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ON STATE TOLERATION OF HATE SPEECH IN PLURALIST DEMOCRACIES. A CRITIQUE OF ALASDAIR MACINTYRE'S APPROACH

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Abstract: MacIntyre's 'liberal' view of the state's toleration of hate speech may seem surprising given his radical rejection of liberalism. It appears liberal because MacIntyre agrees with some classical liberal conclusions, as formulated by Locke, concerning the requirement of evaluative neutrality of the state. This seems to be the main reason why MacIntyre argues that the hate speech toleration at the governmental level should not be 'content-based', i.e. it should be strictly 'context-based'. The paper argues that MacIntyre's 'context-based' approach seems problematic because it does not take the relevance of different political contexts seriously enough and should be modified towards the 'regime-based' model, in which hate speech bans are justified only by the insufficient quality of a given democratic society.

Keywords: Alasdair MacIntyre; hate speech; freedom of speech; toleration; value pluralism

Contemporary Western democracies face a fundamental question about the legitimacy of the state restrictions on hate speech. Particularly since the end of the Second World War and the tragic experience of the Holocaust, an ethical-political pact has emerged among all democracies, with the exception of the United States, on the legitimacy of legal restrictions on hate speech (Fronza 2018, Steuer 2017). However, critical reflection on this issue has continued, as it is clearly a fundamental political, legal and theoretical debate – namely, the debate on the proper attitude of the state towards freedom of speech.[2] The central question is the question of how a democratic state should respond to hate speech in a way that makes its regulation of free speech democratically legitimate. In other words, we need a proper answer to the question of whether it is possible to restrict democracy by restricting freedom of speech in the name of democracy itself.

Some authors are convinced of the legitimacy of hate speech bans and have been labelled as 'prohibitionists', such as Jeremy Waldron (Waldron 2012), while other philosophers question their legitimacy and may be labelled as 'oppositionists', such as Ronald Dworkin (Dworkin 2009). Moreover, both groups justify their position either in a deontological, as in the case of both Dworkin and Waldron, or in a consequentialist manner, as in the case of Jean Stefancic

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[2] See, for example, edited books by Peter Molnár and Michael Herz (Molnár – Herz 2012) and Ivan Hare and James Weinstein (Hare – Weinstein 2011).

and Robert Delgado (Stefancic – Delgado 1999).[3] The deontological justification is based either on the principle of the human dignity of the addressees of hate speech (prohibitionists) or on the dignity of citizens and their right to free speech (oppositionists) (Heinze 2016, 34). At the same time, someone might assume that if one is committed to a position of human dignity and virtue ethics, this fact somehow obliges him or her to be a deontological prohibitionist.

But this is not necessarily the case. Indeed, Alasdair MacIntyre's approach to the issue in question seems to falsify any such assumption, for it is precisely an example of this kind of perspective. Not only does he advocate a neo-Aristotelian virtue ethics (MacIntyre 1981, Knight 2007, 141–144), but he also argues for a consequentialist oppositionist approach to state regulation of hate speech (MacIntyre 2006). This seems to be the case, as he believes that there are some consequences of hate speech bans that are seriously negative in both ethical and political terms. MacIntyre simply believes that the state cannot safely be entrusted with the power to suppress free speech in general and hate speech in particular. Rather, the proper role of the state is to tolerate this kind of speech as part of the protection of broad freedom of speech as a prominent liberal freedom.

This may seem like a paradox. It is, therefore, important to examine how and why MacIntyre arrived at this seemingly paradoxical conclusion. It is also important to examine whether his argument stands up to criticism. And if not, what aspects of his position might need to be revised.

