

# Raising a Red Flag: Incitement and the Amoral Abyss of Tolerating Hatred

Stella Coram, February 6, 2020

*No light ever comes from hate, only darkness* (Martin Luther King Jnr).

In the tradition of bull fighting in Spain, a red cape (capote de brega) is held by a matador before a bull to incite it to charge. Bulls are colour-blind, it is the movement that incites. The colour red is for the crowd – easy to see in symbolising blood, fire, charge, emotion.

Australia prides itself on being one of the most successful multicultural nations in the world in which tolerance of cultural diversity is celebrated. Australia's national day is January 26 with citizenship ceremonies welcoming new Australians across the country. It is not a happy day for many Aboriginal Australians because it marks the arrival of the British Fleet landing at Botany Bay in New South Wales in 1788 and of the dispossession of their lands, culture and society. The Australian flag, bearing the English Union Jack is an all too familiar reminder of this. Calls to have the national day changed, out of respect for Aboriginal people, have largely fallen on deaf ears and whilst efforts to change the flag have been resisted, compromise has been made. The Aboriginal flag depicting an orange sun overlaying a black sky representing Aboriginal peoples and red earth depicting Australia is flown alongside the Australian flag and the blue and white flag of the Torres Strait Islander peoples.

Flags are important. Nations go to war beneath their flag. Athletes representing their countries enter the stadium adorned with their national flag. Flags are symbolic of nation, of unity, of acceptance and belonging. Flags are political. They can be symbols of protest or burnt in protest. They can be displayed with impunity: think the Black Banner of Islamist terrorism. They can be used to serve the dogma of hatred and genocide with no greater symbolism of this arguably than the swastika, originally a symbol of peace, co-opted for Nazi propaganda.

In an ominous start to 2020, a couple flew a red and black flag emblazoned with the Swastika outside their home in the Victorian country town of Beulah (Fox-Koob, 2020). The timing was hardly coincidental given the leadup to the 75<sup>th</sup> anniversary of the International Holocaust Remembrance Day of January 27. The couple pleaded the right to do so on the basis of German ancestry. I, too, claim German heritage not with obnoxious pride but shame due to an ancestor who was a General in Hitler's Wehrmacht.

Such a gesture can only occur within a given social and political context, in this case the rise of white nationalism, with undertones of Nazism, especially in Europe including Germany. It is suggestive of a growing resentment toward the remembering of German history, when some would prefer to forget. In testing the mood of the German nation, Piper (2020) reported on a survey conducted by DW to which over 1,000 participants responded. In relation to the question of continued remembrance of the Holocaust, a majority agreed, though some responded to the option that it was time to "turn the page on history". Interestingly, the survey found that respondents with tertiary qualifications agreed with the position that education on the Holocaust be continued whereas the opposite was found to correlate with

respondents without tertiary qualifications. The educational disparity between remembering and 'letting go' is indicative of the need for ongoing education on the Holocaust and of remembering.

The Yarriambiack Shire Council, within which Beulah is located, claimed that it was powerless to act because there are no provisions in law enabling it to do so. It does not have the power to request the flag come down since Victoria's Racial and Religious Tolerance Act 2001 does not include reference to "hate speech" (Fox-Koob, 2020). This is an abrogation of duty. The Act makes it unlawful to "incite" through "graffiti or the display of racist posters or stickers" (Victorian Legal Aid). The threshold for determining this could not have been more plainly met in the image of the swastika. And there is no mistaking the resentment behind the flag in delivering a rebuke not only to Jewish Australia but also to the 'lunatic left' for going on about the Holocaust. This makes it a matter even more for the attention of government.

The flying of the swastika highlighted the exploitation of a number of legal loopholes. For example, the public display of the swastika is still legal in Victoria, as it predates Nazism, and the indications are that parliamentarians are reluctant to support legislation to ban it. The challenge, it seems, is to get the balance right between free speech and the right to live free of racial or religious vilification (Fox-Koob, 2020). In any case, it was determined that there was no indication of incitement to go on. This is an exemplar of handballing at its worst. Whether it did or did not incite is not the issue even though I see it as being incredibly inciteful, in consequence, for stirring up horrific memories. It is the act of raising a flag bearing symbols of Nazism that is inciteful: a skin crawling message for Jewish Australians of non-belonging – not wanted in Australia – and the denial of their humanity. Jews were mass murdered after all. How this is not sufficient, I do not know.

