

Regulating Speech: A Comparative Analysis of Australia's Racial Vilification Offence and Hong Kong's National Security Law

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Abstract

This article undertakes a comparative critical historiographical analysis of Australia's proposed 2026 racial vilification offence and Hong Kong's National Security Law (NSL) to examine how legal regimes regulate speech through differing constructions of harm, threat, and legitimacy. Drawing on Flowerdew's Critical Discourse Historiography (CDH), the study approaches law as a historically situated discourse that encodes assumptions about state power, social fragility, and political belonging. Through close textual analysis of statutory language and associated discourse, the article examines how the presence or absence of contextual exemptions shapes the legal boundaries of punishable expression, revealing a divergence in the presupposed ontology of power underpinning the two regimes. Although the proposed Australian offence was withdrawn, Australia's hate speech framework operates within a liberal-democratic tradition that presupposes a strong state governing a pluralistic society, in which exemptions and contextual interpretation function as mechanisms for balancing harm mitigation against expressive freedom. By contrast, Hong Kong's NSL presupposes a weak and vulnerable state, foregrounding sovereignty and security as overriding values and discursively constructing dissent as an existential threat. The absence of meaningful exemptions within the NSL

facilitates a form of performative citizenship, in which loyalty is enforced through the policing of alternative political narratives. By situating both regimes within their historical and ideological trajectories, the article argues that exemptions are not peripheral technicalities but central discursive mechanisms that determine whether speech regulation functions as social governance or regime preservation, offering Hong Kong's experience as a cautionary lens for debates on speech regulation in liberal democracies.

Keywords: *critical discourse historiography, political discourses, National Security Law*

INTRODUCTION

In early 2026, Australia's Albanese government proposed a series of law amendments in response to a deadly terror attack that occurred in December 2025. Among the proposed changes was a racial vilification offence accompanied by an explicit exemption permitting the quoting or referencing of religious texts in the context of religious teaching or discussion. The proposed offence quickly became politically contentious after Prime Minister Anthony Albanese defended the exemption by invoking passages from the Old Testament. The Bill prompted criticism from opposition politicians and public concern over the potential damage to free speech and loopholes that critics feared extremist leaders might exploit to incite hatred. Amid widespread debate, the government ultimately withdrew the racial vilification offence from the Bill (Prime Minister of Australia, 2026, para. 4).

Public reactions to the proposed offence revealed a tension between common-sense understandings of speech and anxieties about legal interpretation. Much of this concern centred on how courts would determine whether a "reasonable person", a hypothetical individual representing ordinary community standards, might feel intimidated, harassed, or fearful in contested cases. The inclusion of the exemption further complicated this uncertainty, as critics questioned whether such exemption would preserve necessary contextual interpretation or instead create opportunities for bad-faith actors to shield harmful speech under protected categories. On one intuitive view, quoting religious texts, including passages containing archaic norms or severe language, would not constitute contemporary hate speech, as courts are assumed to recognise historical, theological, and allegorical contexts. From this perspective, formal exemptions appeared unnecessary.

Critics of the proposed exemption argued that, once codified, such defence could be strategically exploited by bad-faith actors to reframe incitement or hostility as legitimate religious instruction. The debate thus exposed two competing discursive anxieties: a) whether the proposed racial vilification offence would unduly chill lawful expression, and b) whether the inclusion of the exemption would weaken the law's capacity to regulate harmful speech through contextual interpretation. Albanese's reference to the Old Testament, therefore, was less about the content of the Bible itself than about illustrating the interpretive challenges that can arise from broadly drafted legislation governing speech. The exemption was intended to function as a gatekeeping mechanism that prevents the decontextualised citation or discussion of religious texts from being automatically classified as hate speech; however, public controversy surrounding the provision, particularly claims that it would shield extremist or fundamentalist religious expression, quickly destabilised this rationale, recasting the exemption as a politically expedient and ultimately untenable concession rather than a coherent instrument of liberal governance.

These challenges are starkly illustrated by developments in Hong Kong following the introduction of the National Security Law (NSL) in 2020. The NSL was enacted after a prolonged period of mass protests in 2019 and criminalises four categories of conduct deemed threats to state security: secession, subversion, terrorism, and collusion with foreign forces. While the statutory text contains relatively few explicit references to "incitement", judicial interpretation has extended liability to a wide range of linguistic acts, including journalistic commentary, political advocacy, public slogans, and participation in overseas organisations construed as endangering the state. Notably, the NSL contains no explicit exemptions for academic discussion, journalism, or political expression. From a legal-linguistic perspective, the NSL exemplifies a regulatory framework in which language itself is constructed as a vector of liability. In this framework, the production and circulation of ideas, rather than demonstrable capacity to bring about concrete harm, can be treated as a criminal act. By contrast, the Australian debate over the religious-text

exemption illustrates how legislative contestation, contextual interpretation, and the withdrawal of the Bill itself operated as institutional constraints on the expansion of linguistic liability. These constraints were violently removed in Hong Kong with the introduction of the NSL in 2020, establishing an operative legal framework under a totalitarian regime that effectively supplants the protections of British common-law tradition. By overriding commitments under the Sino-British Joint Declaration, the NSL asserts state authority in a manner that disregards Hong Kong's established Westminster norms, effectively seizing control of its legal and cultural system inherited from the British Empire in violation of historical agreements with the United Kingdom. This study examines how a shared interpretive framework can produce sharply different legal outcomes under changed political conditions.