Thus, the main aim of this article is to critically analyse MacIntyre's view on the question of the legitimate toleration of hate speech by the contemporary state. The contribution of this analysis is twofold. First, the question of the democratically adequate legal regulation of hate speech is becoming increasingly important in public debate. Second, MacIntyre is a prominent contemporary moral philosopher who, against the background of the Aristotelian-Thomistic tradition, argues for the meaningful integration of ethical and political reasoning in public policy debate and practice. In the context of this ambition of his, a crucial question can be asked: Is it democratically legitimate for the state to tolerate hate speech in public political debate? MacIntyre answers this question in the affirmative, arguing that the state has an obligation to tolerate, and not criminalise, hate speech when it is expressed in public debate. This is because that debate is always, at least to some extent, a dispute between advocates of competing conceptions of the good human life, and the state may not restrict that debate on content-selective grounds. Eric Heinze has taken this claim even further, demanding that the state should not engage in 'viewpoint-punitive' regulation of hate speech (Heinze 2016, 19–22).

It should be stressed, however, that MacIntyre does not frame the question of tolerance of hate speech solely as a question of the state's right to suppress certain kinds of speech by citizens. Indeed, he sees it as an issue that concerns not only public political debate at the level of the state but also the regulation of political conversation at the level of the local community.[4] However, given the power, i.e. the coercive capacity, of the state, it is crucial to answer the question of how to adequately draw the legitimate boundaries of the state's interference with

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[3] The terminology of deontological/consequentialist prohibitionism and oppositionism is borrowed from Eric Heinze (Heinze 2016, 34).

[4] The issue of restricting free speech or tolerating hate speech at the local community level is also important but is beyond the scope of this article. However, it may be briefly noted that at the local community level MacIntyre allows for some local exclusions and intolerances in the interests of a practically rational community dialogue. MacIntyre argues that certain views should not be generally tolerated, such as Holocaust denial, and that their proponents should legitimately be silenced at the local level, adding that only the local community's deliberations in any particular case should be the final decision on relevant issues (MacIntyre 2006, 219–222).

citizens' freedom of expression. Surprisingly, MacIntyre, who has been a harsh critic of liberalism, agrees with some prominent liberal ideas on this issue.[5] Indeed, he accepts some classical liberal conclusions, such as those of John Locke, about the requirement of value neutrality on the part of the state, and some liberal premises, such as those of John Stuart Mill, that the state should not be allowed to suppress views (MacIntyre 2006, 208-209, 217–218). From these, he concludes that the state is obliged to tolerate hate speech, including Holocaust denial as an example of anti-Semitism.

MacIntyre's defence of the idea that the state should tolerate hate speech, including Holocaust denial, deserves critical examination. Such an examination would seem to require an explication and evaluation of the reasons for MacIntyre's position. This will enable the problematic points of MacIntyre's stance to be identified against the backdrop of his broader philosophical premises and a way of addressing them to be suggested. The paper will, therefore, present and evaluate MacIntyre's basic line of argument and then suggest ways in which its shortcomings can be constructively addressed. The article argues that the main shortcoming of MacIntyre's context-based regulation of hate speech, including the cases of Holocaust denial, is that it does not take seriously enough the relevance of the particular democratic context of a given society.

The ethics of conversation and the imperatives of non-toleration

The problem of citizen impunity for hate speech is a question of tolerance. For MacIntyre, the question of tolerance is primarily a question of a kind of debate by a group of people aimed at identifying the optimal course of action to achieve the individual and collective good of that group. The aim of such a debate is to reach an agreement to the extent that effective practical decision-making is possible. This type of debate is also inextricably linked to conflict.[6] The precondition for the progress of a given group is that it has the relevant conflicts under control or that it manages to avoid the risk of excluding opinions, what he calls the *evil of suppression*, as well as the risk of undermining the debate, the *evil of disruption*. What is said applies not only to conversations within the group but also to conversations between groups (MacIntyre 2006, 205–7).

Both these evils represent flawed approaches to regulating social conversation because they are inappropriate responses to the need to manage conversational conflict appropriately. The evil of suppression wrongly assumes that conflict must be managed by silencing the person whose views tend to generate conflict. The fallacy of the evil of disruption, on the other hand, is to allow opinions into the debate that should not be allowed in the first place because they effectively disrupt the debate and make it impossible to reach the consensus necessary for collective decision-making. The criterion for the tolerability of an opinion, according to MacIntyre, is not the degree to which it contributes to the achievement of the common goods of conversational inquiry. To be tolerated, however, it must be of such a nature that it deserves a reasonable response. Thus, the only utterances that are intolerable are those that do not deserve

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such a reasonable response because of their content or their mode of presentation, or both (MacIntyre 2006, 206).