The underlying issue is the threshold of proving incitement of hatred. This is high particularly in relation to Victoria's Racial and Religious Tolerance Act 2001 which means that successful finding for racial or religious vilification is rare. The claimant must prove intent to incite which is near impossible. And, if that is not enough, the Australian Commonwealth and Victorian laws deal with public behaviour not personal beliefs (Victorian Legal Aid). There is no provision, therefore, for the restriction of displays on private property. There should be. The swastika is banned by many European countries but Australia alas is not so clear minded in this regard. Nonetheless, there is scope for the faint hearted, in public life, for an amendment. I suggest broadening the definition of "in public" to include the display of symbols of hatred on private property that can be observed in the public domain. This does not translate into a suppression of a (perceived) right to free speech, including hate speech. It is, instead, a restriction of expression to the private domain so that it is not seen from the public domain.

Free speech, contrary to its underlying principle of freedom, is prohibitive because it requires people who are offended or hurt to endure their hurt. They have nowhere to go. Even if a complaint was to be made, there are issues to contend with in terms of who complains and how to complain. The responsibility of making a complaint, for an individual, is enough of a hindrance on its own let alone considering the basis of a complaint. To put a complaint in writing would take some courage especially when dealing with sensitive matters of race because it would involve the risk of stigmatising a person as 'racist'. A deterrent in itself. Then, of course, there is the factor of meeting the threshold to consider.

It is clear that that there was wide spread objection. My inkling is that few would be prepared to lodge a written complaint because then it becomes official, on the record, permanent, and personal. The potential for being the focus of media attention, should a complaint become public, could prove untenable. To mitigate this, a group letter of complaint might represent an acceptable alternative. Risk of undue attention from a public backlash would have to be factored in by officials. At least they can rely on the cover of free speech should they defer.

Another complicating factor is the current turn toward defending a right to offend which has the effect of subordinating the rights of a victim for protection from offence. A priori of a right to offend is cause for concern. To expect Jewish peoples to tolerate hurt from incitement, for instance, means that they are obliged to accept the right of another to offend them on the grounds of free speech. A saving grace of free speech is 'quid pro quo' requiring the speaker to listen in turn to the extent that intolerant speech must be tolerated. Reciprocity in principle is fine so long as it is observed by all parties otherwise it is open to abuse when one side exercises the right to speak but refuses to listen. To not meet the standard of reciprocity risks increasing intolerance coinciding with decreasing sensitivity to, or tolerance of, others.

Tolerance of the intolerant can emerge in a number of guises such as the immobilising of the political class. Thank goodness for the opinion piece "No reason to go soft on hate" from former Australian Human Rights Commissioner, Tim Soutphommasane (*The Age*, 2020), who reminds the handwringers of the Racial Discrimination Act 1975. Under Section 18C of the Act, it is unlawful to "offend, insult, humiliate or intimidate people on the basis of their race". Far more to work with here than Victoria's woolly Racial and Religious Tolerance Act since the legislation focuses on the impact of racial discrimination – to offend or insult – for example. The legislation is helpful in other respects too given that criticism of people on the basis of race is not unlawful so long as it meets the criteria of in "good faith". For these reasons, I was nonplussed by the failure of Council to cite the Act. The provisions are there, just courage was needed to act. The Beulah community was far less reticent and did not hesitate to engage in peaceful protest resulting in the flag being taken down.

The rather predictable rationalisation of free speech played a role in underlining inaction. Council ought to take note: philosophers have pointed out that free speech is not unfettered. There is a standard to speech to protect both the speech maker and the recipient of speech. Federal law, The Race Discrimination Act 1975 is clear: it is unlawful to incite or express hatred on the basis of race or ethnicity. Limits apply, as imposed by Section 18D of the Act, to prohibit the abuse of language or expression toward others. Drawing on this, I contend that incitement, in the absence of good faith, does not warrant consideration of a priori right before the protection for individuals and their communities from incitement.

