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Free speech in the workplace

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Item Type	Preprint
Authors	Macklin, Rob
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Download date	2026-07-12 09:21:47
Link to Item	http://hdl.handle.net/20.500.12424/174022

**Free speech in the workplace: results of a qualitative study of
workplaces in a selection of Australia Firms**

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Abstract

Freedom of speech is an important right in liberal democratic societies. It is also a concept that can cause significant academic and public debate. However, discussions of free speech are generally limited to analysis of people's rights and capacities to speak on political issues. Very little work has been done in other arenas such as the workplace where many people spend a large part of their time.

This paper reports on a research project that examines the status of free speech at work through a qualitative study of employees in Australian organisations. The project sought to provide insights into what managers and non-managerial employees in Australian organisations take a right to freedom of speech as meaning within workplace settings; their experiences and understandings of their capacity to speak freely at the workplace; and how they make sense of or explain any difference between their rights and capacities at work. This paper provides a description of the qualitative findings and points towards future analysis and research tasks to be undertaken by the project team.

Free speech in the workplace.

Introduction

Freedom of speech can be defined as our right to “express an opinion of any kind without incurring a penalty” (Shorter Oxford English Dictionary, 5th edn 2002). It is clearly an important right in liberal democratic societies and one that a significant number of researchers have investigated. It is also a concept that can cause significant academic and public debate (Schauer, 1982). However, academic discussions of free speech are generally limited to analysis of people’s rights and capacities to speak on political issues such as government policy decisions. Very little work has been done in other arenas such as the workplace where many people spend a large part of their time (Campbell 2002).

As a way of addressing this gap the paper reports on a research project ¹that examines the status of free speech at work through a qualitative study of employees in Australian organisations. More specifically, the aim is to provide insights into what managers and non-managerial employees in Australian organisations take a right to freedom of speech as meaning within workplace settings; their experiences and understandings of their capacity to speak freely at the workplace; and how they make sense of or explain any difference between their rights and capacities to speak freely at work. Ultimately, findings from this study will be used to reflect on legal and philosophical analysis of free speech as a right in modern liberal democracies. This paper provides a description of the qualitative findings and points towards future analysis and research tasks to be undertaken by the authors.

Literature Review

Academic literature directly addressing free speech at work is limited. A few articles over the last decade have addressed the issue directly. They are largely limited to the

¹ The project is being conducted by the author with Professor Tom Campbell from the Centre for Applied Philosophy and Public Ethics in Canberra, Australia.

United States and are normative, legal or philosophical in orientation. Lippke (1995) and Yamada (1998) for example seek to show that workplace free speech should be accorded the same social or legal protection that free speech in the broader community is given. While Yamada (1998) and Barnett (1994) focus on employees' legal rights and the role of the courts in protecting free speech. In addition, Haskins (1996) argues for an acceptance or expansion of free speech on economic or organisational performance grounds.

In the Australian context, Campbell (2002) has undertaken some legal and philosophical analysis of workplace free speech. He challenges a purely state-centred analysis of human rights by arguing for the idea of workplace speech as a significant human right without implying that it involves giving the state the leading role in threatening, protecting or furthering this right. His suggestion is that a human right to contribute to the discussion of matters relevant to the business in which a person is employed is worthy of recognition because of its high moral significance. This, he suggests, arises because of both its connection with human dignity and its role in protecting the important human interests of employees and other stakeholders.

Going beyond the question of rights, no academic literature exists that directly examines in depth the extent to which freedom of speech does exist in the workplace, how it is to be understood and how people make sense of any disparity between their rights to workplace free speech and their actual capacity to speak freely at work. This is the task of the project reported on in this paper.

Methodology

A qualitative in-depth interview design was adopted for the project because it was decided it would best enable a robust picture of people's understandings of their rights and capacities for free speech in the workplace to be built. Qualitative methods such as in-depth interviews allow the time and interaction needed to establish 'thick' descriptions. That is, they allow researchers to build comprehensive pictures of how the

people they are researching understand their world (Patton 1990, Denzin and Lincoln 2000, Taylor and Bogden 1998).

