

THE LEGISLATIVE FANTASY

Hate speech, culture and institutional failure

Dimitri Burshtein





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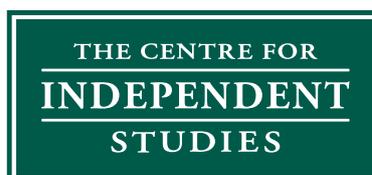
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Foreword

The Bondi Beach attack of 14 December 2025 forced a reckoning that many Australians had been quietly avoiding. Antisemitism was not, it turned out, a relic of European history or a pathology confined to the political fringes. It was here, active and emboldened. The question that followed — "what must we do about it?" — has since animated parliamentary inquiries, legislative proposals, and now a Royal Commission on Antisemitism and Social Cohesion led by former High Court Justice Virginia Bell.

The Centre for Independent Studies has been engaged through the antisemitism research program led by the Culture, Prosperity and Civil Society program. The CIS's work on antisemitism has been driven by the conviction that the health of a liberal democracy depends less on the architecture of its laws than on the vitality of its civil society.

This conviction runs through our most recent work on institutional resilience under conditions of moral and political stress, and it connects this project to the Centre's civic pluralism series — Fractured Loyalties, The Ties That Bind, and Drawing the Line — each of which has explored the conditions under which pluralist societies hold together.

Antisemitism functions as a diagnostic. It is not merely an offence to be regulated or managed; rather, it is a signal of deeper institutional failure and a warning that the mediating structures once capable of transmitting civic norms across generations have been weakened, captured, or hollowed from within.

Dimitri Burshtein's new report is a significant contribution to this ongoing work. Burshtein takes that diagnosis seriously and develops it with rigour

and force. His argument is, at its core, Burkean: the informal sanctions of a healthy civil society are more powerful, and more durable, than any legislative remedy the state can devise. In making his case, Burshtein draws on comparative evidence from Germany, France, and the United Kingdom to demonstrate that the demand for more hate speech law is itself a symptom of institutional failure rather than a remedy for it. When communities lose the capacity to enforce shared norms, they reach for the state. But the state is ill-equipped to cultivate the virtues it has displaced.

This does not mean legal indifference. Violence, incitement and intimidation must be prosecuted firmly, a point about which Burshtein is clear. What his report resists, rightly, is the conceit that moral and cultural problems can be resolved by what Burshtein calls the 'legislative fantasy'. The report also asks harder questions about institutional capture — in universities, the arts, the legal profession and the media — that deserve far greater scrutiny than they have received.

These are not peripheral concerns; they are central ones. If the commanding heights of Australian cultural life have been systematically oriented against our liberal democratic inheritance, then the challenge of antisemitism cannot be separated from the broader challenge of civic renewal. That renewal is the real work before us. In his new report, Dimitri Burshtein helps make the case for why.

Peter Kurti

Director - Culture, Prosperity & Civil Society Program

Introduction

The tragic events at Bondi Beach on 14 December 2025 expose a deepening crisis in Australian civil society, and one that cannot be remedied through enhanced state power. Indeed, the reflexive governmental response, however well-intentioned, even when driven by community demand, risks exacerbating the very decay it purports to address.

When confronted with social breakdown, the political class typically reaches for its familiar instruments of new laws, increased funding, expanded bureaucracies. Yet very few social ills respond to such remedies. As Henry Louis Mencken observed, "for every complex problem there is an answer that is clear, simple, and wrong". And the proliferation of state-administered solutions, far from strengthening the fabric of society, often exacerbates the problem by displacing or weakening the mediating institutions upon which democratic resilience ultimately depends.

Civil and social cohesion in liberal democracies depends less on regulatory intervention than on the vitality of culture and non-state institutions capable of transmitting shared civic norms. The evidence is not merely theoretical. It is visible in the persistent failure of legislative remedies across comparable democracies to contain ideological pathologies that have cultural, psychological, religious, and historical roots that statute simply cannot reach.

Government's proper role in moments of moral crisis is not to jump to legislation but to provide leadership, including through modelling standards and upholding the rule of law. On these counts, Australian political leadership has faltered. But even exemplary leadership cannot by itself restore what has been lost. A genuine sense of community, anchored in shared commitments to decency and mutual obligation, must arise organically from civil society. It cannot be imposed by legislative fiat.

Australia's predicament lies not merely in the persistence of hatred but in the erosion of the institutions that once mediated between the individual and the state, transmitting civic norms across generations and enforcing social sanctions against bigotry without recourse to state power. Families, schools, universities, religious congregations, civic associations,

professional bodies, and independent media once performed this essential work.

They fostered obligation, built resilience, and created communities of meaning capable of inoculating society against the contagion of hatred. This was achieved, not by prohibiting expression, but by making certain expressions socially unacceptable and intolerable. The informal sanction of a community that knows its own values is far more powerful, and far more durable, than the formal sanction of a law.