In other words, in the context of collective conversation, MacIntyre argues, it is important to identify the boundaries of toleration – to distinguish tolerable statements from intolerable ones. The latter are of such a nature that the only appropriate response to their expression is to exclude their author temporarily or permanently from the discussion. The reason for this exclusion, i.e. the intolerability of these utterances, is that their author has disqualified himself as a participant in the debate by the content or manner of his speech – he has eliminated his own conversational status. Two interrelated questions are crucial in this context: (i) Who should draw the line between tolerable and intolerable speech? And (ii) how is this boundary to be enforced, or the questions of what, whom and why are we to be intolerant of? (MacIntyre 2006, 206–207). What do these normative premises imply for the question of the tolerability of hate speech, including Holocaust denial?

The problem of in/tolerable speech – the case of Holocaust denial

MacIntyre characterises the phenomenon of 'Holocaust denial' as the claim that "the Holocaust – the intended and to a horrifying extent achieved destruction of the Jewish people ... never happened and that the belief that it happened is a fabrication of anti-Nazi propaganda" (MacIntyre 2006, 219). For MacIntyre, such a view is both tolerable and intolerable, depending on the type of conversation in which the statement is made. If it is a political conversation on a national political level, it is legally tolerable, but in a discussion in a specific local context, it is a socially intolerable opinion. How does MacIntyre arrive at this conclusion? It seems necessary first to consider the reasons for non-tolerance and the ways in which it is implemented at the level of the local community and then to propose two principled ways of regulating hate speech at the level of the state.

To begin with, MacIntyre argues that practically rational dialogue at the local community level requires not only inclusion and tolerance, but also certain local exclusions and intolerances. This intolerance concerns both the manner and the content of expression. With regard to the manner of expression, it is a certain kind of threatening, insulting, even contemptuous or insecure expression of other participants in the conversation – for example, maliciously referring to their ethnicity or gender – that is unacceptable, rather than a substantive critique of the other person's arguments. Such inappropriate behaviour should be regarded as self-excluding its author, at least temporarily, from the discussion. MacIntyre recognises that we do not have a simple rule for conveniently drawing the line between legitimate and illegitimate ridicule, so he rather emphasises the need to cultivate the virtues of correct reasoning in these cases (MacIntyre 2006, 214, 216).

As for the content of the statement, it is also true that a prerequisite for the reasonableness of the discussion is that certain questions, e.g. scientific questions, are considered by the participants to be conclusively settled. A person who does not share this view should be excluded from the discussion. The exclusion of such a person, who considers these issues to be open, from the relevant discussion should be implemented by an implicit agreement to ignore their contributions to the discussion. It can thus be said that their exclusion takes the form of a form of de facto social ostracization. However, the community in question should not prevent the excluded person from freely expressing his or her problematic views if it is reasonable to believe that no one actually takes the person's views seriously (MacIntyre 2006, 217). An example of a compellingly closed question is the fact of the Holocaust. At the level of the local

community, therefore, Holocaust denial is intolerable. Any historian who denies the Holocaust is professionally disqualified, which justifies their legitimate exclusion from academic work in the field of modern German history (MacIntyre 2006, 219).

At the state level, MacIntyre distinguishes between two basic models for regulating Holocaust denial: the American model, which constitutionally does not allow speech, including Holocaust denial, to be restricted solely on the basis of its content, and the model, such as the German one, which, on the contrary, seriously criminalises Holocaust denial.[7] MacIntyre prefers the American model of free speech, where Holocaust denial is not legally punishable.[8] Otherwise, he believes, the state could be seen to interfere unduly in the debate between those advocating competing ideas of the human good.[9] MacIntyre recognises that Holocaust denial is an expression of anti-Semitism. However, he argues that the evils of anti-Semitism[10] do not justify the state intervening coercively in political debates at the national level, arguing that it is in the appropriate local forum that Holocaust deniers must be effectively silenced (MacIntyre 2006, 219-220). But on what grounds does MacIntyre consider state intervention in value debates, as exemplified by the criminalisation of Holocaust denial, to be harmful?[11]

