Australian columnist found guilty of breaching Racial Discrimination Act

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The Federal Court of Australia last week ruled that right-wing Murdoch newspaper columnist Andrew Bolt was guilty of breaching the Racial Discrimination Act due to an article he wrote in 2009, accusing "fair skinned" Aborigines of choosing their racial identity to advance their careers. The judgement has highlighted the deeply reactionary provisions of the Racial Discrimination Act, and establishes a dangerous precedent for the illegalisation of left-wing opposition to race-based identity politics.

Bolt is one of Australia's most notorious and prominent media commentators. He specialises in provocative diatribes targeting Aborigines, Muslims, welfare recipients, environmentalists, climate scientists, the UN, and other *bête noires* of the far right. He is widely promoted, and has a regular column in the Melbourne *Herald Sun* newspaper, a weekly television programme "The Bolt Report", and receives regular invitations to speak on the government-owned ABC television network.

In April 2009, Bolt wrote a newspaper column titled "It's so hip to be black", condemning what he called "the white face of a new black race—the political Aborigine." The column accused some "white" or "fair" people of choosing to be Aborigines on "almost arbitrary and intensely political [grounds], given how many of their ancestors are in fact Caucasian." Bolt went on to assert that "there is a whole new fashion in academia, the arts and professional activism to identify as Aboriginal", adding that "full-blood Aborigines may wonder how such fair people can claim to be one of them and take black jobs." The column cast doubt on the legitimacy of fifteen prominent people—including academics, writers, artists, and politicians—choosing to identify as Aboriginal.

Nine of those named by Bolt took him and Murdoch's News Limited to court on the basis of the Racial Discrimination Act, specifically the "racial hatred" sections of the legislation that were added in 1995. These provisions outlaw any public act that "is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people" and "is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group." Exemptions on the grounds of public debate and free expression are permitted, under section 18D of the Act, only for "anything said or done reasonably and in good faith".

In his ruling on the case, Justice Mordecai Bromberg explained that under the Racial Discrimination Act: "Whether conduct is reasonably likely to offend, insult, humiliate or intimidate a group of people calls for an objective assessment of the likely reaction of those people... General community standards are relevant but only to an extent." He concluded: "I am satisfied that fair-skinned Aboriginal people (or some of them) were reasonably likely, in all the circumstances, to have been offended, insulted, humiliated or intimidated by the imputations conveyed by the newspaper articles."

The Federal Court further found that Bolt could not claim a section 18D exemption, because of "the manner in which the articles were written, including that they contained errors of fact, distortions of the truth and inflammatory and provocative language." Justice Bromberg also cited Bolt's "derisive tone, the provocative and inflammatory language, and the inclusion of gratuitous asides" as grounds for ruling against the column's "reasonableness" and "good faith."

These findings are extraordinary. For a start, "offensive" commentary is determined not on the basis of any objective measure, or by estimating the likely response of a typical Australian citizen, but rather by the reaction of the group allegedly targeted.

Andrew Dodd, senior lecturer at the School of Journalism at Swinburne University, noted: "There would be lots of instances where we're talking about minority groups, or religious groups, where we're going to write stuff that really questions their practices. You know, if we're talking about Scientologists, or the Exclusive Brethren, or a Muslim group, or any one of a number of minorities we're going to be saying things about them that they're not going to like hearing. Now, have they got grounds under the Racial Discrimination Act to say, 'You know what? I've been offended by what you wrote. I'm going to take an action against you under the Racial Discrimination Act, and this ruling might just help me.'?"

All manner of politically-motivated prosecutions may follow the Bolt judgement. To take one potential example—American author and critic of Zionism Norman Finkelstein wrote *The Holocaust Industry*, which examined the way the Holocaust had been exploited to advance various material interests. The Racial Discrimination Act would now appear able to be used to prosecute Finkelstein in Australia, on the basis that pro-Zionist Jewish groups found his work "offensive."

There are other serious implications. Justice Bromberg's judgement interprets the exemption clause in the Racial Discrimination Act requiring "reasonableness" and "good faith" in a manner that prohibits statements made with a "derisive tone" and in an "inflammatory and provocative" manner.

The ABC's Jonathan Holmes noted: "In other words, if you want the protection of section 18D of the act when writing about race in a way that's likely to offend, you need to be polite, not derisive, calm and moderate, rather than provocative and inflammatory, and you must eschew 'gratuitous asides'. If you did all that, of course, you'd be unlikely to offend anyone in the first place. So there doesn't seem much point in section 18D."

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Justice Bromberg rightly condemned the many factual errors and distortions in Bolt's column. The columnist, for example, wrote that Larissa Behrendt, Professor of Law and Indigenous Studies at Sydney's University of Technology, had a German father. Her father is in fact Aboriginal. Behrendt and the other eight people who brought the legal action also testified that they had been raised as Aboriginal from childhood, and had not chosen that identity as young adults to advance their careers, as the newspaper column had implied.

The kind of false accusations against specific individuals contained in the Bolt column would normally have given rise to charges of defamation. Within the framework of the Racial Discrimination Act, however, Bolt's factual errors were largely irrelevant. It appears that he would have been found guilty even if he had been able to prove beyond doubt that everyone he named in his column had chosen to call themselves Aboriginal solely for personal gain.