This is about civility toward each other: a social compact if you will. To take up a position of reflection and solidarity, to identify with the other and to act accordingly so as to deter incitement. Flying a flag with as swastika is troubling enough but for institution to do nothing is far worse. This is the point at which minorities are most let down. The celebrated author of *The Alchemy of Race and Rights*, Patricia Williams (1992:73) wrote eloquently that racism is about "generic disregard for peoples whose lives are qualitatively dependent on regard". Williams, a black professor of law, discloses that she was accused of making too much of race in response to raising issues of racism in relation to her faculty. She was told by a White

professor to “laugh it off” and by another to “not take it too seriously” (Williams 1992: 66). Only the privilege of objective distance could warrant such a reply of dismissal. Of course, Williams refers to her experience as a framework for attempting to make sense of the context in which soft racism is mediated by parties quietly urging a complainant to “let it go”. This is indicative that to make an accusation of racial discrimination comes with great personal risk.

An important distinction can be made here in terms of a complaint and asserting wrongdoing – to accuse in other words. To lodge a complaint with Council in relation to an offensive flag does not by necessity have to be personal whereas to raise a complaint by a college professor about racially discriminatory treatment in a law faculty is most definitely personal. The former may not be about racial identification whereas the latter is at least for the complainant. To complain might generally be seen to refer to incidents occurring in the public domain, whereas to accuse refers, arguably, to an incident of racial bias in the private domain. One is objectification, the other subjectification.

Loaded as they both maybe, they are not the same. To make a complaint is hard enough, an accusation even harder since this is reliant on perspective. Open to (mis)interpretation, and without definitive proof, defence based on denial becomes relatively straightforward. In any event, the hearing process for a complaint is usually conducted through conciliation. There is no ‘guilty’ party, only an unenlightened individual, or institution, to be educated out of their state of ignorance.

Human rights commissions are established to uphold standards of conduct that are non-discriminatory. In reality, their processes are structured, or at the very least, work to deter a complaint given that the threshold for determining racial discrimination is incredibly high – success is rare. In part this has to do with reluctance to stigmatise by finding that racial discrimination has occurred and by implication to label a person, community, or institution ‘racist’. Considering this, it would appear that the reputation of the perpetrator precedes the hurt of a complainant. Scholars have pointed out the burden is on the complainant to prove discrimination than on the accused to prove otherwise (McNamara, 1998). This is not to suggest that the pendulum be swung in favour of the complainant, only to draw attention to the inequities surrounding the burden of having to prove intent to discriminate.

For Williams, this is illustrative that determinations based on intent overlook the capacity for racism to be present in terms of what is not done. An expression of racial hatred, a category of racism, is readily identifiable by an overt act of vilification, to call a “monkey”. However, insufficient attention is given the soft underbelly of racism marked by indifference or inertia. The insipid response from officialdom in relation to the swastika flag is indicative of this.

Officials were clearly appalled but not enough to warrant action fearing perhaps community back lash unless a groundswell of support rendered it safe to act. To opine that nothing could be done meant in effect to pave the way for legitimising hate speech. I appreciate that tension between action-inaction is impacted to some extent by the libertine of free speech. But this is problematic because it is susceptible to exploitation due to lopsided legislation and because it can be invoked as an excuse to justify inaction. There is no moral high ground in defending the right to incitement on the basis of free speech. Morality can only apply when upholding the right to be free of incitement. To shelter others and ourselves in the process.

Rights are overstated. Fanciful ones come out of nowhere to be defended vigorously yet foundational human rights to safety, dignity, privacy and so on are somehow regarded as optional. With the politics of individual rights in the ascendancy, local authorities are cautious about intervening in fear of a lawsuit. As an aside, my local park installed an exercise station in 2018 with each machine clearly stating that they are not suitable for children under the age of fourteen. The station is right next to a fabulous playground area but children including toddlers being naturally curious creatures want to play with the exercise equipment. They get in the way. Even worse, their guardians watch on. Children's rights are equal to adults. I wrote a letter to Council twice but was advised on both occasions that Council cannot ban children or instruct parents to not allow their children to play on the equipment. Their safety is a secondary consideration compared to their right of access.