This paper undertakes a comparative analysis of Australia's proposed 2026 racial vilification offence and Hong Kong's NSL. As a British common law jurisdiction governed through Westminster-derived executive institutions, Hong Kong previously shared with Australia a comparable legal rationality in the regulation of speech, grounded in the rule of law, judicial independence, and contextual interpretation. Unlike national security laws in liberal democracies, which target concrete threats, Hong Kong's NSL weaponises ordinary political speech to suppress dissent, as seen in Jimmy Lai's imprisonment (Wong, 2026). This extreme enforcement highlights why comparing the NSL with Australia's proposed legislation can illuminate the consequences of discursive overreach. This paper treats both statutes as historically sedimented texts through which states articulate and stabilise particular understandings of harmful speech. While the NSL and the proposed racial vilification offence are not comparable in doctrinal terms, both regulate speech they define as harmful; yet they do so on radically different terms. Unlike Australia's proposed offence, Hong Kong's NSL is not calibrated to identifiable harms or proportional risk, but instead functions as a value-driven regime in which national security is rhetorically constructed to legitimise the suppression of political pluralism. Following its imposition, the NSL has subordinated judicial independence, displaced proportionality and contextual reasoning,

and hollowed out the rule of law that previously rendered Hong Kong's speech regime comparable to other Westminster-derived common law jurisdictions. The NSL thus reflects a legal logic imposed by the Chinese state without regard for Hong Kong's historically sedimented British cultural context.

Drawing on Flowerdew's (2017) historiographical approach to critical discourse studies (CDH), the study reads statutory language not merely as legal regulation, but as an archive of prior discursive struggles over harm, authority, and legitimacy. While previous research by Flowerdew (1997, 2004b, 2011, 2016, 2017) has studied political discourse in Hong Kong, few studies have undertaken a comparative discursive analysis of legal frameworks across British common law jurisdictions. This paper addresses the gap by applying CDH to examine how statutory language and exemptions shape the boundaries of punishable expression in each jurisdiction, highlighting the broader implications for pluralism, rule of law, and freedom of speech. The novelty of this study lies in its comparative focus on exemptions in legal language, showing how they function not merely as technical rules but as central mechanisms that determine whether speech regulation governs society or preserves regimes. This article asks how Australia's racial vilification laws and Hong Kong's National Security Law regulate speech, and what implications this has for freedom of expression. To address this, it poses two further questions: How does the wording of these laws, and in particular the presence or absence of contextual exemptions, construct the boundaries of punishable expression? And what does Hong Kong's experience reveal about the consequences of legally foreclosing context? By analysing how assumptions about intent, legitimacy, and threat are encoded in legal language, the paper shows how different historical-discursive formations condition the criminalisation of speech in each regime.

Critical Discourse Analysis (CDA) has been widely applied to the study of Hong Kong's political discourse, particularly in relation to questions of identity, legitimacy, and power. CDA provides a methodological framework for examining how language constructs social and political reality, revealing how power, legitimacy, and ideology are encoded in texts

and interpreted across historical and institutional contexts. A foundational body of this work is associated with John Flowerdew, whose analyses examine political speeches and written texts produced by both colonial and post-handover administrations, including those of Chris Patten and Tung Chee-hwa. Across a series of studies, Flowerdew investigates how Hong Kong's core political principles were discursively articulated (Flowerdew, 1997, 2016), how Chinese national identity was ideologically framed (Flowerdew, 2004b), and how metaphors of patriotism were employed to naturalise political authority (Flowerdew & Leong, 2007). These strands are brought together in *Critical Discourse Analysis in Historiography: The Case of Hong Kong's Evolving Political Identity* (Flowerdew, 2011), which demonstrates how shifts in political sovereignty were accompanied by transformations in dominant political narratives. In later work, Flowerdew (2017) argues that Hong Kong's political identity increasingly developed in opposition to totalitarian governance and identifies recurring discursive patterns of conflict and resistance during the 2014 Umbrella Movement. Subsequent scholarship has expanded CDA's application to related dimensions of Hong Kong's political discourse. J. Wang (2017) examines how civic identity was constructed through official policy addresses under both colonial and post-handover governments, while Ng (2020) analyses how Beijing's political voice was recontextualised during the Leung administration. W. Tang (2014) explores diasporic discourses that imagine Hong Kong beyond its territorial boundaries, highlighting the role of transnational narratives.