The issue of value neutrality of the state

MacIntyre rejects state intolerance of hate speech because he agrees with John Locke's liberal conception of tolerance on this issue, considers the contemporary state to be a highly problematic entity, and regards the idea of the state's value neutrality as an 'important fiction'.[12] MacIntyre agrees with Locke's conclusion about the need for the state to be value-neutral, but, as will be shown, derives it from a different premise. For the role of political authority, according to Locke, is to provide security, order and social harmony, not to regulate or influence

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[7] The German approach to restricting Holocaust denial seems very similar to the Slovak one. According to Káčer and Šajmovič, the state legitimately punishes its denial because of the historical legacy of Slovak society, the fact that the Slovak state power actively participated in the Holocaust in the past (and the same would apply to the German case) (Káčer – Šajmovič 2021, 108).

[8] Roger Kiska has explained the main differences between the European and American models of hate speech regulation (Kiska 2012–2013). Anne Weber has also explained the European model in detail (Weber 2009).

[9] In his inaugural lecture, MacIntyre explained in detail why the modern state has privatised the good and why this is a problem (MacIntyre 1990).

[10] In this regard, MacIntyre says that „the poisons of anti-Semitism are such that no conception of the human good can be treated as rationally defensible whose defenders cannot show not only how allegiance to it can be dissociated from antiSemitism, but also how it can provide or acquire resources for neutralizing those poisons. And that can be done only by those who recognize the facts of the Holocaust. I do not mean by this that there are not many other facts that also need to be recognized. But I take the facts about the Holocaust to be a paradigm case of historical facts, the denial of which precludes a rational evaluation of an important range of conceptions of human good. I conclude that this is an opinion that ought not to be tolerated in any local community, that to tolerate it is a form of vice, and that those who express it ought to be silenced" (MacIntyre 2006, 220).

[11] Max Steuer analysed the issue of the criminalisation of Holocaust denial in the context of three Central European post-communist states (Slovakia, the Czech Republic and Hungary). He pointed out, among other things, that this ban transforms the Holocaust into a 'taboo outside politics', with all the negative consequences for the nature of remembrance (Steuer 2017).

[12] Some may agree with MacIntyre's rejection of the assumption that the state can ever speak or act with political neutrality, and still point to the fact that questions then arise about what would be meant by the state 'imposing' a political viewpoint. For example, whenever a state punishes or threatens to punish someone for shoplifting, for scrawling graffiti, or for physically harming an innocent bystander, the state, by definition, imposes its conception of the good, the right, or the just. However, I believe MacIntyre is not concerned with these kinds of issues as they are rather uncontroversial, or at least not disputed by the large majority of citizens. What is indeed disputed is whether the state may be genuinely neutral in its rhetoric and actions when it comes to 'thick' conceptions of the good life, i.e. in the context of highly divisive issues that citizens fundamentally disagree about, such as, for instance, the question of abortion, euthanasia, the role of religion in public life, and so on.

the views of the people when these do not jeopardise the fulfilment of these roles and duties. Therefore, both the state and everyone else are prohibited from imposing any views on the people (MacIntyre 2006, 208–209). MacIntyre notes, however, that Locke himself was a party to the conflict he proposed to resolve – including through the legal enforcement of toleration. The modern state was thus not a value-neutral arbiter of the conflict between divergent conceptions of the good, but rather a participant in that conflict, and at the same time, an instrument for enforcing a particular, highly contested conception of liberty and property, a state that systematically favoured conceptions of the good that were consistent with those contested conceptions (MacIntyre 2006, 209–210).

