GAZA, THE CORPORATE UNIVERSITY AND THE RE-REGULATION OF INTELLECTUAL FREEDOM

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The corporate university has become more vulnerable to political pressures, with undermined collegial processes and greater sensitivity to financial and reputational attacks. In that context, staff and student responses to university collaboration in the recent massacres of Palestinians in the Gaza Strip has catalysed a repression which includes radical reregulation of the traditional idea of 'intellectual freedom'. The corporate university response has been to ban many traditional freedoms.

How was this possible? When the Political Economy group was founded in the 1970s and 1980s, despite the ideological repression of 'heterodox economics', there were certain collegiate features of the University of Sydney (USyd) and some openings for staff and students to agitate and alter the status quo. Proposals for new academic curricula were backed by extended activism which included partial strikes by staff, protest meetings, boycotts of classes, a 'day of protest' and a 'day of outrage', resulting in the University authorities setting up several committees of inquiry and eventually acceding to the demands for new political economy course (Jones and Stilwell 1986).

Once the political economy course was established, it provided space and opportunity for lecturers to weave strong critiques of current economic and political arrangements into the new curriculum and to encourage students to consider critical viewpoints alongside the more conservative views offered in more mainstream economic courses and most media commentary. Units of study were developed with themes like the social

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foundations of capitalism; the political economy of conflict and power, and human rights in development (which I introduced and taught for some years). These aspects of the political economy program have provided an atypical opportunity for students to consider critical and radical alternatives.

In the Twenty First Century, however, the logic and structures of the corporate university have increasingly snuffed out such possibilities for critical views and dissent in Australian tertiary education. Many options for agitation are now banned. Curiously, much of this has been done under the banner of 'intellectual freedom', non-discrimination and maintaining a safe learning environment.

This article examines how the corporatised University of Sydney, linked to the ideological apparatus of the state, has acted to re-regulate political expression and political protest. It points to the pressures from private funders and notes how innovations in rhetoric have weaponised 'intellectual freedom' and even non-discrimination slogans. The article begins by briefly setting out the constraints of the corporate university, then examines management innovations during the National Tertiary Education Union *vs* University of Sydney court case, the 2024 student encampment for Gaza and subsequent initiatives to control 'controversial' political expression, concluding with reflections on how this has changed the context for political economy and for radicalism at universities more generally.

Gaza and the corporate university

There can be little doubt that the corporate university is a different creature to the idealised (if elite) statutory public institution, created many years ago. But how might it best be characterised?

Increased emphasis on private fund-raising, instrumental learning and research, and concern for a marketable reputation are features of today's corporate university. Some have preferred to call this an 'enterprise university', recognising the institution's differences with private corporations, but with the key drivers remaining prestige and competitiveness linked to fund-raising (Marginson and Considine 2000: 5). This may be overly generous, suggesting dynamism and creativity above corpulence, compromise and corruption. Most university staff agree, for example, that academic standards in Australia have deteriorated

in recent times, with increased commercialisation (Evans 2018). It is also a common complaint that 'the increasing corporatisation of universities' has threatened the role of the university as a 'public good institution' (Baum and Anaf 2023: 1).

Discussions on university 'success' certainly focus more on fund raising than on intellectual achievements. The links with grants and private contracts are constantly stressed (Dodd 2016), with grants often serving as proxies for actual research outcomes. Qualitatively, commercialisation has been said to contribute to a 'hollowing out of education', reducing education to a skills-focussed process aimed at preparing students for a business world, rather than a process of non-commercial 'learning and reflection' (Abele 2015). This sort of instrumentalism was criticised decades earlier by Paolo Freire (1970). With the rise of industrial 'partnerships', the character of research can be similarly degraded.

Corporate university managers must deal with pressures from government, from an often aggressive corporate media, and from the demands of their private sponsors. Australia's oldest university, the University of Sydney, boasted in 2019 of receiving over one billion dollars in private funding (University of Sydney 2019). Yet there has been no systematic public accounting of these funds, in origin, purpose or deployment. Those factors must compromise academic independence. Yet academic freedom seems to have become most threatened at times of instability and war and, with the scale of hybrid and proxy wars increasing this century (Turse and Speri 2022; TUFTS 2022), the Australian state has often acted, if inconsistently, to contain dissent (Nilsson 2024). The state response has included setting up a Senate Inquiry into 'Antisemitism at Australian Universities' (Parliament of Australia 2024). It is notable that most Australian universities have repressed student protest over the slaughter in Gaza (Amnesty International 2024).