More recently, a growing body of work has applied CDA to study how Hong Kong's political and legal discourses have evolved following the introduction of the NSL. Wong (2024) demonstrates how Carrie Lam's political discourse during the 2019 protests contributed to legitimising the introduction of the NSL. Wong (2025c) further argues that the law itself is underpinned by a discursive construction of patriotism oriented toward the "motherland". In subsequent work, Wong (2025b) illustrates how China has constructed Hong Kong as its "internal affair" through key underpinning discourses. Political slogans in Hong Kong have also been analysed as highly condensed sites of

ideological struggle. Leung (2024) interprets the slogan “Liberate Hong Kong, Revolution of Our Times” as articulating grievances without prescribing specific political outcomes, while A. Tang (2022) emphasises how the slogan reflects democratic awareness and aspirations for freedom. Extending this line of inquiry, Wong (2025a) analyses Hong Kong’s protest anthem “Glory to Hong Kong”, which incorporates the slogan, and demonstrates how political expression extends beyond street protests into symbolic forms of resistance in exile. Wong (2025d) further provides a critical discourse analysis of the slogan “Liberate Hong Kong, Revolution of Our times”, examining how its meanings are reconfigured once removed from its original protest context. Iu (2025a, 2025b) analyses competing discursive framings of the 2019 Hong Kong protests by the Hong Kong government and the Hong Kong diaspora and identifies the slogan’s role in expressing belonging among exiled communities.

Although CDA is frequently associated with large corpora, existing research shows its effectiveness in close analyses of specific texts and discursive mechanisms. Flowerdew (2004a), for example, conducts a detailed examination of three politically salient texts to reveal how Hong Kong was discursively constructed as a “world-class city”. Similarly, Wong (2025d) analyses the slogan “Liberate Hong Kong, Revolution of Our Times”, alongside other key political texts, to derive the discursive construction of Hong Kong independence. These studies demonstrate CDA’s capacity to expose ideological processes even in small-scale analyses. The present study addresses a gap in the literature, as no prior studies have compared Hong Kong’s NSL with Australia’s proposed racial vilification framework from a discursive perspective. Through this study, the article demonstrates how statutory and institutional interpretations can construct ordinary political or cultural speech as punishable. It illustrates that without explicit exemptions like those proposed in Australia, speech acts that would be considered normal discourse can be treated as violations, much as has occurred under Hong Kong’s NSL.

RESEARCH METHOD

Methodological Approach

This study adopts a documentary research design to analyse Australia's proposed racial vilification offence and Hong Kong's National Security Law. It examines how states discursively regulate speech, manage social fragility, and, in doing so, either protect or punish dissenting voices. Particular attention is given to exemptions, which in Australia mediate the regulation of harmful speech, and in Hong Kong are entirely absent.

Unlike methods based on interviews or surveys, documentary research relies primarily on written or recorded texts as sources of evidence (Grant, 2018). The investigation forms part of a broader doctoral project on Hong Kong's political identity, originally situated in Teaching English to Speakers of Other Languages (TESOL) but ultimately completed as a historical study. The larger research examines how the British National (Overseas) (BN(O)) status has evolved from a symbolic marker of British nationality into a tool of political resistance in response to the totalitarian party-state's assault on Hong Kong. It traces the historical discourses embedded in official and public texts.

Methodological rigour is ensured through the transparent selection of primary sources, systematic comparative analysis across cases, and interpretive consistency grounded in Flowerdew's (2017) Critical Discourse Historiography (CDH). While the study does not seek statistical reliability, interpretive validity is supported through close textual analysis and the triangulation of statutory language with historical and political context.

Data Collection

The primary legal texts analysed in this study comprise Hong Kong's NSL and the Exposure Draft of *Combating Antisemitism, Hate and Extremism Bill 2026*. Both documents were downloaded from official government websites (see Attorney-General's Department, 2026a; Hong Kong e-Legislation, 2020). In addition, a fact sheet was also

obtained from Australia’s Attorney-General’s Department website for understanding the background (see Attorney-General’s Department, 2026b). These statutes served as the focal point for examining how legal language constructs and regulates potentially harmful speech, with particular attention to the inclusion or absence of contextual exemptions.

Data Analysis

The collected legal texts were analysed using Flowerdew’s Critical Discourse Historiography (CDH), examining how statutory language constructs historical and ideological meanings through discursive strategies such as foregrounding, presupposition, othering, and framing. In this framework, discourse is understood not merely as language-in-use, but as language that embodies historically sedimented assumptions about authority, harm, and legitimacy (Statham, 2022). Applying CDH to a small corpus of official texts enables a historiographical reading of how statutory language both reflects and shapes broader political discourses around potentially harmful speech.