Similarly, to intervene in the form of a suppression order to ban public display of racial hatred might thereby be considered by Council to be the equivalent of fascism – to be unnecessarily interventionist or rules driven. This is nonsensical. Discretion would have to inform decision making, depending on the context. For example, a suppression order ought not to apply when elected officials or leading thinkers, community leaders, journalists, and the like, discuss in “good faith” issues of race whereas it must when citizens enter into a domain of knowingly causing offence whilst pretending some disingenuous justification. When people are aware of the sensitivities or vulnerabilities of other people but go ahead and ‘have their say’ – to wound anyway – is inexcusable and warrants censorship. There is of course another right and that would be the option to choose not to offend. There is no rule insisting that one offend.

Council got it wrong in other respects too. Going on the comment noted by Fox-Koob (2020): “we [Council] are disappointed it is causing offence in the community”, it can be read from this that Council bemoaned offence being taken. To be offended, it seems, is a matter of choice implying that to be offended was the problem rather than the cause for being offended. If there is no offence, there is no problem and therefore no need for action.

The notion of offence being a matter of choice dances dangerously around indifference in terms of who can afford to be complacent – certainly not Jewish people – and certainly not Australia but Council seems to think so anyway. Distance and time underscore this. Australia was not invaded by Germany. Dissident citizens were not rounded up and executed. It harbours no horrors of mass murder or genocide, with the exception perhaps in relation to Aboriginal history. Australia can afford to take liberties, to be indifferent, by interpreting incidents of discrimination on the basis of race, religion and history as isolated. Council would prefer seemingly that no offence was taken, as a matter of choice, requiring no action.

The flag spoke, not in words, but in imagery evocative of a history of tyranny against humanity. It spoke to those it harbours within Australia's rising ranks of white nationalism. This was an offence and need to be attended to as such. It has nothing to do with free speech except to bring to bear insight that free speech is hardly free at all especially when it is used to generate fear and uncertainty for some and anger and resentment for others. The costs are enormous even loss of life. It is in this light that I wish to distinguish freedom of speech from free speech. Free speech is about taking liberties whereas freedom of speech seeks to uphold the liberty of freedom. The former is without obligation, the latter is full of obligation.

It requires the courage to speak up against oppression. Foucault (1993) expresses this nicely in his concept of parrhesia.

Free speech is defended because it represents a cornerstone of liberalism in the context of tolerance. That is to say, we tolerate the intolerable. This is troubling because it means to elevate tolerance, of hatred for example, above the importance of being intolerant of hatred. Karl Popper wrote in *The Open Society and its Enemies* (1945) on the paradox of tolerance. Unlimited tolerance leads to the disappearance of tolerance. If we extend unlimited tolerance including to those who are intolerant, and are not prepared to defend a tolerant society against intolerance then the tolerant will be destroyed, and tolerance with them.

*Utterance of intolerant philosophies need not be suppressed, which he argues would be unwise to do, so long as they are countered by rational argument and kept in check by public opinion. This comes with the caveat: we should claim the right to suppress by force if necessary; should it turn out that exponents of intolerant philosophies are not open to or denounce all rational argument, or forbid followers to listen to rational argument. Otherwise, it teaches to reply to arguments by use of fists or pistols. We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant.*

John Rawls diverges from Popper to argue in *A Theory of Justice* (1971) that a just society must tolerate the intolerant otherwise the society would become intolerant. He agrees though with Popper that society has a reasonable right of self-preservation against acts of intolerance that supersedes the principle of tolerance. An implication of this for free speech is that restrictions ought to apply to ensure that the principle of freedom of speech, and its binary opposite of counter speech, is not suppressed by those who exploit freedom of speech.