To what extent do compliant corporate universities act as part of an 'ideological state apparatus', as Udas and Stagg (2019) have argued? Building a revisionist instrumental state theory, using Clyde Barrow (1990), Louis Althusser (2014), William Domhoff (1979), Ralph Miliband (2009), Jürgen Habermas (1988) and others, they try to explain greater political repression at times of war, as well as the inability of the corporate university 'to engage in a serious critique of corporate liberal democracy'. If the university is – or has become – more an auxiliary agent of the state, it would certainly act to 'restrict the university's ability to engage in critical

dialogue about state sponsored capitalist forms of democracy […] [and] the state's role in privatising the common good' (Udas and Stagg 2019), as well as state and university support for foreign wars.

Then there is the role of private, unaccountable funders. Israeli lobby groups have been very active at the University of Sydney. The most influential lobby seems to be the Fund for Jewish Higher Education (FJHE), a sub-group of the World Zionist Organization (Anderson 2024) which has funnelled millions of dollars into Sydney University. Former Provost Stephen Garton praised FJHE Chair, Emeritus Professor Suzanne Rutland, for her contributions to 'interfaith dialogue' plus 'tolerance and understanding' (Anderson 2024); yet Rutland is one of those who claims that student chants of 'Free Palestine' are the cry for a new genocide of the Jewish people (Lynch and Riemer 2015). Since this trajectory is broadly consistent with bipartisan state policy, the Israeli lobby might be best regarded as reinforcing an elite political consensus.

Before the 2023-2024 war on Gaza, there were increasing attacks on 'dissident' academics in the USA. For example, 'Turning Points USA' created a 'Professor Watch List' of 195 academics said to 'advocate a radical agenda' (Turning Point USA 2017; Loomis 2016); while Google-YouTube and Facebook announced they were working with the US Government to combat supposed Russian subversion (McCarthy 2016; Lieberman 2017; RT 2017). Such pressures can intimidate revenue- and reputation-focused managers. But reactions to the slaughter in Gaza have also led to more forthright management interventions.

Shutting down criticism of the Gaza massacres

At the University of Sydney two events helped shape managers' response to criticism of the war on Gaza. The first was a Federal Court challenge (NTEU vs Sydney University) to the dismissal of this writer. I was fired, after twenty years' service at the university, for 'discourteous' criticism of pro war journalists and comments over the 2014 Gaza massacres that were deemed 'offensive' to the Israelis (Anderson 2024). The second was the student encampment for Gaza (Abbas 2024) over several months in 2024. Managerial responses to both have helped build new, systematic constraints on political expression. The details of these two processes merit some attention.

Much of the argument in the case against this writer focused on a 'Gaza Graphic' I had used to illustrate methods of 'reading controversies'. One aspect of it compared the 2014 Israeli massacres in Gaza with those committed by Nazi Germany: at left an obscured Nazi swastika was placed over the Israeli flag on an Israeli tank. The re-post of this graphic was linked to my research article 'The Future of Palestine', which showed the parallels in racial ideology and racial massacres (Anderson 2018). Otherwise, this was a graphical explanation of how to read sources, using as an example reports on the massacre of Palestinian civilians in Gaza during the Israeli invasion of Gaza of July 2014.

The student led Gaza encampment, modelled on similar actions in the USA (Banerjee 2024), ran from April to June 2024, as a protest against Sydney University's links to the arms industry and support for the Israeli regime (AAP 2024). Students spoke of a moral necessity for the action, so that their hands 'were not stained with blood' by university links to the crimes in Gaza (Abbas 2024). The camp ran for 55 days, after which managers declared that any further such actions were prohibited. Vice-Chancellor Mark Scott in May had 'apologised to students and staff who felt unsafe around the encampment but stopped short of ordering them to disband' (McKeith 2024). However, a new Campus Access Policy (University of Sydney 2024a) banned any repeat, by demanding 72 hours' notice of any type of demonstration, subject to approval, and prohibiting any encampment on university grounds (Panegyres 2024).

Sydney University Vice Chancellor Mark Scott came under fire from Israeli lobbyists (Narunsky 2024) and some parliamentarians because, unlike at other universities (McGrath 2024), University management (a) let the encampment wind down before banning any recurrence, rather than calling in police to dismantle it; and (b) did not adopt the International Holocaust Remembrance Association 'working definition' of antisemitism (IHRA 2024), which labels virtually any criticism of Israel as anti-Jewish (Anderson 2020). Responding to these attacks – and with the legal rationale approved at the final round of the Federal Court of Australia in NTEU *vs* University of Sydney – managers made extra efforts in late 2024 to codify sanctionable 'uncivil' speech or behaviour (University of Sydney 2024b).