While the Australian proposal is short-lived, both it and the Hong Kong NSL can be read, through a CDH lens, as encoding historically sedimented meanings. In Hong Kong, for instance, the absence of contextual exemptions reflects the state’s reading of the “century of humiliation”, which frames the British-influenced legal and cultural system itself as suspect and justifies restricting freedoms (Bates, 2022; Y. Wang, 2020; Zhao, 2021). By contrast, in Australia, historical discourses such as *terra nullius*, colonial dispossession, and the long-standing marginalisation of Aboriginal cultural and legal systems had previously rendered these practices legally and socially vulnerable. Contemporary references such as the Acknowledgement of Country and the proposed religious-text exemption can be understood, through this lens, as institutional mechanisms aimed at protecting Aboriginal sacred teachings and recognising historical injustice. In this way, the analysis applies a consistent historiographical lens to both cases, while highlighting that shared legal-logical frameworks can produce sharply divergent outcomes depending on political context.

FINDINGS

A cross-textual reading of Hong Kong's NSL and Australia's proposed 2026 racial vilification offence reveals that both statutes constrain the boundaries of permissible expression, albeit through distinct historical and ideological logics. In Hong Kong, a liberal-democratic ethos had been cultivated over 156 years under British rule, culminating in the 1995 fully elected legislature, and codified in practices allowing political debate, civil society activism, and a degree of press freedom. The Chinese-imposed NSL in 2020 interrupts this trajectory by foregrounding state security as the overriding value and subordinating prior liberal-democratic norms to a discourse of loyalty, threat, and control. By contrast, Australia's proposed offence operated within a longstanding liberal-democratic framework, in which freedom of expression is historically tempered by protections against social harm. The inclusion of the religious-text exemption signalled a continued commitment to this proportionality and pluralism. This reflected a discursive logic in which restricting speech was framed not as an assertion of state authority, but as a mechanism to balance competing social and moral interests. Yet, the category-specific nature of this exemption constructed differential regimes of legitimacy, in which exempted speech were treated as contextual or protected, while others remained fully exposed to regulatory scrutiny.

Discursive Constructions of the Strong State and the Weak State

The fundamental discursive divergence between the two regimes lies in their presupposed ontology of power. Australia's proposed offence presupposed a strong and stable state tasked with regulating a potentially fractious society in order to protect vulnerable groups within it. Here, authority is expressed institutionally, and security is framed as contingent and proportional. It should be noted that the characterisation of Australia as a "strong state" is framed here as a discursive construction for analytical clarity. While pluralism is enabled within Australia, it is not suggested that historical or contemporary exclusionary practices such as the

dispossession of Indigenous peoples or the use of immigration detention have been absent. By contrast, Hong Kong's NSL presupposes a state that constructs itself discursively as vulnerable, requiring constant defence against a subversive society. This self-positioning draws on a longer historical narrative of national fragility, frequently articulated through references to a "century of humiliation", which underpins the NSL's emphasis on loyalty, subversion, and extraterritorial enforcement. The analysis treats discourse as a historically sedimented vehicle through which pre-existing political positions, sovereignty claims, and power relations are legitimised. From a CDH perspective, the contrasting legal discourses reflect long-standing and unequal historical relationships between state and society: one grounded in negotiated civic pluralism, however imperfect; and the other in unresolved sovereignty. Discourse therefore renders these historical conditions intelligible.

In the case of Hong Kong, the discourse of fragility embedded in the NSL extends its pragmatic force beyond formal legal sanctions. It produces a form of performative citizenship in which loyalty is enacted through the vigilant policing of the state's sovereign narrative (Wong, 2025b, 2025c). As a result, democratic expressions such as "Hong Kong is not China" are not processed as descriptive or historical claims, but as existential threats to the state's assumed vulnerability. The NSL discursively forecloses alternative constructions of political belonging by presupposing the incontestability of the state's territorial sovereignty as a legal truth. In doing so, the law makes the state's absolute narrative of belonging legally exclusive, othering those who articulate alternative political identities or conceptions of sovereignty, and eroding the pluralism that previously defined Hong Kong society.

By contrast, Australia's proposed racial vilification offence directed regulatory attention towards maintaining social boundaries between protected groups. The characterisation of Australia as a strong state is itself a discursive construction, as

it frames the state as secure and pluralistic while legitimating certain social boundaries. The Bill presupposed the coexistence of multiple, competing identities within the polity and seeks to manage conflict between them rather than eliminate it. Here, the boundary being guarded was social, and the regulation of speech was framed as harm mitigation rather than regime preservation. In a pluralistic society, individuals can freely claim multiple forms of belonging without fear of legal or political retribution. The practice of acknowledging Indigenous land, where the state formally recognises that land was never ceded and belongs to the Indigenous peoples, illustrates how a strong state can foster plurality and recognise multiple identities. This acknowledgment is not a threat to national unity; rather, it signals a commitment to cultural respect and historical truth within the framework of a democratic society. This is because Australia, as a strong state, operates within a liberal democratic tradition where shared core values such as freedom of speech, equal rights, and democratic participation guide the state's approach to identity. This allows for a diversity of voices without the need to conform to a singular narrative of belonging, illustrating that the strong state framing is strategic and historically situated.