Moreover, MacIntyre stresses that the contemporary state differs from the eighteenth-century state in three important ways: (i) the successful secularisation of Western politics; (ii) the significant transformation of the state associated with the enormous increase in the degree of state activity in the economy, the expansion of state agencies and the complexity of legislation; and (iii) the significant inseparable alliance between the state and the domestic and international market (MacIntyre 2006, 210). The contemporary state and market present their power and values in two distinct rhetorical ways. On the one hand, it presents itself in a utilitarian idiom in the sense of cost-benefit analysis, where notions of utility and rights are central to the discussion. On the other hand, the state and the market defend their policies and activities as the custodians of society's values, where the state presents itself as the guardian of the nation's ideals and the custodian of its heritage, and the market as the institutional expression of its freedoms. The state employs this second form of self-presentation when it sporadically invites its citizens to die for it (MacIntyre 2006, 211–212; 2006i, 163).

For these reasons, MacIntyre arrives at the same conclusion as classical and many modern liberals, but in a different way, that the state must not impose any view of the good life but must tolerate a plurality of views. Unlike liberals who base this conclusion either on the notion that the state must be value-neutral or on the notion that the state should actively promote the freedom and autonomy of the individual, MacIntyre draws the same conclusion from the following two premises. He argues that (i) the present state is not and cannot be value-neutral, and (ii) its failure to be value-neutral justifies our distrust of its ability to promote any meaningful set of values. Indeed, the state is incapable of adopting any understanding of the human good without significantly distorting and discrediting it or exploiting it for its own ends. The state should, therefore, not draw boundaries between tolerable and intolerable views. Rather, the state is supposed to be ostensibly neutral, and while this neutrality is never (entirely) real, it is an important fiction (MacIntyre 2006, 211–212). What do these ideas imply for state regulation of hate speech?

MacIntyre's preferred model of state regulation of hate speech

MacIntyre distrusts the state's ability to fairly regulate the plurality of conceptions of the good life that happen to exist in modern pluralist democratic society and, therefore, refuses to grant it the authority to draw the line between tolerable and intolerable views. It is clear from his comments that MacIntyre favours a legal regulation of free speech, including hate speech, that is context-based rather than content-based. But what if there are more than these two models of free speech regulation? And what if this third model does not suffer from the shortcomings of the two traditional models and offers a more democratically adequate form of hate speech regulation than MacIntyre's preferred context-based model? There is indeed such an alternative, and it has been termed the 'regime-based' model (Steuer 2021). Let us, therefore,

briefly outline all three models in order to (i) identify both the advantages and the shortcomings of MacIntyre's approach and (ii) suggest some ways of addressing these shortcomings.

Given the nature of its purpose, the state is not only entitled but also obliged to regulate freedom of expression in some appropriate way, i.e. to regulate the freedom that can be considered the most important human right (Heinze 2022). The need for this legal regulation stems from the fact that the ideal of unlimited freedom of expression is absurd in practice. The state can regulate freedom of expression primarily in two alternative ways: (i) *context-based*, also called content-neutral, regulation; and (ii) *content-based* regulation. The first approach, in contrast to the second, in principle does not allow the restriction of the freedom of speech because of its content, except for so-called unprotected speech, but regulates other aspects of speech, namely its time, place or manner of performance (Bartoň 2010, 154–156, 176–178). Alongside these two models, however, there is an attractive third option, namely (iii) *regime-based* regulation. This third model combines key aspects of the two basic models of regulation described above. What is the essence of this alternative model?

Before specifying the model itself, however, it is important to address one of its key assumptions. First of all, it is important to bear in mind the distinction between full and defective democracies that Eric Heinze has adopted in the context of his approach. This is because democracies fulfil, to varying degrees, the parameters of the cultural and institutional ideal of a fully democratic socio-political order. The best of these are full democracies, which Heinze coined the term 'long-term, stable and prosperous democracies' [LSPD]. Political regimes of this type "maintain sufficient legal, institutional, educational and material resources to admit all points of view into public discourse, while remaining adequately equipped to protect vulnerable groups from violence or discrimination" (Heinze 2016, 70).[13] The existing plurality of opinion in LSPDs is viable enough to adequately respond to hate speakers and groups without obliging the state to restrict citizens' democratic prerogative to speak in public debate (Heinze 2016, 71–72).