As government has expanded into ever more spheres of social life, many of these mediating institutions have been crowded out, politicised, captured, or hollowed from within. And when such institutions atrophy, even the most carefully-crafted legislation will prove inadequate, as the experience of Germany, France, and the United Kingdom demonstrates.

A healthy liberal democracy is not measured by how little anyone feels offended. It is measured by the strength of its public discourse and by the willingness of its citizens to face disagreeable ideas openly, civilly, where they can challenge them, disprove them, and when warranted, push them beyond the bounds of polite society. It also asks something harder: that people who disagree with one another continue to share a common life, not in spite of that disagreement but alongside it.

Civilisation and civility are advanced and maintained not through laws, but through culture. Effective responses to antisemitism must therefore look beyond state power to the reconstruction of civil society itself. This means not only dismantling what is toxic but actively cultivating what is healthy, including nurturing a culture in which decency, honest disagreement, and mutual respect are modelled and expected rather than merely demanded by decree. The priority must also be reversing the erosion of those mediating institutions that once sustained informal social sanctions against bigotry. Key among these are schools and universities.

Legislative remedies are a poor substitute for, and cannot replace, the organic civic resilience that a well-functioning civil society provides.

Taking antisemitism seriously

Antisemitism is not merely offensive speech nor the expression of ignorant opinion. At its most extreme, it is a lethal ideology.

It drove the extermination of six million Jews in the Holocaust. It motivated the Hamas massacres of 7 October 2023. In Australia, it led to the 14 December 2025 Bondi attack. It has resulted in synagogue bombings, the harassment of Jewish students, the vandalism of Jewish-owned businesses, and fostered a climate of fear that has led many Australian Jews to conceal their identity, withdraw from public life, or contemplate emigration. These are not abstract harms. They are borne by real people in real communities.

The Jewish community's desire for additional legal protection is entirely legitimate and must be treated with moral seriousness. The question is not whether antisemitism is real or grave. It plainly is. The question is whether the legislative remedies most often proposed are proportionate, effective, and consistent with the broader freedoms that make a liberal democracy worth defending, or whether there are better and more sustainable remedies that achieve the intended purpose of those desirous of legal reinforcement.

Before the case for new and additional speech codes can be made, an important question must be answered: why were existing legal tools not used? Chants of "gas the Jews" and "where's the Jews", which rang out at the Sydney Opera House on the night of 9 October 2023, were arguably prosecutable under the NSW Crimes Act, which criminalises the public threatening or inciting of

violence on grounds of race or religion. That no prosecutions followed demands explanation.

The law should criminalise action or incitement to action, not ideology or speech. Violence, intimidation, assault, arson, vandalism, and threats should be prosecutable firmly under law. The wrongdoing lies in the act and its consequences, not in the beliefs of the perpetrator. Treating ideology as a separate legal category shifts attention from punishing unlawful conduct to regulating belief. Thus chants such as "from the river to the sea" and "globalise the intifada", or even coded variations of such chants, should be prosecutable, not because they are offensive, but because they represent calls to violent action

Those advocating for new speech codes must first demonstrate that existing law, properly enforced, would still have fallen short. Until this issue is honestly confronted, the case for legislative expansion remains incomplete.

This is an uncomfortable question because it shifts focus from the law itself to whether authorities are willing to use it. If the explanation lies in institutional timidity, ideological sympathy among those responsible for enforcement, or simply an unwillingness to protect one community for fear of offending another, new legislation does not resolve that failure. It simply grants additional power to the same compromised institutions. New legislation risks becoming a substitute for enforcement rather than a remedy for it.

An ancient pathology

The persistence of antisemitism defies the trajectory of many other prejudices. The difficult truth is that for as long as there have been Jews, there have been those who hate them, and for as long as there are Jews, antisemitism will likely persist in some form. This is one of the unfortunate and enduring realities of human history, and no amount of legislation alone can eradicate it. Its staying power requires looking beyond statute to factors that law simply cannot reach.

Antisemitism did not commence on 7 October 2023, nor on 14 December 2025. It did not emerge with the establishment of the State of Israel nor the wars that followed. It preceded the births of Christ and Mohammed. It has been a recurring fever in the body politic for more than 3000 years.

This historical depth matters analytically. If antisemitism regularly resurfaces across vastly different legal regimes, economic

systems, and cultural contexts, then the most compelling explanation is not the absence of adequate legislation. It is that the pathology has theological, psychological, conspiratorial, and cultural roots that statute cannot reach. Roots that persist beneath the surface of formal prohibition, erupting wherever the social conditions that once contained them have been left to decay.