Exemptions, Context, and the Management of Social Fragility

Within this framework, exemptions function to reorganise expressive vulnerability. Where exemptions exist, citizens are positioned as morally diverse subjects whose differences must be accommodated. Where exemptions are absent, as in Hong Kong's NSL, citizens are positioned as potential threats whose speech must be disciplined. In Australia, even where the proposed offence was removed from the Bill, existing legal structures under the *Racial Discrimination Act 1975* (Cth) prevent citizens from being automatically positioned as threats. This highlights a more negotiated and context-sensitive discursive environment.

In Hong Kong, the polarisation that became visible during the 2019 protests, often characterised in public discourse as a division between “blue” and “yellow”

camps, signalled a fractured polity with competing conceptions of political legitimacy. Unlike Australia, Hong Kong's NSL does not respond to this fragility through mechanisms of contextual accommodation. By contrast, Australia's proposed offence attempted to address social fragility through the legal authorisation of context, most notably via the religious-text exemption. This proposed exemption acknowledged that deeply held religious doctrines may generate offensive speech and treated them as legitimate within a pluralistic legal framework. The political withdrawal of the exemption illustrates that contextual accommodation within liberal democracies is not uncontested but remains a site of active discursive struggle over the limits of pluralism and harm. The collapse of the proposed exemption therefore constitutes empirical evidence of how liberal governance manages social fragility through public contestation and institutional reversal, rather than through the foreclosure of alternative positions.

From Speech to Threat: Intent, Context, and Criminal Liability

A further point of divergence between the two legal regimes lies in how intent and threat are constructed in relation to speech. Under Hong Kong's NSL, once expression is discursively categorised as implicating state security, intent is no longer independently assessed but is inferred from presumed political allegiance. In the case of Jimmy Lai, judicial reasoning presupposed hostile intent on the basis of his public speeches, writings, and international advocacy. Lai's meeting with former U.S. Secretary of State Mike Pompeo to discuss Hong Kong autonomy was not assessed in terms of evidentiary effect, but functioned as symbolic proof of disloyalty, collapsing political advocacy into presumed criminality. Ultimately, Jimmy Lai received a twenty-year sentence for his commitment to liberal democracy in Hong Kong (Wong, 2026). NSL judges thus construe such acts not as expressions requiring contextual assessment, but as indicators of political allegiance. This presumption is not generated by statutory text alone but is actively reproduced through judicial interpretive practices that treat the invocation of

national security as sufficient to collapse questions of intent into questions of loyalty.

Comparable forms of international engagement, such as the first Hong Kong Chief Executive Tung Chee-hwa's visit to the White House to discuss Hong Kong autonomy, were historically treated as legitimate diplomacy rather than security threats. The divergence lies not in conduct but in discursive positioning: identical forms of engagement acquire radically different legal meanings depending on the speaker's alignment. What is presumed, therefore, is not intent, but allegiance. In this sense, courts function not merely as appliers of the NSL but as institutional agents in consolidating a discursive formation in which political expression is preemptively reclassified as security-threatening conduct. Participation in activities framed as challenging state authority such as opposition primaries, critical journalism, or political organisation becomes legally intelligible as subversion or collusion.

By contrast, Australia's proposed racial vilification offence maintained a legal distinction between offensive speech and criminal liability by foregrounding context, intent, and impact. For example, the draft offence would have applied where the conduct would cause a reasonable person who is the target or a member of the target group to fear harassment, intimidation, or violence, rather than merely punishing unpopular or critical expression. In the proposed framework, speech was not collapsed into threat but was mediated through an interpretive architecture that sought to balance harm and expressive freedom. The "reasonable person" standard under a liberal-democratic framework would not treat Dreamtime teachings as subversive, and current law already exempts fair, contextual, or religiously informed expression from liability. Similarly, no reasonable person would construe Jimmy Lai's actions as subversive. Under this framework, advocacy opposing political systems condemned by religious teachings consistent with Lai's Catholic faith would likely be protected. This illustrates how the contextual

interpretive framework mediates potential liability. In Hong Kong, by contrast, the “reasonable person” standard is rendered irrelevant, as the NSL’s arbitrary judgements are ultimately determined by the Chinese Communist Party (CCP) rather than by impartial legal principles. This highlights that the interpretive logic underpinning intent assessment was once broadly consistent across the two British common-law jurisdictions until the liberal-democratic framework in Hong Kong was destroyed by the CCP in 2020. This contrast underscores how the criminalisation of speech is shaped not solely by content, but by the political architecture through which meaning, motive, and social impact are authorised or denied.

