

Freedom of Speech Has Its Limits

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Pictured: Hillary Clinton and Donald Trump
Source: US News 2016

One of the best shows in town for the past few weeks has been the presidential race to the bottom in the US.

The land of freedom of speech has thrown up personal and very public attacks, lewd and offensive comments and debates in which the strategy seems to be to insult your opponent as much as possible. It is not easy to discern the real policy arguments as most of the airtime is devoted to sensationalism.

In Australia politics can get rather personal at times but often this will occur in the chamber, where comments made are protected by what is called parliamentary privilege.

In 1994 the High Court ruled in a case known as *Theophanous* that even though there was no specific recognition of freedom of speech in the Australian Constitution, there was an implied constitutional freedom to publish information discussing government and political matters, and the way members of parliament conducted their duties and their suitability for office.

However, to the extent this case actually did allow freedom of speech, and in my opinion it didn't get us close to the US position, the world changed again in 1997 when former New Zealand Prime Minister David Lange succeeded in a High Court case against the ABC.

It followed a Four Corners program that alleged that The NZ Labour Party, then led by Mr Lange, had been influenced by donations from certain large business interests.

Mr Lange was successful in a defamation action and the High Court overturned its earlier position by introducing a test requiring publishers of potentially defamatory information to act reasonably.

Many high profile politicians have sued publishers over the years. The list includes Tony Abbott and Peter Costello, Bob Hawke and Joe Hockey.

So you could be forgiven for being a little sceptical when you see politicians doggedly advocating for freedom of speech.

But the way the law has evolved in Australia is one reason why news organisations, journalists, politicians and members of the public alike need to think twice before launching attacks that might be seen as personal.

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