NTEU vs University of Sydney

In the union-run legal appeal over my 2019 dismissal, University managers argued that a 'right to intellectual freedom', as stated in the Enterprise Agreement (University of Sydney 2013), did not really exist; it was 'an aspiration' subject to management control based on a range of principles under the code of conduct. This claim was successful in the first round but was overturned by a first full bench Appeal, which ruled that such a right did exist, subject to some prescribed limits, and could be maintained against management directions. However, in a second Appeal, management won with the counter argument that anyone claiming intellectual freedom had to prove to managers that this right was exercised 'consistent with the highest ethical, professional and legal standards'. We lost, as I was said to have not proven such a case.

The NTEU ran this 'unfair dismissal' case for five years in defence of the 'right to intellectual freedom' provision placed in successive enterprise agreements (EAs), which stated that:

> The Parties are committed to the protection and promotion of intellectual freedom, including the rights of Academic staff to […] express unpopular or controversial views, provided that in doing so staff must not engage in harassment, vilification or intimidation.

Managers did not allege that I had engaged in any 'harassment, vilification or intimidation' (University of Sydney 2013).

The NTEU decided to run the case as a defence of the 'intellectual freedom' provision, with little emphasis on the content of my political arguments. The assumption was that, if my comments were linked to my work and had not breached any proscribed standard, they were permissible.

In the first round, managers won. In November 2020 Justice Tom Thawley ruled in favour of arguments from Sydney University's Barrister Kate Eastman, first that the 'intellectual freedom' clause in the Enterprise Agreement (cl.315) did not create 'an enforceable right to intellectual freedom', which exempted it from claims of 'misconduct' (FCA 2020: 161, 163). Second, it was not for the court to decide on matters of actual 'misconduct'; 'It is sufficient to note that the view taken by [Provost] Garton was open and […] not shown to be affected by some vitiating error' (FCA 2020, 227, 233). Third, the exercise of 'intellectual freedom' did not prevent the imposition of manager-determined sensibilities. In relation to

posting teaching materials (some of which Garton disapproved) the judge said,

> Even if the posting of the (Gaza) infographic was a genuine exercise of intellectual freedom […] it would not matter […] It is open to the university to invoke the [misconduct] processes […] and to be satisfied that there has been 'serious misconduct' where, in the context of an exercise of intellectual freedom, the standards required […] have not been met (257, 260).

Finally, the judge relegated the academic role to that of a loyal employee, bound to follow orders:

> An employee's duties would include […] the implied duty of fidelity and to obey the lawful directions of the employer […] a refusal to follow lawful directions […] is capable of being 'serious misbehaviour' (FCA 2020: 265).

However, in the second round, the NTEU appealed Thawley's decision to the full bench of the Federal Court, which ruled in our favour. On 31 August 2021 Justices Jagot, Rangiah and Chief Justice Allsop overturned Thawley's decision, finding that he had mistakenly ruled that (1) academics had no right to intellectual freedom, under the USyd Enterprise Agreement; and that (2) it was simply for the delegated manager to be satisfied whether or not misconduct had occurred.

The majority (Jagot and Rangiah) recognised the substance of my 'Gaza Graphic' (FCA 2021: 268-9), saying that my presentation 'involves the expression of a legitimate view, open to debate, about the relative morality of the actions of Israel and Palestinian people'. The graphic was

> including Israel within a long history of colonial exploitation by one political entity over another weaker entity or people. It does not matter whether this comparison may be considered by some or many people to be offensive or wrong […] offence and insensitivity cannot be relevant criteria for deciding if conduct does or does not constitute the exercise of the right of [lawful academic] intellectual freedom.

This judgment overturned the claim by Provost Garton that the Graphic served 'no legitimate academic or intellectual purpose'.

Jagot and Rangiyah said:

> If the impugned conduct […] constituted exercises of the right of intellectual freedom […] then the University had no lawful right, power or authority to give warnings to or terminate Dr Anderson's employment because of that conduct as it could not be misconduct (FCA 2021: 271)

> […] If Dr Anderson intended the reposting [the Gaza Graphic as an exercise of intellectual freedom] he would have been correct and entitled to make that point to the University by the re-posting of the material (FCA 2021: 267).