DISCUSSION

The comparison between Hong Kong and Australia illustrates how exemptions, or their absence, shape the discursive construction of citizens and the regulation of speech. In Hong Kong, the absence of contextual exemptions under the NSL produces a discursive environment in which citizens’ speech is presumed threatening, foreclosing plural constructions of political belonging. This is evident in the imprisonment of 45 pro-democracy politicians who participated in the 2020 primaries, the incarceration of media tycoon Jimmy Lai, and the closure of *Apple Daily*, all of which occurred without any legal space for alternative political expression. Democratic voices such as “Liberate Hong Kong, Revolution of Our Times” are treated as existential threats to the state. This illustrates how the law transforms ordinary political expressions into a marker of disloyalty and danger. By contrast, in Australia, the draft legislation revealed how the law was attempting to balance harmful expression with contextual interpretation. Even with the removal of the proposed offence, including its debated religious-text exemption, Australia’s hate speech framework does not produce the same discursive foreclosure as Hong Kong’s National Security Law. Under current Australian law, racial vilification is already regulated through civil provisions in sections 18C and

18D of the *Racial Discrimination Act 1975* (Cth), which expressly prohibit acts reasonably likely to “offend, insult, humiliate or intimidate” on the basis of race, while explicitly exempting fair comment, artistic or academic work, and public interest speech carried out reasonably and in good faith.

These features indicate that Australian laws are designed to mediate context and impact, rather than collapse all controversial speech into criminality. In practice, such thresholds and exemptions reflect a legal discursive environment where context, audience impact, and the purpose of speech are central to determining punishability. The political debate surrounding the proposed offence and exemption also demonstrates the continued negotiation of boundaries: Greens and Coalition senators raised concerns about overreach and potential chilling effects on religious discourse. This debate highlights that democratic institutions mediate how citizens are positioned vis-à-vis the state. It should be acknowledged that “context” is never entirely neutral: in Australia, judicial interpretation and the reasonable person standard operate within a socially and culturally mediated framework, which reflects mainstream values while still protecting pluralism and minority expressions.

This is a stark contrast with Hong Kong’s NSL, which forecloses contextual defences and positions speech as inherently threatening once framed as subversive. Although Hong Kong’s NSL contains textual guarantees that “human rights shall be respected and protected” and references rights such as freedom of expression, it has also been interpreted to take precedence where it conflicts with other Hong Kong laws. According to Article 62, the NSL “shall prevail” over local laws that are inconsistent with its provisions. This effectively gives the NSL overriding effect on other statutes. This means that rights protections in Hong Kong’s Basic Law and Bill of Rights can be overridden when they are judged inconsistent with national security provisions. The structural primacy has thus effectively nullified other legal safeguards in cases involving speech and political activity. As a result, existing legal

texts that nominally protected freedoms, including speech rights enshrined in the Bill of Rights, the Basic Law, and the Sino British Joint Declaration, have been discursively and legally subordinated to the security logic encoded in the NSL. This structural priority helps explain why rights protections have done little to prevent prosecution for political speech or the closure of independent media, reinforcing the argument that the absence of exemptions enables the law to foreclose alternative constructions of political belonging.

The Australian debate over the religious-text exemption in the proposed offence highlights how such mechanisms could enable or constrain bad-faith actors. The proposed religious-text exemption was not intended to override the law's safeguards: speech would still only be criminal if it causes a reasonable person in the target group to fear harassment, intimidation, or violence. Instead, the proposed exemption signaled certain forms of religious instruction or discourse, even if offensive, should be interpreted in context rather than automatically treated as punishable. In this way, the law would balance protection against harm with the recognition of legitimate religious expression.

By contrast, in Hong Kong, the absence of exemptions, coupled with the NSL's explicit primacy over other laws, allows the Chinese state itself to act in bad faith. Here, the law's invocation of national sovereignty and security becomes a discursive shield for suppressing dissent, criminalising ordinary political expression, and foreclosing alternative interpretations of political belonging. Whereas in Australia, the proposed exemption sought to create a controlled space for negotiating moral difference, in Hong Kong the lack of exemptions permits the state to monopolise the moral and legal discourse, punishing speech it deems subversive even when that speech would otherwise be protected under human-rights instruments.

The extra-territorial scope of Hong Kong's NSL extends the state's regulatory gaze beyond its borders. It enables the government to pursue dissenting actors globally. Article 38 allows prosecution of individuals for acts considered subversive,

secessionist, or colluding with foreign forces, regardless of where they are located. As a result, exiled activists, journalists, and opposition political organisations are framed as potential threats to the state even while operating abroad. It demonstrates how the law discursively constructs political danger as a global rather than domestic phenomenon. The NSL's extra-territoriality thus amplifies its bad-faith potential: under the cover of sovereignty, the law enables the criminalisation of dissent irrespective of location, a phenomenon without a counterpart. This extraterritorial reach reveals the law's underlying ontology of a weak state—one that survives by monopolising sovereignty narratives and recasting disagreement as existential danger. The insistence that Hongkongers are Chinese regardless of their British nationality transforms forced citizenship into an instrument of coercion, allowing repression to be projected far beyond the state's territorial limits (Wong, 2025a, 2025d).