As a historically unique type of democracy, the LSPD is comparatively better able to eliminate the risks associated with hate speech, allowing it to employ more legitimate and effective forms of eliminating the harms of hate speech without censoring citizens' speech. At the same time, however, it is important to highlight the fact that even LSPD-type states may temporarily fail to meet the criteria of this model, for example when faced with a security emergency. In this case, they may introduce bans on hate speech as an exceptional (security) measure. At the same time, however, these measures are seen as fundamental flaws in the democratic process and never as necessary or desirable improvements to democracy. Insofar as the LSPD-type state then resorts to banning hate speech, it *ipso facto* abandons its legitimation criteria for democracy (Heinze 2016, 71–72, 79). Flawed democracies are all democratic regimes that, in one way or another, do not adequately meet all the criteria of 'full democracy'.

Having explained this distinction, regime-based speech regulation can be defined as a combination of the two main models of regulation, in the sense that content-based regulation of public debate is only democratically legitimate in conditions of defective democracies, since these are not politically and institutionally capable of effectively protecting the targets of hate speech. The reasons for such restrictions are therefore not justified on democratic grounds, but only on security grounds. Under the conditions of full democracies (LSPD type), it is

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[13] To identify states as LSPD-type democracies, Heinze uses The Economist's *Democracy Index*, which annually assesses the level of democracy in the world – a model that the LSPD identifies with what the index understands as 'full democracies' (Heinze 2016, 71).

democratically illegitimate to selectively punish the views of citizens for their, for example, hateful speech in public debate (for more, see Heinze 2016; Kahn 2017; Kuna 2020; 2021). In other words, in full democracies, only context-based regulation of free speech will be democratically legitimate. That is, it will not be legitimate to legally restrict hate speech in public debate in these democracies.

It is clear from the discussion so far that MacIntyre clearly prefers context-based regulation to content-based regulation. This is because MacIntyre denies not only the actual but also the potential value-neutrality of the modern liberal democratic state – a key claim of liberalism's neutrality. Moreover, the state is not only incapable of functioning value-neutrally but also dangerous in so far as it attempts to promote or protect any meaningful human values, including liberal ones, which is ideal for the adherents of ethical liberalism. This conclusion extends to the very important values that animate and motivate the criminalisation of hate speech in general and Holocaust denial in particular. MacIntyre, therefore, rejects the state's criminalisation of hate speech in general and thus denies it the authority to punish Holocaust denial as well.

A critique of MacIntyre's approach

This means that the state should strive to be as ostensibly neutral as possible in value disputes. In other words, the state must also maintain ostensible neutrality in value disputes about the existence and nature of the Holocaust or about the ethical meaning and implications of its denial. In this way, MacIntyre argues against the state being entrusted with the problematic power to intervene in their fundamental value disputes by punishing what it perceives as 'hate speech', i.e. in a content-selective manner. In other words, he is on the side of freedom, especially freedom of expression, which he argues is the best way to participate in disputes about the human good in the current conditions of pluralistic societies of late modernity.

From MacIntyre's preference for the American approach to regulating Holocaust denial, it is reasonable to conclude that, in his view, the only things that would justify state intervention in this dispute would be reasons not directly related to the specific value aspects of the Holocaust as a radically negative ethical phenomenon. These reasons could relate exclusively to the *time* – for example, the night, the *place* – for example, in public buildings, or the *manner* – for example, too loud speech – of carrying out the anti-Semitic act of historical denialism in question. This interference would thus not be related to the content of the speech itself but solely to the context in which it is made. This solution appears problematic from the perspective of the regime-based approach. However, before articulating its main problem, it is necessary to consider two possible objections to the regime-based approach.

The first objection concerns the role of the security argument in full democracies. This is the question of why the security argument in the regime-based approach (that hate speech can lead to persecution and violence against minorities) is only valid in the context of flawed democracies and not in the context of LSPDs. For example, both the US and Germany could be considered LSPDs, but some minorities in these countries tend to be exposed to more violence than in some countries that could be considered flawed democracies.[14] This objection can be addressed as follows: it is important to note that the reason why the security argument is inapplicable in the context of the LSPD is that such a democracy can protect vulnerable groups from violence and discrimination without the need to punish hate speakers (as already

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[14] I would like to thank the anonymous reviewer for bringing this issue to my attention.

explained). It can effectively eliminate the harm of hate speech without resorting to censorship. Where a particular LSPD fails to protect some vulnerable groups, the question arises as to whether it can still properly be regarded as an LSPD. This may be either its *temporary failure* or its *gradual erosion* into a flawed democracy. It seems fair to conclude that in both cases, depending on the extent to which the quality of democracy is failing or eroding, the security argument may apply.