The court ordered the matter be remitted to Judge Thawley to decide (1) whether the social media posts were lawful expressions of my right to intellectual freedom; and (2) whether the University decided to dismiss me 'in whole or part' based on my lawful expression of intellectual freedom (FCA 2021). In a third round, Thawley re-heard the matter, delivering his second judgement on 27 October 2022. He found on every count for the NTEU and myself, saying that all the key comments complained of were linked to my intellectual work and so protected under the University's Enterprise Agreement (FCA in CCHS 2022).

On the Gaza Graphic, Thawley said that no part of that graphic should be taken 'out of context'. It was created 'for an academic purpose' and was not intended 'to incite hatred of Jewish people'. University managers 'did not establish any breach of standard' under university rules. Barrister for management, Kate Eastman, claimed that there was still some breach of s.317, which additionally demanded 'the highest ethical, professional and legal standards'. Thawley asked her: 'So in what way do you say Dr Anderson didn't meet that standard, and what do you say the standard is?' Eastman could not specify any breach. Thawley found that my employment was terminated illegally and, several months later, ordered my reinstatement, with four and a half years back pay.

Yet all this was negated in a fourth round, after Sydney University management appealed Thawley's second judgement. In May 2024, a second full bench ruled in favour of the University managers on an argument not run at trial, that there was an onus on me to prove that my exercise of intellectual freedom was 'consistent with the highest ethical, professional and legal standards'. Two of the three judges disapproved of my subordination, saying I had not proven my words to have met these 'highest standards'. Justice Nye Perram said that I had 'waded into the briar patch which is the situation in Palestine' and not explained how my

> at least incendiary conduct could be characterised as being consistent with the highest ethical, professional and legal standards […] I cannot be satisfied that Dr Anderson's comments met the highest ethical, professional, and legal standards. This of course does not entail a positive finding that Dr Anderson's comments did not meet those standards. Rather, given the paucity of evidence on this topic from at

> least the Union parties, I am unable to determine the issue one way or the other' (FCA 2024: 21).

Justice Michael Lee agreed, emphasising my 'refusal to comply with the directions to remove comments' and remaining 'defiant' over managers' censorship demands (FCA 2024: 37, 40, 42).

Only dissenting judge Geoffrey Kennett, who set out a detailed history of the case, backed the final decision of trial judge Thawley (FCA 2024: 254). Although, in total, five of seven judges had found in our favour, the final word went to Perram and Lee. In this way, a vague additional burden effectively neutered the Enterprise Agreement's 'right to intellectual freedom'.

Reporting of the case was distorted. In November 2024, presumably to reinforce his defence against Israeli lobby attacks, Vice Chancellor Mark Scott claimed that I had been dismissed for 'antisemitism', saying 'I believe we're the only university in the country that has fired someone for antisemitism' (White 2024).

Re-regulating intellectual freedom

After NTEU vs University of Sydney 2024, the obligation on those claiming 'free speech' would be conditioned by demanding proof that such speech met 'the highest ethical, professional and legal standards', to management satisfaction, but without any specified criteria.

For example, in September 2024, the University of Sydney's Registrar, Hayley Fisher, wrote to students planning a discussion of Gaza, demanding several things: a change of venue, 'appropriate conduct' including that none should engage in any anti-Semitic, racist or unlawful conduct', and that 'any exercise of intellectual freedom is in accordance with the highest ethical, professional and legal standards' so as to meet 'the University's expectations' (Fisher 2024). The freedom part was side-stepped in favour of management expectations, with the phrase endorsed by the Federal Court.

Perhaps conscious of the vague nature of these 'highest standards' demands, managers then commissioned a report from lawyer Bruce Hodgkinson, who reported back with a series of recommendations on enforceable 'civility' standards (University of Sydney 2024b).

The Campus Access policy had already made many protest actions subject to approval. Hodgkinson's proposals sought to further systematise control in the following ways: (1) by prohibiting any future encampments and indeed 'any form of protest within a building on University campus'; (2) by prohibiting student announcements at the start of a class, (3) by requiring permission to put up any posters; (4) by requiring that the 'words or phrases' of on campus speech 'be made clear' to the audience (most likely a reference to complaints that 'from the river to the sea' is not a Palestinian democratic slogan but rather an anti-Jewish slogan); (5) by demanding training in and compliance with new 'civility rules' for all who speak on campus; and (6) new sanctions and penalties for those who break these rules, including enforcement agreements with state and federal police (University of Sydney 2024b).