The comparative evidence makes this pattern impossible to dismiss. Germany maintains some of the world's most comprehensive hate speech laws, yet documented [an 80% increase in antisemitic incidents in 2023, with well over half occurring after 7 October 2023](#).¹ France enforces robust legislative protections yet saw a [quadrupling of antisemitic acts in 2023 with 60% of those acts involving physical violence, threatening words or menacing gestures](#).² The United Kingdom's legislation coexists with persistent and

Strange bedfellows

That the far left and the far right have found common cause in their hatred of Jews is not an anomaly. It is a warning. When movements that otherwise despise one another unite around a shared enemy, that enemy is rarely their last.

Consider the ideological coalition that has formed around opposition to Israel. Its constituent parts include progressive movements whose stated commitments to human rights, minority protection, and gender equality are plainly violated by the very bodies they champion. Women, gay people, and religious minorities under Hamas rule are invisible to them.

The harvest

In Albert Camus' novel *The Plague*, the first sign of catastrophe was not the disease itself but the rats. They emerged from the sewers, stumbling into the light and onto the streets. The rats had always been there, thriving in the darkness beneath the city. But something had changed. Something had driven them upward, into public view, where they could no longer be ignored.

So too with antisemitism. The hatred was always present, festering at the margins, nurtured in obscure corners of the internet

rising antisemitic incidents as [documented by successive parliamentary inquiries](#),³ including a [147% increase in incidents in 2023 compared to the prior year](#).⁴

These are not incidental failures. They are a pattern, and patterns require explanation rather than repetition of the same remedy.

Laws can punish expression after the fact. They cannot alter the belief systems responsible for it. They cannot reach the incrementally radicalised, nor inoculate institutions against the slow infiltration of ideas that, once normalised, no longer feel like radicalism at all. Law is the wrong primary instrument for a problem whose primary character is cultural.

Antisemitism is an ancient and ideologically promiscuous pathology that has survived not in spite of legal suppression but alongside it. It has repeatedly recruited new hosts as old ones became inhospitable.

The contradiction is not incidental. It is revealing.

When an ideology becomes sufficiently powerful to override self-interest, factual scrutiny, and internal consistency, it has ceased to function as a political position and begun to behave as a cult. The same movements that passionately denounce Israel maintain a studied silence on the mass killing of Christians across northern Nigeria, the execution of young Iranians resisting theocratic tyranny, and the generational imprisonment of an entire people in North Korea. Selective outrage, consistently applied, reveals the operating principle beneath the professed one.

and among fringe activists most Australians had never encountered. The Hamas attack of 7 October 2023 did not create the disease. It broke it open. What had been confined to the shadows erupted into public life with a velocity that shocked even the vigilant. The rats, emboldened, no longer feared the light.

Street celebrations and protests broke across major cities before the dead had been counted, and before Israel had taken a single action in response. On the steps of the Sydney Opera House, crowds

gathered to celebrate the slaughter of Israeli innocents while bodies were still being recovered. This was not spontaneous combustion. It was the harvest of a long, patient campaign. A methodical effort to capture and corrupt the commanding heights of Australian institutions and turn them against the society they were built to serve.

The academy, the schools, the arts, the media, the bureaucracy. Each had been seeded, over years, with assumptions hostile to the liberal democratic inheritance and tolerance Australians had taken for granted. The events of October 2023 did not create these dynamics. They exposed them.

Culture, mediating institutions and civil society

In his 1790 *Reflections on the Revolution in France*, Edmund Burke described “the little platoon we belong to in society” as the first source of our public affections: the small, local associations through which individuals learn loyalty, duty, and restraint.

Families, religious congregations, schools, universities, professional bodies, charities, clubs, and independent media form a dense network of mediating institutions standing between the individual and the state. These institutions transmit norms across generations and embed citizens within communities of obligation. They are formative rather than coercive. They shape character before law must intervene. They impose informal sanctions of reputation, honour, and shame long before misconduct becomes a legal matter.

In Burkean logic, social order is sustained less by statute than by habit, by inherited practices, shared moral assumptions, and the slow accumulation of trust across

generations. Law is a backstop. Culture does the real work.

This is the point most often missing from contemporary debates about hate speech regulation. The question is not only whether the law can punish a given utterance. It is whether the culture has the capacity to make that utterance unacceptable in the first place.

A society with strong mediating institutions does not need to wait for the police. The neighbour, the congregation, the community, the professional body, the employer, these are the first and most effective enforcers of civic norms. They act before harm occurs. Law acts after. Where mediating institutions are strong, government need not regulate every moral dispute. Where they are weak, pressure for state intervention grows. The demand for more hate speech law is, in this sense, itself a symptom of institutional failure rather than a remedy for it.

Institutional decline

Over recent decades, the thinning of Australia’s institutional fabric has become increasingly visible. As government has assumed functions once performed by families, civic organisations, and community associations, those institutions have lost both purpose and authority. The displacement can be gradual and well-intentioned, but the cumulative effect is the same: mediating institutions are rendered redundant or co-opted into delivering state purposes rather than their own.