As I have argued, resentment was behind the raising of the swastika flag in relation to perceived unfair concessions for Jewish communities, to the exclusion of other Australians, and to hostility of leftist caving into minority interests. Such resentment is unlikely to be explicitly stated in the public domain. Moreover, the impact of the act itself may be trivialised: to be passed off as the act of irrational individuals and not reflective of society at large. Trivialities, unattended to, roll into a groundswell. Scuffles between ethnic groups at Sydney's Cronulla Beach swelled into riot, in 1995, when two Lebanese youth were set upon by White Australians bearing the Australian flag (Farrell, 2015). Radio shock jock, Alan Jones, was accused of inciting youth into violent attack by giving details of the meeting place on his broadcast. Jones, who has made a career out of courting controversy, remains on air because no one is prepared to sack him settling instead with issuing a paltry fine and slap on the wrist.

Ghassan Hage (1998) in his ground breaking work *White Nation: Fantasies of White Supremacy in a Multicultural Society* argues persuasively that "real" [White] Australians draw on their convictions and sentiments to explain the problems of multicultural Australia. Personal experience is the source of their knowing on the decline of White Australia being overtaken by migrants or non-White Australians. Conviction and sentiment underpin their privilege to talk back to the rest of Australia. Whiteness, as an informal category for knowing, is selective thereby providing no guarantee. It can and does exclude. Although many occupy high office, including in political and financial sectors, Jewish Australians do not necessarily fit the category of White since, broadly speaking, they are identified primarily as a religious minority. Both in and out, they represent a subset of White and Other Australia.

Hage (1998) observes that the new knowledge base is the “people” and that this is the reasoning for rejecting the contribution of intellectuals to knowledge. The “people” already know everything there is to know – life taught them. Anything that the intellectual says which is not known by the people is superfluous knowledge. Any attack on the knowledge of the intellectual is a defence of the knowledge of the people. Hage traces this back to Hitler.

*The social intelligentsia always looks down with a really limitless condescension on anyone who has not been dragged through the obligatory schools and had the necessary knowledge pumped into them. The question never asked is are what are the man’s abilities but what has he learned? To these ‘educated’ people the biggest empty head, if he is wrapped up in enough diplomas, is worth more than the brightest boy who happens to lack these costly envelopes (Hitler, cited in Hage, 1998).*

Ridiculing independent thought, is precisely what Hitler did, turning propaganda of denouncement into reality and truth for the masses. For ordinary folk to fly the flag of Hitler’s Nazism is to fly the flag of propaganda on the displacement of White Australia by a minority.

History is on the verge of being repeated. It is not just a flag: it is what comes next, laying the ground for what follows. Nazism is not history. It is on the rise in Europe and Australia. For this reason, German President Frank Walter Steinmeier remarks that “Germany’s historical responsibility will not expire”. He observes that “Germans understand the past better than the present” (quoted on DW website). The question, then, is what must we not ignore of the present that reminds us of what we know of the past? I suggest, in answer, that resentment is easy to tap into when there is a ready-made minority to target. Such discrimination is made palatable, given a nice name, to stave off criticism. The enforced displacement of Jews from their homes, the first step to a concentration camp, was called “resettlement”. The *Holocaust Encyclopedia* identifies a set of themes beneath the rise of Nazi Germany:

- Control of the media
- Indoctrinating youth
- Rallying the nation
- Deceiving the public

Propaganda was used to deceive the German and international public as to its actual political aims. National unity based on a superior white race, and utopian future, were preached. However, Jews were excluded from the new national community. Germany presented itself as a victimized nation denied its right to self-determination by the Treaty of Versailles in the aftermath of the First World War.

Deflection of criticism, was done through counter accusation. A constant theme perpetuated was that the Jews and the Allies spread malicious lies about Germany. The massive undertaking of genocide was mobilised by the fact that Germany was governed by presidential decree not parliamentary consent. There was also the allure of joining a mass movement enabling Nazism to take on the guise of being a protest movement against corruption and ineffective government. Symbolic gesture of the raised arm Nazi salute played in essence into the propaganda of unification to seal the deal (Holocaust Encyclopedia).