The corporate media and the Israeli lobby kept up the pressure for control of speech over Gaza. Management said that they were 'investigating' comments on media bias over Gaza made by sociology Professor Sujatha Fernandes (Chidiac and Haghighi 2024), while pro-Israeli lawyers made a 'race discrimination' complaint against two other academics, Nick Riemer and John Keane, claiming that 'Jewish students and staff members […] have encountered a hostile environment perpetuated by certain academics whose actions allegedly foster antisemitic sentiments' (Klein 2024).

What was this 'antisemitism'? In August 2024, in an extraordinary general meeting, more than 500 Sydney University students voted for the University to cut all ties with Israel. The first motion called on managers to disclose and divest from its partnerships with weapons manufacturers and higher education institutions in Israel; the second demanded support for Palestinian statehood and recognition of their right to resist (Honi Soit 2024). A similar motion had been passed, earlier in the year, by 'more than 1,500 students' at the University of Queensland (Liang 2024). In October 2024 the National Council of the university academics union, the NTEU, passed a motion calling for an 'institutional academic boycott of Israel' (Chidiac 2024).

Sydney University managers had already decided how to deflect this, ignoring their links to Israeli groups and arms manufacturers. Non-discrimination principles including opposition to 'anti-Semitism', must mean, they said, that no-one could be excluded from engagement with the university (Riemer 2024). Managers were indulging Israeli lobby claims of a 'crisis of antisemitism' at the university, while even one pro-Israeli

academic admitted that: 'classic Jew-hatred' doesn't exist at the University of Sydney'. Sydney University NTEU President Nick Riemer said:

> Zionists want us to believe that the mere expression of support for Palestine – Palestinian flags, slogans calling for freedom, equality and justice for Palestinians, criticism of Israel as an apartheid and intrinsically racist state – makes 'Jewish' people feel 'distressed' or 'unsafe' and is therefore inherently anti-Semitic (Riemer 2024).

Vice Chancellor Mark Scott, in his statement to a Senate Inquiry into alleged 'antisemitism at universities', showed that 'non-discrimination' would be the idea behind a management decision to not even contemplate a boycott of Israel, so as 'to ensure a safe environment free from discrimination' (Scott 2024). Of course, the Israel lobby and some politicians would cry 'discrimination' if there were to be any management endorsement of a boycott.

The series of controversies and pressures led to administrators second-guessing political sensitivities. For example, a young student of Lebanese background offered to show a documentary of how artefacts at the Aleppo museum were protected from the ISIS terrorist group back in 2015. The first reaction of the administrator in Archaeology was 'is it overall a balanced portrayal or is it quite pro Assad? I'm just concerned of how risk averse the university is in the current climate' (BC 2024). The same student was told by his tutor that he could not do an indigenous studies essay on Palestinians as they were said to be 'not one of the world's indigenous peoples' (BJ 2024). Fear of managerial repression was very real.

Conclusion

The corporate university has created a more codified and repressive approach to dealing with dissent than existed fifty years earlier when the agitation for political economy at the University of Sydney began. That was a time when, nationwide, anti-war protests, anti-racist, feminist and emerging environmental struggles were frequent and often intense, both on university campuses and in the broader society.

The experiences during 2024 of the protests over the slaughter in Gaza may be seen as pushing an increasingly repressive response to dissent harder and faster. The corporatised University of Sydney, conscious of pressures from the state, private funders and the corporate media, has created rhetorical innovations to re-regulate 'intellectual freedom', even

using non-discrimination slogans to shut down controversial political expression and calls for a boycott of Israel. After NTEU *vs* Sydney University, the student encampment, media attacks, the Senate inquiry and the Hodgkinson review, managers effectively reclaimed their original position that 'intellectual freedom' is more an aspiration than a right. A first full bench of the Federal Court forced them to accept that a 'right to intellectual freedom' indeed existed, and exercise of that right could overrule management directions. However, a second full bench endorsed their claim to trump that right with an extra, rather arbitrary demand, that those exercising such a right must prove that their actions met (some unspecified) 'highest ethical, professional and legal standards', to management's satisfaction. If adopted, the Hodgkinson 'civility' rules may further codify that burden, while seriously limiting further protest. The campus will remain 'safe' from debate over controversial matters such as genocide.

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