false.

Google and Facebook, as private platforms, should monitor their sites to make sure that dangerous conspiracy theories don't go viral, but if they over-police what appears on their pages, they'll create new impairments for edgy speech. Certainly, news outlets should strive to uphold professional and ethical standards, but they alone can't convince cynical readers to trust them. Similarly, those who believe fake news tend to distrust the fact-checking

outlets that try to tell them the stories are bogus.

Ultimately, the power of fake news is in the minds of the beholders — namely, news consumers. We need a news consumers' equivalent of the venerable Consumers Union that, starting in the 1930s, mobilized millions behind taking an informed approach to purchases, or the more recent drive to empower individuals to take charge of their health by reading labels, counting steps, and getting tested for risk factors.

When there were only a few dishwashers to choose from, buyers didn't need consumer reports to sort through their features and flaws. But when the appliance shopper began to face information overload, trusted arbiters were established to help them sort out the good from the bad. In decades past, news consumption centred on newspapers, magazines, and network shows that had undergone layers of editing and fact-checking. Most consumers saw little necessity to educate themselves about the political leanings of media owners, modes of attribution for quotes, journalistic sourcing protocols, the meaning of datelines, or other indicators of veracity.

Now, with the proliferation of overtly partisan media, lower barriers to entry into public discourse, and information flooding across the web and cable news, consumers need new tools to sort through choices and make informed decisions about where to invest their attention and trust. The fight against fake news will hinge not on inculcating trust in specific sources of authority but on instilling scepticism, curiosity, and a sense of agency among consumers, who are the best bulwark against the merchants of deceit.

A news consumers' movement should include several prongs, building on PEN America's newly released 'News Consumers Bill of Rights and Responsibilities' from its new report, *Faking News: Fraudulent News and the Fight for Truth*. The movement should furnish credible information to help consumers weigh the reliability of varied news sources.

It should include an advocacy arm to prod newsrooms, internet platforms, and social media giants into being transparent about their decisions as to what news is elevated and how it is marked. This movement should advance news literacy curricula in schools and equip the next generation to navigate the information ocean they were born into. It should conduct outreach to diverse constituencies and strive continually to avoid ideological bias. It should develop an investigative research arm to expose, name, and shame the purveyors of fraudulent news and their financial backers. And it might provide periodic ranking of, and reporting on, newsrooms and other outlets to hold them accountable to their audiences.

The movement should also mobilize the public to become good news consumers by encouraging them to apply a critical eye to news sources, favour those that are trustworthy, validate reports before sharing them on social media, and report errors when they see them.

Recognizing fraudulent news as a threat to free expression cannot be grounds to justify a cure — in the form of new government or corporate restrictions on speech — that may end up being worse than the disease. Unscrupulous profiteers and political opportunists may



never cease in their efforts to infect the global information flow of information to serve their purposes. The best prescription against the epidemic of fake news is to inoculate consumers by building up their ability to defend themselves.

Fake news poses looming threat to free expression

PEN America's comprehensive report *Faking News: Fraudulent News and the Fight for Truth* released in October evaluates the array of strategies that Facebook, Google, Twitter, newsrooms, and civil society are undertaking to address the problem, stressing solutions that empower news consumers while vigilantly avoiding new infringements on free speech.

The report argues that even though most “fake news” is protected by the First Amendment, its proliferation creates a flood of disinformation that imperils open expression writ large and demands a concerted response.

“Fake news is mendacious publication gone viral in the digital age,” said

Suzanne Nossel, executive director of PEN America, who cites the organization's 1948 Charter which commits PEN to “oppose such evils of a free press as mendacious publication, deliberate falsehood and distortion of facts for political and personal ends”.

The report rates the range of fact-checking, algorithmic, educational and standards-based approaches being taken to counter the proliferation of fake news. It identifies sound methods that merit investment, and sounds a warning bell for tactics that risk suppressing controversial speech, such as giving government new powers to regulate or calling on social media companies to block specific content entirely.

The report was published as tech giants Facebook, Google, and Twitter were being called to Capitol Hill to testify about how their companies' platforms and technologies were used by Russia in an effort to sway the 2016 presidential election. Arguing that these companies — which are many Americans' primary channels for news consumption — must play a critical and transparent role in curbing the spread of false news, the report spells out a series of specific strategies that centre on empowering news consumers with access to fact-checking initiatives and news literacy programs.



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Make a difference, join us

Any true democracy respects and protects freedom of expression. Without this, social justice is at risk.

Yet this freedom is great danger. Every day, people are persecuted simply for speaking out, and governments and others in positions of power continue to gag, imprison, murder and silence individuals who have the courage and honesty to speak and to write about what is happening in the world around them.

By joining Sydney PEN you will be supporting the work of an historical Australian organisation, with a focus on advocating for these rights in our Asian and Pacific region.

You will be the first to receive invitations to hear our guest speakers participate in local letter-writing evenings, and receive campaign alerts to take action. Join today at www.pen.org.au/join

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