The result is not the disappearance of prejudice but the erosion of the informal constraints that once contained it. James Q. Wilson and George Kelling’s [broken windows theory](#) observed that visible disorder left unaddressed signals that norms no longer apply,⁵ and that signal

travels. What begins as tolerance for small violations ends as an invitation to larger ones. The [UK Equality and Human Rights Commission found that antisemitic conduct had persisted for years inside the UK Labour Party](#),⁶ not because rules were absent but because the internal culture had stopped enforcing them.

When communities lose the capacity to enforce shared norms, the burden shifts to government, an instrument ill-suited to cultivating virtue and chronically prone to substituting procedural compliance for the real thing.

Institutional transformation and ideology

As the state extends its reach into welfare, education, healthcare, and community life, it progressively displaces the institutions of civil society that once performed those functions. The ties binding individuals to communities of shared obligation weaken, creating conditions ideological movements are well positioned to exploit.

Universities present a distinct case within this broader pattern. As institutions that had historically understood their purpose as the preservation and transmission of accumulated knowledge, they became sites of something more closely resembling advocacy rather than inquiry. The distinction matters. An institution committed to inquiry exposes its conclusions to scrutiny whereas an institution committed to advocacy treats scrutiny as a threat.

The ideological ambition behind this transformation was articulated with remarkable candour in the [1962 Port Huron Statement](#),⁷ the founding manifesto of Students for a Democratic Society. Its authors lamented that the university, which they believed could serve as a significant source of social criticism and a shaper of attitudes, had instead been domesticated into mere credentialism, stripped of any ambition to challenge the world it was preparing students to enter. Their vision was to turn the university toward radical social change, a vision that was realised beyond anything its authors could have anticipated.

That realisation was not confined to the United States. Carried through academic networks, the same ideological project took root across the western world, and its consequences are visible in the curriculum of Australian universities today.

[As one observer noted](#),⁸ humanities departments across the country have, with few exceptions, converged on a single cultural theory that now dominates both research and teaching: a Marxian analysis of society as a zero-sum contest for power between the privileged and the oppressed. Undergraduate history subjects are constructed almost entirely around themes of empire, race, gender, sexuality, and colonial violence, while the foundational concepts of Western civilisation, equality before the law, freedom of conscience, the abolition of slavery, the inheritance of

Enlightenment reason, are largely absent from the narrative.

What is transmitted is not a body of knowledge to be interrogated but a framework of judgements to be adopted. The university, in this mode, does not invite the student to think about Western civilisation but to indict it.

The intellectual roots of this transformation lie in the fate of Marxist thought after the Cold War. The collapse of communism as an economic system did not extinguish its broader critique of hierarchy and power, but rather it mutated. In advanced liberal democracies, where class mobility proved more fluid than Marxism had anticipated, attention shifted from who owned the means of production to who occupied positions of cultural, racial, and institutional authority.

Within Western universities during the 1980s and 1990s, strands of critical theory evolved toward identity-based frameworks emphasising race, gender, colonial history, and structural inequality. Drawing on the Frankfurt School's Marxian critique of liberal institutions, Foucault's reframing of knowledge as power and critical race theory's location of racism in structures rather than individuals, these strands converged on a common premise: that apparently neutral institutions systematically serve the powerful.

This body of thought penetrated broader public culture less by direct popular conversion than through the graduates those institutions steadily produced. The university was not merely a passive conduit. It was a factory. Postcolonial theory and intersectionality introduced new taxonomies for classifying populations within hierarchies of power and privilege, taxonomies resistant to revision.

This produced an unlikely contradiction. Jews, historically among the most persecuted minorities in Western history, could be repositioned within contemporary discourse as beneficiaries of whiteness or participants in structures of colonial power.

The betrayal of multiculturalism

At its best, Australian multiculturalism has never been a doctrine of cultural equivalence but something more practical and admirable: a capacity to draw on the best that successive waves of immigration have brought, while allowing practices incompatible with Australian democratic life to wither through the quiet pressure of shared civic expectation. Regrettably, the conditions for this process have not been maintained.⁹

No culture is without worth, but cultures differ in their practical consequences for human flourishing. Attitudes toward education, family structure, commerce, trust, and civic obligation produce different outcomes across societies and across time. What matters greatly is the process by which different cultural inheritances interact with the norms of the society receiving them. Where that process works well, the best of what newcomers bring is preserved and shared. Where it fails, the results are less benign.

For much of its modern history, Australian multiculturalism operated exactly through this kind of cultural natural selection. Successive immigrant communities brought traditions, work ethics, and civic commitments that enriched the national fabric. Practices at odds with Australian norms tended to fade across generations, not through coercion but through the quiet operation of shared institutions: schools teaching a common civic inheritance, workplaces and neighbourhoods creating daily expectations of mutual engagement.