This narrative of a weak state began with the Sino-British negotiations over the future of Hong Kong, during which Chinese sovereignty was articulated not as a flexible legal arrangement but as an absolute and non-negotiable principle. Although Deng Xiaoping's original formulations acknowledged a high degree of autonomy and the coexistence of different systems, these commitments were subsequently distorted through selective repetition and narrowing reinterpretation, producing a simplified sovereign narrative that tolerated little ambiguity (Wong, 2025b, 2025c). Over time, this discursive contraction transformed political plurality from a managed condition into a perceived threat. The result was not confidence but fragility: a state increasingly reliant on coercive legal instruments to stabilise its authority. Hong Kong's NSL exemplifies this dynamic and translates discursive insecurity into juridical force by treating alternative interpretations of sovereignty, identity, or political belonging as dangers requiring elimination rather than debate.

This form of discursive insecurity is not unprecedented. It is consistent with earlier moments in which the CCP responded to challenges to its narrative not through deliberation, but through the use of lethal force and retrospective reinterpretation. The 1989 Tiananmen Square massacre exemplifies this pattern. The Tiananmen protests, which articulated demands for accountability, reform, and political participation, were not defeated because the Chinese state possessed legitimacy, but because it perceived the pluralisation of political meaning as intolerable. In the aftermath, the events were discursively reconstituted as “counter revolutionary rebellion”, a framing that the Chinese state retrospectively justified its mass killing of students and civilians in the early hours of June 4, 1989, while erasing the democracy movement’s political content (Wong, 2024). This distortion did not signal strength, but weakness expressed through mass murder. It illustrates an inability of the CCP to accommodate competing interpretations of political belonging without collapsing the regime’s rigid narrative. The NSL inherits this logic, codifying the CCP’s longstanding insecurity and framing Hong Kong’s democracy movement as a threat to national security.

While the Chinese state has committed an internal atrocity through the mass killing of pro-democracy student protesters in Tiananmen, the imposition of the NSL represents a fundamentally different exercise of power. In Hong Kong, the CCP did not merely repress opposition but imposed an external security regime onto a society shaped by liberal democratic governance, legal pluralism, and protected civil liberties. This contrasts sharply with Australia’s proposed racial vilification offence, which sought to defend an existing liberal order through legal self-regulation rather than dismantling it. Hong Kong’s failure to resist this imposition reflects the Chinese state’s inability to uphold the institutional logic of “one country, two systems” and its failure to honour the commitments made to the United Kingdom, resulting in the collapse of the city’s promised political autonomy and rule of law. The collapse of Hong Kong’s liberal-democratic framework under “one

country, two systems” prompted the British government to introduce the British National (Overseas) (BN(O)) repatriation scheme, providing an avenue for Hong Kong’s BN(O) residents to escape the city’s eroding freedoms.

This article introduces Hong Kong as a comparator to illuminate why anxieties about interpretive power, exemptions, and bad-faith enforcement recur across jurisdictions that previously shared a common-law inheritance but have diverged sharply in their contemporary political trajectories. Public criticism of the proposed offence did not rest on an expectation of an authoritarian rupture in Australia, but on apprehensions about how legal authority might be exercised once the state is empowered to define harmful speech. The concerns echo a broader discursive pattern in which laws framed as protective may, under conditions of perceived vulnerability, be repurposed to discipline dissent. Hong Kong thus functions here not as a reference point within Australian political discourse, but as a comparative case that reveals the latent risks embedded in regulatory approaches to speech.

These examples underscore that the presence or absence of exemptions has tangible consequences for the discursive positioning of citizens. In Hong Kong, the absence of exemptions enables the law to operate as a tool of state control, where the very act of speech can transform ordinary citizens into potential threats. In Australia, by contrast, the legislative debate over the offence and associated exemption as well as the protections already embedded in the *Racial Discrimination Act 1975* (Cth) ensure that Australian laws preserve the possibility of plural interpretation, even in the absence of the proposed racial vilification offence. This illustrates a liberal-democratic commitment to negotiation and context. The contrast highlights that exemptions are not merely procedural details, but crucial mechanisms that mediate the balance between regulating harmful speech and maintaining the discursive space for diverse moral and political identities in liberal democracies.