For this project, both men (9) and women (8) of varying ages and managerial seniority were interviewed. Five interviewees were senior executives in their organisation four occupied a middle management position and eight were non-managerial employees. The interviews took place in five medium to large organisations drawn from four separate industries (financial services, packaging, food manufacture, and business services). Two of the organisations were located in regional Victoria, two in regional NSW and one in Sydney. This variability provided a diverse sample of interviewees whose personal histories and work contexts were quite heterogeneous. The in-depth interviews went for between one and four hours.

In drawing on the interviews no claim is made about the *statistical generalisability* of the issues raised to the broader population of managers and employees. Our goal was to build a rich picture of a selection of managers and employees understandings of their rights and capacities to speak freely at work. This picture can then be used to reflect on broader possibilities and one that we hope will resonate with other managers and employees. As such it will be used as a basis for further research and reflection. In particular, the intention is to use the finding to reflect on and evaluate philosophical theories of free speech.

Findings

In most cases, interviewees were asked four broad questions: What does ‘free speech’ mean?; Do people have a right to workplace free speech?; How free is speech really at work?, and; How can people’s current capacity to express themselves freely be explained? These questions were used as a starting point from which to explore interviewees’ understandings of their rights and capacities and are used here as headings.

What does free speech mean?

All the interviews commenced with this question, which was designed to establish what the interviewees took free speech to mean and what, therefore, we were to talk about in the rest of the interview. The question was initially directed at free speech in the broader society, before being narrowed to a workplace context.

With respect to free speech in the broader society, perhaps reflecting the pervasiveness and importance of free speech as a principle in Australian society, most of the interviewees un-prompted put forward a definition that resonated very strongly with the dictionary definition quoted in the introduction to this paper. Thus in general terms interviewees defined it as about being able to voice one's own opinions on any subject matter without restriction or fear, or feeling held back or suppressed. As one interviewee put it

I would say it's your ability to say whatever you are feeling, it doesn't matter what peoplethink of you, you should be able to say how you feel, anytime...

Perhaps the one significant difference was that the interviewees did not generally portray free speech as an entitlement. The focus was on 'being able' to speak freely rather than on a right that they may or may not be able to exercise.

Resonating with Campbell's (2000) challenge to purely state-centred studies of human rights, none of the interviewees limited free speech to the political realm. Rather they saw it as about being able to speak freely without penalty or recrimination from any authority figure. As one interviewee stated

It could be in anything, ... a sporting club or something like that. It would just be for you... to have your opinion on how things are conducted. For example, if I was playing netball, it might be me telling the coach about how I feel about her coaching strategy.

And for the people I interviewed this also meant authority figures in organisations such as managers and supervisors. That is, the interviewees argued that free speech in organisations is about being able to express your own views without suppression or sanction¹.

Having said all this, many interviewees suggested that while free speech is about being able to express your views on any subject, there are limitations upon it that reasonable people should accept. Here the interviewees spoke of speaking within the limits of civility and decency. That is they suggested that reasonable and decent people will express themselves in a courteous manner which is respectful of others views and beliefs.

Do people have a right to workplace free speech?

In order to deepen our understanding of managers and non-managers views on free speech, we explained what we saw as a distinction between a person's right to something and their actual capacity or opportunity to exercise this right. That is, it was suggested to the interviewees that someone may have a 'right' to speak freely within a particular context without actually having the ability or capacity or opportunity to speak freely in that context. All the interviewees appeared to be aware of, were readily able to grasp the meaning of this distinction, and thus were asked what right as opposed to capacities they thought employees have in their workplaces. Responses are grouped and summarised below in terms of the interviewees' positions in their organisational hierarchies.