Newcomers, by and large, wanted to participate fully in their adopted home, and the institutional environment made that participation both possible and rewarding. The process had its limits, but for much of Australia's history those limits were rarely tested. Yet successive governments have been insufficiently attentive to these limits.

Without meaningful public debate about its pace or composition, immigration intake expanded without adequate regard for whether institutional capacity to support integration kept pace. The result was that communities carrying ideologies or practices deeply hostile to liberal democratic norms were admitted faster than the social and civic infrastructure could absorb, and in some cases faster

than those communities themselves had reason or incentive to embrace the civic norms of their new home. This was exacerbated by political opportunism to garner the vote of ethnic or cultural groups which empowered leaders of those communities and helped entrench a sense of entitlement to those beliefs and practices in their new homeland, as has occurred in Britain.¹⁰

A weakened institutional environment, increasingly reluctant to assert civic expectations, made the problem significantly worse. The result was not diversity enriching a confident society but fragmentation straining a society that had lost confidence in its own inheritance.¹¹

Government policy accelerated this failure through other means. Schools, public broadcasters, and publicly financed arts institutions have in many instances become vehicles for denigrating the civilisation that made Australia's liberal democratic inheritance possible, producing not critical self-awareness but civic self-loathing: a population poorly equipped to defend, or even articulate, what it stands to lose.

As social disharmony increased, governments responded not by rebuilding what they had undermined but expanded the state as arbiter. Anti-discrimination tribunals, human rights commissions, diversity mandates, and bureaucratic mediation multiplied, substituting procedural management for the organic civic life they displaced. The demand for state arbitration has grown in direct proportion to the weakness of the institutions that once made it unnecessary, including, most recently, the creation of a Special Envoy to Combat Antisemitism and a Special Envoy to Combat Islamophobia.

This did not happen by accident. Institutional confidence was deliberately eroded, and the vacuum was filled by administrators. The question now is whether Australians retain the clarity and the will to reverse the exchange.

Treason of the intellectuals

Nowhere is institutional erosion more entrenched than in education. Many institutions nominally charged with forming citizens and transmitting civilisation now present their own society as a catalogue of crimes requiring perpetual atonement. Historical complexity is flattened into moral indictment. Inheritance is reframed as guilt.

In 1927, the French philosopher Julien Benda published *La Trahison des Clercs*, The Treason of the Intellectuals. Benda observed and condemned, with undisguised fury, that the intellectuals of his day had descended from the universal to the partisan, trading the pursuit of truth for the performance of political commitment. They had become the great betrayers, not of any particular cause, but of the only office that exists to stand above them all.

Today's intellectuals do not merely subordinate truth to political passion. They institutionalise that subordination, draw a salary for it, and confer credentials upon students who demonstrate sufficient mastery of it. The betrayal has become a curriculum. The treason a qualification.

Writing in 1942, Joseph Schumpeter observed in *Capitalism, Socialism and Democracy* that prosperous societies would inevitably generate a class of intellectuals whose material security is entirely underwritten by the very order they are professionally trained to denounce. The revolutionary would not be the factory worker but the university professor, comfortable, credentialed, and

contemptuous of the civilisation that had made his comfort possible.

Between them, Benda and Schumpeter described how the intellectual class, freed from material want by the civilisation it inhabits and freed from accountability by institutions that reward dissent without requiring it to be either true or constructive, tends toward a particular pathology: the transformation of inherited civilisation into an object of contempt.

What neither could quite have anticipated was that the state itself would become the principal patron of this pathology. That one arm of government would finance the arsonists while another responded to the fires they set.

Examples are neither abstract nor costless. The Australian Research Council has directed significant public funding toward research programs premised on decolonisation frameworks and gender theory,¹² [including grants](#) to “decolonise cultural policies” and to examine how “intersectionality, gender, power and complexity shape universities”. The [Australian school curriculum](#) has been progressively reshaped to foreground colonial guilt at the expense of historical complexity.¹³

These are not isolated eccentricities. They represent a systematic reorientation of publicly funded institutions away from the transmission of shared civic knowledge and toward the excavation of grievance.

The shield becomes the sword

When institutions built to pursue truth became instruments of ideological production, they did not abandon the language of scholarly virtue but repurposed it.

Academic freedom was designed to protect scholars from institutional and political interference in the pursuit of truth. It was never intended as a licence for universities to abdicate judgement, nor as a shield behind which institutions could avoid the discomfort of deciding what they stand for. Yet across Australian universities in recent years, that is precisely how it has

been deployed: not to protect inquiry but to excuse leadership paralysis, permitting conduct that suppressed the freedom of others.