Hitler drew on the swastika, once a symbol of peace ironically, to make a statement about a new order for Germany, to ignite German nationalism. Similarly, the flag in the country town of Beulah was meant to inflame. This is where the official response to the flag is turned on its head. The legislation implies incitement is an individual experience and is therefore inadequate because hurt or offence can also be experienced collectively. Just as the Nazi flag was intended to stir German patriotism, to justify going to war, so too was the flag in Beulah intended to stir the patriotism of Australia's 'white' nationalists and neo-Nazis – to send a message to the likeminded – but also one of fear for those who remember the Holocaust.

The tactics of Nazi Germany were brutal and effective. It is incumbent on all not to accept at face value the rationalisations of office, to not be fobbed off by disingenuous answers. Confront the representation of Nazi symbolism and be unwavering in taking apart the falsehood of exclusion dressed up as unity. No room for complacency. Ensuring the welfare of others is the equivalent of ensuring our own – the cornerstone of civil society. Ongoing vigilance in social discourse is essential to deter from immunity the horrors of humanity. To refuse to tolerate the abuse of our "fellow man" is the greatest of responsibility to ourselves and to others. Freedom then is not for ourselves but for others in resisting tyranny.

Australia is at the crossroads. There are citizens who dare to 'hail' Nazism. The pressing issue is whether we are to tolerate mistreatment of people in the name of free speech. If we are to defend the right to incite hatred then, presumably, we tolerate abuse not only of others but also of ourselves. We must defend the right of others to likewise discriminate. Hardly a position of strength or morality at all. This is dangerous territory where we are allowing ourselves to slide into an amoral abyss of indifference to the safety and protection of others.

Good speech is not enough. Good citizens are required. Ali (2019) puts it nicely in the notion of the "art of civility", a collective commitment to just society. She argues that we cannot afford to tolerate or have patience for the institutional breeding of environments that nurture hate speech and hate crimes. 'No tolerance for hate' policy is needed (Ali, 2019). Time for Australia to declare the flying of a Nazi flag not only immoral but also unconstitutional.

## References

- Ali, S. (2019) "Hatred hurts all of us. We must rise to become a tolerant and accepting society" Opinion, *Tennesen*, March 21, [www.tennesen.com](http://www.tennesen.com).
- Farrell, P. (2015) "How Cronulla summer of simmering tension boiled over into race riots", *The Guardian*, December 5, [www.theguardian.com/australia](http://www.theguardian.com/australia).
- Foucault, M. (1983) 'The meaning and evolution of the word parrhesia' *Discourse and Truth: The Problematization of Parrhesia*, University of California, Berkeley, <https://foucault.info/parrhesia>.
- Fox-Koob, S. (2020) "Couple flies Nazi flag over Victorian home", *The Age*, January 13, [www.theage.com.au](http://www.theage.com.au).
- Germany is not immune to evil 75 years after Auschwitz liberation, Steinmeier says*, January 23, 2020, DW.

- Hage, G. (1998) *White Nation: Fantasies of White Supremacy in a Multicultural Society*, New York: Routledge.
- McNamara, L. (1998) 'Long stories, big pictures: racial slurs, legal solutions and playing the game', *Australian Feminist Law Journal*, 17, pp. 85-108.
- Piper, O. (2020) *Germans want to uphold culture of Holocaust remembrance*, Jan 24, DW. [www.dw.com/en/germans-](http://www.dw.com/en/germans-)
- Popper, K. (1945) *The Open Society and its Enemies*, Volume 1, The Spell of Plato, Routledge.
- Rawls, J. (1971) *A Theory of Justice*, Harvard University Press.
- Soutphommasne, T. (2020) "No reason to go soft on hate", *The Age*, January 18, p.35.
- The Holocaust Encyclopedia*, encyclopedia.ushmm.org.
- Victorian Legal Aid Website, [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au).
- Williams, P. (1992) *The Alchemy of Race and Rights: The Diary of a law Professor*, Harvard University Press.