Senior Managers

Senior managers argued that employees have a prima facie right to reply on disciplinary matters, express an opinion on *any* work issue, especially how it should be done and talk about *any* non-work. Interestingly they drew a close connection between 'free-speech' and employee participation in management decision-making. That is, unprompted the senior managers appeared to take the term free-speech to be a synonym for worker's

participation and this they were suggesting is a right. Nevertheless, they suggested that there are some limitations on rights at work. For example, it was argued that there is an expectation that employee speech will be civil, respectful, and “constructive” and that non-work discussions will not interfere with work, will not be forced on people and will respect difference. Moreover, many of the senior managers argued that there are appropriate forums for speaking freely such as in one to one meetings with managers and formal staff meetings. One senior manager also argued that people in his organisation do not have a right to campaign on an issue and must understand that there will always be a time limit on free speech. In the first instance here, he was suggesting that while people have a right in his organisation to raise issues and to question decisions, they do not have a right to publicly protest or mount campaigns in an attempt to force management to act in a certain way or to change a decision. In the second instance, his argument was that while employees have a right to raise issues and make an input into management decision making, once a decision has been made and enacted they do not have a right to continually question the decision or to advocate for its change. That is, employees have a right to free speech on any issue but they don’t have a right to speak in any way and whenever they choose. It is perhaps important to point out that employees in this manager’s organisation were not organised by a trade union.

Middle-managers and non managers

Middle managers and non-managers suggested that, roughly speaking, they have the same right to speak freely at work as in civil society on a wide range of issues and especially on questions of how work tasks should be undertaken. They did not, however, suggest that they have a right to speak about any issue they choose. In this regard as the following quote suggests, one interviewee claimed that there are likely to be some higher level policy issues affecting owners financial interests that employees should not be seen as having an automatic right to discuss. The assumption here seemed to be that ownership implies a broader right to speak about organisational issues than employment status.

It depends I think, ...if there is a policy that is going to effect the (owners) directly, financially, ...just because you work here doesn't mean you have the right to discuss that information.

Moreover, as did senior managers, many of the middle and non managers argued that they do not have a right to speak uncivilly, disrespectfully, or “unconstructively” and that they do not have a right to allow non-work discussions to interfere with work. Nevertheless, it was clear that all saw the right to free speech as extremely important and this is encapsulated well by the following slice of dialogue from an interview.

Question: What if your boss was to say to you, “look you don't actually have the right to free speech, I choose to listen to you and I can choose not to”. ..What would be your response?

Answer: I'd say, “What?, sorry, I choose not to listen to you.”

How free is speech really?

So it would seem that for the managers and employee's interviewed, a right to free speech is recognised, albeit within limits. The interviewees were then asked how free they actually are to voice their own opinion on any subject matter.

Senior managers

According to the senior managers interviewed, despite rights, employees do not speak as freely at work as they, the senior managers, would like them to. Most argued that participation arrangements haven't lived up to promise and that employees frequently seem reluctant to raise grievances or express an opinion. Moreover, they admitted that employees are often not asked by their managers to give opinions on work issues and that while people have a right to speak negatively about the company, if they do not go through proper process it will be frowned upon.

Interestingly the senior managers also suggested that it is often the case that they and other managers are more restricted than non-managerial employees when it comes to saying what they really think. In this respect they spoke about having to be careful about criticising other managers or the firm in front of employees, and the expectation that all managers will be loyal to the company in their speech both outside and inside the organisation. In this respect, one senior manager provided the following short example.

We had an example of a manager who...disagreed with senior management and went and told all the employees in the middle of an EBA....Needless to say he is not there anymore....

Middle managers

The middle managers also suggested that there is a real gap between people's rights and capacities. In this regard, they argued that the reality is that their own speech is restricted by their position in the management hierarchy. They argued that they are in a 'sandwich' position which means they often have sympathy for employee grievances but must, nevertheless, follow the company line. Moreover, this is often exacerbated by senior managers wishing to be friendly with staff, leaving middle managers to play the 'long arm of the law'. More broadly they suggested that middle managers must be politically astute or pragmatic about what issues to communicate to senior management and must be very careful with 'off the cuff' remarks that could be misinterpreted. They indicated that they as employees may well be encouraged to express their own views but that they must be politically astute.