The encampments that appeared at Australian universities following 7 October 2023 illustrated the pattern directly. Jewish students and academics reported harassment, intimidation, and being physically blocked from parts of their own campuses. Incidents escalated from graffiti to verbal abuse to assault within days. Many students stopped attending in person.

The justification offered, when offered at all, was academic freedom and the right to protest. That the freedom of Jewish students and staff to move through their own institutions without fear was itself suppressed went unacknowledged.

At the University of Sydney, Australia's oldest, a preliminary [SafeWork NSW report found the institution had taken inadequate steps to protect Jewish staff and students in the 11 months following the October 2023 Hamas attack on Israel](#).¹⁴ Investigators further suggested that a full inquiry would likely reveal outright

contraventions of law.

Academic freedom, properly understood, is a protection for the minority against the majority, for the dissenting scholar against institutional orthodoxy. When invoked to protect the majority from having to tolerate the presence of a minority, it has been turned against its own purpose. These institutions were allowing freedom's language to be weaponised against the very people it was built to protect, and they had either failed to notice or lacked the courage to do something.

Cultural diffusion and its consequences

Over time, intellectual trends migrate beyond campus walls. Graduates carry prevailing frameworks into media, the arts, public administration, human resource departments, secondary schools, and the non-government sector. Funding criteria, hiring practices, and professional norms gradually reflect the assumptions embedded in intellectual currents. This is not typically the result of coordinated conspiracy but of cultural diffusion, where ideas gaining legitimacy within one institution normalise within others; each step rendering them less visible as ideas at all.

Government funding mechanisms, while formally neutral, inevitably reflect the priorities and assumptions of those administering them. The circle thus predictably closes: the state funds the institutions; the institutions normalise the frameworks; the frameworks shape the administrators; the administrators direct the funding.

Once inside public institutions, assumptions are codified in grant criteria, procurement conditions, and employment frameworks,

making ideological alignment a quiet prerequisite for access to public resources across arts and culture, research, and government procurement.

Diversity, Equity, and Inclusion policy offers an illustration. [With roots in Marxist critical theory](#),¹⁵ the framework migrated from American to Australian higher education through the channels that carry most intellectual fashions. Its language of safety and inclusion was adopted readily by university administrations, appearing in strategy documents and institutional charters. The gap between that language and lived reality could be stark.

The [University of Melbourne's first Annual Report of Racism on Campus recorded 112 incidents](#) in 2024 related to the Middle East conflict,¹⁶ including an encampment, the occupation of a building, classroom incursions, and an intrusion into the office of a Jewish staff member. Twenty-four of those incidents alleged antisemitism. Meanwhile, the same institution's [Diversity and Inclusion strategy](#) promises a safe and enriching environment for all.¹⁷

The law, arts and media

The legal profession represents perhaps the most consequential vector of transmission. Law schools, embedded within the same university culture that produced the broader ideological shift, trained successive generations of graduates already fluent in these frameworks before they entered practice. Junior barristers and solicitors carried those assumptions into chambers, firms, and advocacy organisations. Over time, the profession's internal culture

reflected them including through the causes taken up by *pro bono* practices, in the interpretation of anti-discrimination instruments, in the arguments considered respectable to run.

Silk appointments and judicial elevations draw from that same professional pool. Judges are not ideologically neutral arbiters who happen to have legal training; they are products of particular social, educational,

and professional formations, and their instincts about what the law means, what values it serves, and which arguments deserve serious engagement are shaped accordingly.

Where an ideology has successfully colonised the institutions that form lawyers, it will in time reach the bench. At that point it acquires something more durable than policy — it acquires precedent. We are witnessing what happens when the institutions entrusted with forming judgement instead deform it.

The capture of Australia's publicly funded arts institutions has followed a similar pattern and with similarly corrosive consequences. Creative Australia's selection of Khaled Sabsabi as Australia's representative at the 2026 Venice Biennale, an artist whose past work includes an installation celebrating Hezbollah leader Hassan Nasrallah, was not an aberration but a symptom.

As [respected Australian art historian and critic Christopher Allen observed](#),¹⁸ Sabsabi's selection revealed a shocking lack of judgement on the part of all involved, in choosing as a national representative anyone associated with either side of a conflict so bitterly divisive within Australian society. That the appointment passed through multiple layers of institutional review without triggering alarm speaks less to individual failure than to an environment in which hostility to Western liberal norms

had become the ambient condition of professional life.

When the Creative Australia board eventually reinstated Sabsabi after rescinding his appointment following a negative public reaction, it revealed an institution more responsive to ideological pressure than to its own founding obligations.

Australia's public broadcasters present a variant of the same problem. Insulated from audience preferences by guaranteed funding and from editorial accountability by a culture that has conflated progressive advocacy with journalistic virtue, they have drifted steadily toward the assumptions of the class that staffs them. The result is less overt propaganda than the subtler distortion produced by a monoculture through the stories chosen, the voices platformed, the framings naturalised, and the questions never asked.