Justice Bromberg declared: "In seeking to promote tolerance and protect against intolerance in a multicultural society, the Racial Discrimination Act must be taken to include in its objectives tolerance for, and acceptance of, racial and ethnic diversity. At the core of multiculturalism is the idea that people may identify with and express their racial or ethnic heritage free from pressure not to do so... Disparagement directed at the legitimacy of the racial identification of a group of people is likely to be destructive of racial tolerance, just as disparagement directed at the real or imagined practices or traits of those people is also destructive of racial tolerance."

This finding underscores the political character of Bromberg's judgement, which is explicitly aimed at reinforcing the official ideology of the Australian ruling class.

From the mid-1970s onwards, "multiculturalism" has been promoted as a refashioned national ideology, in the wake of the collapse of the "White Australia" program. The central purpose of "White Australia" was to provide the necessary ideological cement for the young Australian nation-state amid deep class divisions. Its central purpose was to undermine the development of class consciousness in the working class, through the promotion of a national and racial identity across class lines. As Australian capitalism developed closer trade and investment ties with Asia, however, it became untenable for the ruling elite and its political representatives to retain the old isolationist and xenophobic policies. Multiculturalism was fashioned as an alternative, "progressive" means of undermining the development of a unified and independent political movement of the working class. Over the past three decades, in line with similar processes internationally, "identity" politics has predominated in academia, the media, and throughout political, social and cultural life, with ethnic, racial, linguistic, religious, gender, and sexual distinctions elevated above class.

In relation to Aboriginal issues, this agenda has involved various initiatives—"reconciliation", land rights, an apology for members of the stolen generations. These have been aimed, above all, at covering up the historical reality that it is the capitalist profit system—not "all white people"—that has been responsible for the dispossession, genocide, and continued oppression of the Aboriginal people. At the same time, definite material privileges and career opportunities have been provided to a narrow layer of Aboriginal bureaucrats, landowners, businesspeople, and other middle-class strata that have been cultivated as a new black elite.

For ordinary Aboriginal workers and young people, on the other hand, social conditions have only continued to deteriorate, with ongoing poverty, unemployment, poor health and drastically lower life expectancy than other Australians, as well as lack of access to basic social services and infrastructure.

It remains unclear to what extent the Bolt verdict has established a precedent that could be used against the socialist critique of "multiculturalism" and Aboriginal identity politics. The *World Socialist Web Site* and the Socialist Equality Party have a clear and principled position on these issues, advancing a perspective aimed at mobilising the entire working class, Aboriginal and non-Aboriginal alike, in a common struggle against the profit system and all its political apologists. This involves politically exposing the role played by various Aboriginal figures whose wealth and status is bound up with their loyalty to the major parties and to the agenda and institutions set up by the ruling elite under the aegis of "multiculturalism." No doubt the individuals concerned regard such analyses as "offensive", "inflammatory" and "provocative."

For various self-styled "liberal" figures, who have commented on the Bolt case, no such principled considerations arise. Prominent journalist David Marr, for example, sprang to the defence of the Federal Court, insisting that it was not interfering with free speech, merely "attacking lousy journalism." Marr's response demonstrates just how closely his social milieu is wedded to identity politics—and to defending its upper-middle class colleagues in the Aboriginal elite. Marr did admit, however, that he thought the Racial Discrimination Act "set the bar too low" by outlawing political comment that was merely "offensive" rather than "humiliating" or "intimidating."

The pseudo-left protest organisation Socialist Alternative, however, was unequivocal. Its comment on the Federal Court case, authored by Louise O'Shea, hailed the ruling, insisting that the only issue that mattered was that Bolt was a nasty right-winger, and that his conviction should be celebrated on this basis alone. O'Shea stressed that the judge found that "Bolt unashamedly lied in his column and broke the law", and concluded: "I hope all those who have been vilified, disparaged and mocked by Andrew Bolt over the years are enjoying his public humiliation. May there be more of it."

What a devastating self-indictment! The unprincipled and subjective basis of middle-class "radical" politics could not be more clearly articulated. Socialist Alternative revels in narrow-minded *Schadenfreude* and vengeance, while dismissing any consideration of the serious implications of the court ruling for democratic rights. O'Shea insisted that Bolt "broke the law"—without making any assessment of the content of the law itself. Socialist Alternative is clearly content to outsource to the capitalist state the task of challenging Bolt and his positions. O'Shea further writes about Bolt's "public humiliation", when in fact the court judgement has allowed the columnist and his right-wing supporters to engage in some bogus posturing as martyrs for free speech.

The Marxist movement's opposition to the ruling class and its ideologists—including yellow journalists and provocateurs like Bolt—has nothing in common with the approach taken by Socialist Alternative. Genuine socialists are the most strident and principled defenders of the democratic rights of all. The escalating attacks by governments around the world on democratic rights and legal norms reflect the extreme growth of social inequality, because their unprecedented assault on jobs and living standards cannot be implemented democratically. That is why authoritarian forms of rule are being prepared. It is also why the defence of democratic rights requires the political mobilisation of the entire working class on the basis of a conscious struggle for socialism against the capitalist profit system itself.

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