Non-managers

A few non managers Interviewees claimed *they* are free to speak at work and are listened to. Quoting one of them:

I'm very free to speak here. I mean my boss, we have a very open and transparent relationship in day to day dealings. (My boss is always saying) "What do you think, tell me what you think?" It's a very unusual situation working here.

Further a few discussed the importance of team meetings as a means to raising ideas regarding work and one strongly argued that she felt she had more free speech in work decisions than in the broader running of the country and especially government decisions that could have significant implications for her wellbeing.

However, all the interviewees suggested that free speech is largely limited to work issues and all work issues must be raised in a 'professional' manner. What they meant by 'professional' here was difficult to pin down but generally went to such things as being very careful about how to express emotion, and ensuring that one is always being constructive rather than simply negative or unreasonable.

Further, it was argued that employees cannot simply say what they think; they must learn how to speak to different managers in different ways depending on the managers personality and seniority. In this regard, one employee argued that it is important to be very careful about how to question a manager's work. She suggested that it is important to use humour and be gentle. Many also suggested that it is not possible to be totally free about non-work matters. Employees have to develop an understanding of what is appropriate especially when it came to political or social views.

In addition, it was argued that while it might be easy for some people to speak up many individuals seem very reticent. This reticence is suggested in the following quote, where the interviewee was clearly attempting to very carefully explain that one must be very careful about what one says in her organisation.

In the workplace I think freedom of speech...I feel that you can only say...I mean you can say certain things, but you think about things before you say them. That's how I think about it. Freedom of speech in the workplace is a funny one for me because I just think

about things before I say them so I'm making sure that maybe I don't say the wrong thing, or maybe...yeah I make sure that I don't.

Further it was argued by many of the non-managers that while it is easy to talk about how work might be done more effectively, this is not the case when it comes to grievances. That is, offering ideas for how to make the organisation more productive etc. are fine but when raising grievances one must be professional and 'politically correct'. Moreover, even when it came to constructive suggestions, many of the employees felt that management rhetoric about listening isn't necessarily matched with action.

Why is there a gap between rights and capacities?

An obvious follow up question here was to ask why there is the difference between rights and capacities. More accurately, why do the interviewees think that while they have a right to free speech, their actual capacities are limited?

Senior managers

The senior managers generally argued that the problem is that despite the initiatives they had instituted, many employees *choose* to remain silent. That is, it wasn't that employees couldn't express themselves freely, it was just that they choose not to speak. In explaining this reluctance, many of the senior managers pointed to the individual make-up and psychological development of many employees and further suggested that early conditioning in schools caused employees to adopt a deferential attitude towards more senior managers which meant they are reluctant to question or speak-up. This early conditioning was also seen to result in the erroneous belief that managers are experts who need little input from employees and thus speaking-up was of little use.

The senior managers did not, however, seek to argue that it was all a matter of school based conditioning. They acknowledged that past company cultures where people had been sanctioned for being too vocal were causes of silence and that this was exacerbated

by the burdens of private responsibilities such as mortgages. They also acknowledged that there are in their organisations strong cultural norms around what and how people should speak and that some managers cannot take criticism, run away from problems or lack affinity with staff.

Further, the senior managers suggested that speaking freely is also problematic in organisations because of the political nature of organisational life. Organisations are comprised of frequently competing coalitions that create schisms and mean employees have to be careful with whom they share information. In addition, the politics of career progression means that people who 'rock the boat' are often marginalised and that this is something the young manager needs to learn early. As one senior manager argued:

...people who more freely express themselves are seen as mavericks in the system and not the norm of the system. They are seen to be shelf dwellers, their careers don't go much further than where they are and they tend to often become bitter and twisted and withdraw back into "what's the use of saying something, they won't listen to me anyway" So we condition them...