As with the universities and the legal profession, the mechanism of capture was not conspiracy but cultural diffusion: the slow accumulation of hiring decisions, editorial norms, and institutional incentives that rendered certain assumptions invisible precisely because they had become universal.

What the public funds, the public cannot easily correct. And what cannot be corrected, tends in time to calcify.

The myth of enlightened censorship

The first refuge of the censorship advocate is always the same — you cannot yell fire in a crowded theatre.

That phrase originates in Justice Oliver Wendell Holmes Jr's 1919 opinion in *Schenck v. United States*, written in the heated atmosphere of the First World War. Holmes deployed it to justify the imprisonment of Charles Schenck for distributing anti-draft flyers written in Yiddish arguing that military conscription violated the Constitution. This was political dissent, not deception. It was advocacy, not panic-mongering.

The case was prosecuted under the Espionage Act of 1917 by the administration of President Woodrow Wilson, who oversaw one of the most repressive periods for civil liberties in

American history, imprisoning thousands of dissenters, banning newspapers from the mail, and re-segregating the federal public service.

The crowded theatre slogan survives because it sounds reasonable. But it rests on a logical sleight of hand that collapses the most important distinction in the debate about expression: the difference between speech that causes offence and speech that causes immediate, articulable, physical harm. Shouting fire in a crowded theatre creates a direct and concrete threat to human safety. The harm is not hurt feelings or wounded dignity. It is trampled bodies.

None of that is true of political dissent, cultural criticism, or offensive opinion.

A liberal democracy is not measured by the absence of ideas that cause offence. It is measured by its willingness to subject those ideas to the full scrutiny of open debate, to trust its citizens to hear hateful arguments and reject them.

The alternative does not produce a society inoculated against hatred. It produces a society incapable of defending itself against it. There is always a constituency willing

and eager to expand the coercive powers of the state when its allies control them and its opponents are the ones silenced. But power does not always remain in friendly hands. Once expanded and embedded in statute, speech restrictions will eventually be wielded toward ends their original architects did not anticipate and would not sanction. Speech should be restricted only where it poses an immediate, articulable, and physical threat to human safety.

The asymmetry between action and restraint

There is a vast difference between government actively restricting speech and government declining to subsidise certain forms of expression. These are entirely different kinds of conduct, with different legal implications, moral weights, and consequences for the freedom of citizens.

When government restricts speech, it deploys coercive power against persons whose expression has been deemed impermissible. Once such powers are created, they are rarely relinquished and almost never narrowed.

Speech restrictions accrete over time, undermining the very freedoms essential to democratic contestation. Each expansion is justified on its own terms. None is confined to its original purpose.

Withdrawal of subsidy is not a form of state interference. The interference occurs at the point of taxation, not at the point of subsidy withdrawal. To remove a subsidy is not to suppress expression but to restore neutrality. The state steps back; it does not step in.

This distinction between coercion and withdrawal of subsidy matters beyond the theoretical.

When the state's instinct is to reach for criminal law rather than merely withdraw support, the risks of overreach and over-legislation become very real.

The path forward

The legislative fantasy, that hatred can be abolished by statute and that social harmony commanded into existence, is not merely wrong but a distraction from the genuine work that needs doing. Every hour spent debating new speech codes is an hour not spent asking the questions that actually matter: why our

CIS scholar and Adjunct Associate Professor in the School of Law and Business at the University of Notre Dame Australia, Peter Kurti, raised precisely this concern before a parliamentary inquiry in February 2026, warning that criminalising the response to antisemitism risked undermining the very thing it sought to protect.¹⁹ Antisemitism, he argued, was "not only a security problem; it is also a moral and cultural problem". Treating it primarily through the criminal law risked weakening the social taboo that made it unacceptable in the first place. When moral responsibility is outsourced to law enforcement, civility withers, and with it, civic responsibility.

Kurti further emphasised that the effectiveness of law in a liberal democracy depends on its legitimacy: on public trust that the law is fair, proportionate, restrained, and neutral. That legitimacy is fragile and undermined whenever criminal law is extended into the domains of belief, identity, and association; whenever power shifts from courts to administrators; whenever citizens are treated differently based on status or motive rather than conduct. These are not merely procedural concerns. They go to the heart of what principled governance requires.

A government that cannot distinguish between withdrawing support and suppressing speech will, in time, do far more of the latter than anyone intended.

universities have become seminaries of grievance; why our schools tutor children in suspicion of their own civilisation; why our cultural institutions have been captured by movements openly hostile to the society that funds them; and why the informal social sanctions that once made antisemitism disreputable have dissolved.

These questions share a common answer — the retreat and corruption of the institutions that once performed the work of civic formation, and the advance of a state that has colonised their territory without being able to replicate their function.