The Chinese-imposed NSL thus reveals the CCP's fundamental misunderstanding of a city shaped by 156 years of liberal-democratic governance under British rule, while selectively mobilising pre-existing Chinese nationalist narratives such as sovereignty and national humiliation to legitimate restrictions on speech and political participation. By framing ordinary dissent as an existential threat, the NSL turns political participation into a crime, punishes those who question the state, and enforces loyalty under the guise of sovereignty. In effect, the Chinese state's legal apparatus uses sovereignty to dominate rather than protect. This demonstrates the CCP's insecurity that manifested through its brutality. Hong Kong's democracy movement suffers the consequences of this performative authority. From the Tiananmen Square massacre that ended in a bloodbath to the enactment of the NSL that resulted in silencing resistance, the CCP has repeatedly used state power to suppress truth and dissent. Hong Kong's NSL shows how the totalitarian party-state uses distorted interpretations of history and sovereignty claims to justify suppression of speech and erode Hong Kong's liberal-democratic identity.

CONCLUSION

This comparative analysis has shown that the regulation of harmful speech is shaped less by the formal severity of legal sanctions than by the discursive assumptions embedded within statutory language. Through a CDH reading, the article has demonstrated how Hong Kong's NSL emerged from a narrative of state fragility in which alternative political identities were constructed as existential threats, resulting in the total foreclosure of contextual or interpretive exemptions. By contrast, Australia's proposed racial vilification offence operated within a discursive tradition that presupposed a strong state managing social conflict rather than suppressing it, even as debates over the offence and exemption revealed anxieties about the loss of free speech and bad-faith exploitation. This framework sought to guarantee freedom of expression, the rule of law, and democratic

disagreement—principles formally articulated in the Australian Values Statement (see Department of Home Affairs, n.d.) and reflected in legal distinctions between offensive speech and criminal liability. These principles presume plural interpretation and protect lawful dissent by foregrounding intent, context, and impact.

The NSL marks the systematic dismantling of comparable principles in Hong Kong. This highlights a broader analytic tension between two competing discourses of legal legitimacy: the Westminster-derived, pluralistic and negotiated rule-of-law system that operated in Hong Kong prior to the NSL, and the security-centered, absolutist system imposed through the NSL by a totalitarian party-state. Both systems are discursive formations that produce and naturalise political authority: the pre-NSL Westminster system did so through negotiated rule-of-law practices, pluralism, and judicial independence, while the NSL does so by framing security, loyalty, and sovereignty as overriding legal imperatives. Once part of the British Empire's liberal-democratic system of governance, Hong Kong was defined by four bedrock principles: (1) a market economy sustained by legal predictability, (2) individual freedoms protected by civil liberties, (3) the rule of law grounded in judicial independence, and (4) democratic participation expressed through protest, elections, and public debate (Flowerdew, 1997, 2016). Through the criminalisation of political expression and the mobilisation of citizens against one another, the NSL replaces Hong Kong's bedrock principles with a regime of discursive absolutism, where the absence of exemptions signals not legal clarity, but the collapse of civic trust.

Hong Kong therefore functions as a cautionary case not because liberal democracies inevitably converge toward authoritarian speech control, but because it demonstrates how a previously liberal-democratic system can be fundamentally transformed when contextual safeguards are overridden by an externally imposed sovereign narrative intolerant of plural interpretation. The Australian Indigenous

Voice referendum, while constitutionally democratic and institutionally distinct from Hong Kong's experience, illustrates how such sovereign narratives that reject plural recognition can limit the institutional channels through which historically marginalised groups influence law and policy. Unlike Hong Kong, however, these constraints do not criminalise dissent, and Aboriginal voices remain free to participate in political debate. The distinction thus lies in potential reversibility: Australian constitutional defeats remain democratically revisable, whereas under the NSL Hong Kong's political closure is so complete that the democratic voice could only return through the collapse or overthrow of the CCP. While Australia's liberal-democratic institutions make the permanent closure of lawful democratic voice extremely unlikely, the comparison underscores how law can potentially be transformed into a tool of political control when safeguards are eliminated, whether through hate speech legislation or through the rejection of constitutional mechanisms such as the Indigenous Voice. This is a risk that liberal democracies must remain vigilant against. The lesson is not that all restrictions on speech inevitably lead to totalitarian repression, but that laws governing expression must remain attentive to context, proportionality, and good-faith interpretation if they are to preserve trust between state and society.

Future research could extend this comparative framework to examine how emerging speech-regulation regimes in other liberal democracies negotiate the balance between harm prevention and expressive freedom, particularly in moments of political crisis. Comparative CDH analyses of judicial interpretation, enforcement practices, and public reception would further illuminate how statutory discourse is operationalised in practice and how contextual safeguards are sustained or eroded over time.

AI Declaration

The author declares that ChatGPT was used only as assistive instruments during the preparation of this manuscript. Specifically, it was used to support language clarity, grammar, and formatting. ChatGPT did not generate, fabricate, or manipulate research data, analysis, interpretations, or references. All ChatGPT-generated outputs were carefully reviewed, verified, and edited by the author, who takes full responsibility for the content of the manuscript. This use of ChatGPT complies with the Publication Ethics and Malpractice Statement of the *Journal of Pragmatics Research*.

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