Middle managers

Middle managers also acknowledged the limits associated with organisational cultures past and present. They also strongly echoed the senior managers point about the politics of career progression. They argued that speaking to senior managers about subordinates could have significant ramifications upon the career prospects for junior employees. They thus must weigh up very carefully whether or not they should raise and be open about a particular employee's problem or performance with senior management. This care they suggested also needed to be applied to themselves. That is, they themselves have to carefully measure how and what to say in order to protect and advance their own career. The implication was that being too candid or raising too many problems can destroy a career.

Question: they are trying to push a line of openness, participation, everybody involved in decision making and being open about issues and problems. But you're saying that's all very well and good but one has to be a bit cautious?

Answer: That's right, yeah. Just from my own point of view, I believe that you can't go bull at a gate because there is going to be a point where they will also cut their losses with you...look I'd hate to be thought of as a "problem" employee.

Non managers

As with the senior managers and middle managers the non managers interviewed also spoke of company past and present cultures, organisational politics and the reality that a persons career can be compromised by raising grievances or 'un-professional' speech. Perhaps validating the senior managers somewhat many also argued that the age, experience and expertise of many managers creates respect, deference, and thus hesitancy around being too vocal. Some also argued that they had become disheartened by the gap between the rhetoric of participation and the reality that many of their ideas are ignored.

In addition, non-managers argued that a major reason for their or their colleagues silence was to do with poor management skills. That is, most argued that limits on their capacity to speak freely frequently come down to the fact that they are managed by individuals who have poor communication skills, are overly dominant (and sometimes bullying), disinterested, hard to build rapport with, aloof or too busy.

Some people also argued that free speech is inevitably undermined by structural factors. For example, sometimes colleagues and managers are at a separate and geographically distant location and this limits speech. That is some argued that it is hard to speak freely with people when they are beyond face to face interaction. Also, it was argued, speech is frequently constrained by performance imperatives and time constraints. Finally one interviewee argued that there will always be limits to what can be raised, because organisations aren't democracies. They are hierarchical structures where the goals are set

before an employee starts, so there will inevitably be limits to what can be raised by an employee.

Conclusion

It will be recalled, that the few academic writers who have written about free speech in the workplace claim that it should be an important right. Based on these findings, it would appear that at least for the employees and managers interviewed this is indeed the case. The existence of a right to free speech, within the bounds of civility, was asserted by everyone interviewed. For the writers concerned about the recognition of rights this is perhaps a pleasing finding. However, their research suggests that a recognition of rights is not necessarily enough. The people interviewed seem to be suggesting that the issue of rights is not the problem. Rather, the suggestion seems to be that it is in their actual capacity to exercise these rights where the problem lies. People may have a right to free speech in the workplace but this right is not matched by practice. Given this one possible suggestion is that where senior managers and other policy makers place a value on employees being able to speak freely they should, regardless of any legal, legislative or corporate policy initiatives aimed at formalising rights, focus on developing strategies that will break down barriers to employees opportunities, abilities or capacities to freely express themselves.

In this regard, the interviewees described some of the barriers they saw as important including broader socialisation processes, older less participative cultures, the politics of career progression and managerial competencies. It is beyond the bounds of this paper to discuss strategies specifically aimed at these barriers, but it would be fair to say that there is a considerable body of literature that focuses on issues relevant to these barriers.

Problems with organisational cultures, company politics and managerial competencies have been a considerable focus of attention in what is a very large body of management studies literature (for overviews of this literature see for example Thompson & McHugh, 2002). What does not exist however, are studies of these problems as they relate to

people's capacity to speak freely. This, plus broader philosophical concerns, will thus be the focus of further work.

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ⁱ In this respect, the interviewees did not explicitly limit authority figures to more senior managers, but argued that free speech was also about being free to express your views without sanction or recrimination by anyone in an organisation