Government may be competent at redistributing income, but it is not competent at cultivating virtue. Those are fundamentally different activities and confusing them is the source of much of the damage. When government moves beyond the former and attempts the latter, it does not strengthen civil society but displaces it.

The path forward therefore begins not with addition but with subtraction. Burke's little platoons: families, congregations, schools, civic associations, professional bodies, and independent media, do not need government to build them. They need government to stop distorting and crowding them out.

Civil society was not displaced because it failed. It was rendered redundant by subsidies and regulations that made voluntary provision unnecessary. A community that no longer needs to organise to care for its own members gradually loses the habits of mutual obligation that make it a community at all.

In education, restoration does not require new programs. It requires the removal of curriculum mandates that have converted classrooms into ideological seminaries, a far more rigorous approach to the small but influential cohort of teachers who have confused indoctrination with education, and the re-empowerment of parents as the primary decision-makers in their children's formation.

It also requires the restoration of genuine civics education through the teaching of shared history, national symbols, and the inheritance that binds Australians to one another across differences. The classroom is not a pulpit, and school leadership must be willing to say so and act on it. School choice, the ability of families to select schools whose values reflect their own, returns formative authority to the community rather than concentrating it in bureaucratic hands.

Universities present a harder problem, but not an intractable one. Governing bodies can assert their authority over academic culture and hiring priorities without new legislation, including by protecting students and staff from intimidation regardless of its direction. Government can also exercise the simplest lever available — declining to tax citizens to fund research grant bureaucracies that have been colonised by ideological activism. This is not censorship. It is the ordinary exercise of fiscal responsibility.

Money that once flowed into socially destructive advocacy dressed as research would instead remain with those who earned it, finding its way toward activities that create genuine economic and social value rather than perpetuating grievance. The academics concerned retain every freedom to seek voluntary patronage for their work. What they lose is the public subsidy to which they were never entitled.

What is required of government is restraint in reaching for new coercive powers over expression, and discipline in refusing to fund the ideological movements that have done so much to make hatred respectable again.

Significant reductions in government funding for humanities research programs, public broadcasting, and arts institutions whose primary output is the denunciation of the society that finances them would return those resources to the people from whom they were taken, allowing communities rather than publicly subsidised advocates to determine which activities deserve support.

What thrives without a public subsidy has earned its place. What requires one to survive should examine why.

Immigration policy too requires recalibration. The pace of intake should be moderated to allow civil society's absorptive capacity to keep pace. Equal attention should be given to the civic compatibility of incoming communities with the liberal democratic expectations upon which Australian multiculturalism depends. Numbers matter, but composition matters as much.

Conclusion

The choice before Australia is not between hate speech laws and antisemitism. It is between two entirely different diagnoses of what has gone wrong. One holds that Australia lacks sufficient legal machinery to punish the expression of hatred. The other holds that Australia has allowed the institutional foundations of civic decency to erode, and that this erosion, not any shortage of statute, is what has permitted antisemitism to resurface with such confidence and velocity.

No statute can repair what cultural failure has broken. No criminal penalty can restore what institutional decay has allowed to be destroyed.

The path forward is not more state power but more freedom. It is not more prohibition but more persuasion. Not more laws but more leadership. Not the management of expression but the renewal of the civic culture that once made certain expressions unthinkable.

That renewal begins with the state doing less, not more. Government may have a legitimate and important role in redistributing income to those who need it. It has no comparable legitimacy or competence in allocating social meaning, directing cultural formation, or deciding which ideas deserve a platform.

When it attempts those things, it does not fill the space left by weakened institutions. It prevents those institutions from recovering. The little platoons, the families, congregations, schools, and

civic associations through which citizens learn loyalty, obligation, and what it means to belong to something larger than themselves, cannot be rebuilt by legislation. But they can be liberated by its restraint.

Hatred will not be vanquished by politicians or eliminated by bureaucrats. It will be countered by strong families, confident communities, and citizens who believe their inheritance is worth protecting, and who have been left free enough, and trusted enough, to protect it themselves.

Endnotes

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When confronted with social breakdown, the political class typically reaches for its familiar instruments of new laws, increased funding and expanded bureaucracies. Yet very few social ills respond to such state-administered remedies. Far from strengthening the fabric of society, such solutions often exacerbate the problem by displacing or weakening the mediating institutions upon which democratic resilience ultimately depends. Social cohesion in liberal democracies depends less on regulatory intervention than on the vitality of culture and non-state institutions capable of transmitting shared civic norms. The evidence is not merely theoretical. It is visible in the persistent failure of legislative remedies across comparable democracies to contain ideological pathologies that have cultural, psychological, religious, and historical roots that statute simply cannot reach. The priority now must be in reversing the erosion of those mediating institutions that once sustained informal social sanctions against bigotry. Key among these are schools and universities.

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