The second objection goes in the opposite direction, stressing the need for a high level of protection of freedom of expression beyond the scope of full democracies. This idea has been considered by Robert Kahn when he asks whether the protection of freedom of expression is not more important in democratic states that have not yet reached the parameters of full democracy (he points to the controversy over Turkey's ban on recognition of the Armenian genocide) or are losing them (as he believes has been the case in the US in the era of Donald Trump) (Kahn 2017, 247–249). There seem to be two very valuable insights behind his objection. First, a robust free speech regime is an important tool in combating the ongoing erosion of full democracy. Indeed, extensive free public debate tends to effectively expose and curb the gradual erosion of democratic institutions and public culture. Second, freedom of expression is, at the same time, a key tool for improving a defective democracy and transforming it into a full democracy. Indeed, it is precisely in defective democracies that the security argument is often misused by those in power to silence their critics. Thus, the limited scope of freedom of expression, at best, reduces or, at worst, eliminates the prospects of a given society meeting the parameters of a full democracy over time.

With regard to these considerations, it can be said that while the regime-based model presupposes a qualitative classification of democracies with different regimes of freedom of expression, there is another aspect of the problem that needs to be taken into account. This concerns the fact that the qualitative parameters of a given democratic society are never entirely static and that its democratic culture and institutions either strengthen or weaken over time. As a result, security considerations sometimes gain ground at the expense of freedom of expression, while at other times the invocation of security is merely a pretext for the illegitimate curtailment of this crucial freedom. Thus, while in theoretical reflection, we need to think about democracy in abstract terms, in everyday political reality, we also need to take into account the specific socio-historical context in which a particular democracy, with its corresponding regime of freedom of expression, is realised. This brings us to the problem of abstract universalism, which also applies to MacIntyre's position. So let us see how this negatively affects MacIntyre's position on the legality of hate speech, including expressions of anti-Semitism in the form of Holocaust denial.

It seems that MacIntyre's context-based stance suffers from one important flaw, namely it seems to presuppose an abstract universalism about the question of freedom of speech.[15] As a result, he does not take seriously the actual political, legal, cultural and economic context of the democracy in question (as an expression of the long-term development of that particular exemplar of the idea of a democratic society). In other words, MacIntyre does not take context into account when attempting to answer the question of the appropriate form of regulation of

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[15] The notion of abstract universalism here refers to the idea that the question of the appropriate regulation of freedom of expression can be addressed in *abstraction* from the context in which that freedom is to be exercised and is therefore at the same time a *universally* applicable answer to the issue in question.

free speech in the case of hate speech.[16] The consequence of MacIntyre's disregard for the importance of context is that he ignores the risks to the addressees of hate speech of applying context-based regulation in the conditions of defective democracies. Regime-based regulation seems to be a better form of regulation than the one MacIntyre advocates. This is because it appropriately combines citizens' freedom of expression – which is unrestricted by the state in full democracies – and its restrictions, which are legitimate only for the purpose of protecting the potential victims of hate speech in the context of defective democracies.

However, there might be a critic who would defend MacIntyre's position against this critical conclusion in the following way. For example, the critic would claim that MacIntyre could argue that he does not need to take into account the regime-based approach because his context-based approach is designed for stable democracies where it is highly unlikely that an increase in hate speech would lead to an increase in hate crimes. Therefore, his argument is not applicable to defective democracies. The response to this criticism is as follows. MacIntyre does not seem to explicitly limit the desirability of the context-based approach to full democracies. Moreover, there seems to be no good reason why the critic's claim should have MacIntyre's implicit endorsement. For if we take seriously MacIntyre's claim that every modern democratic nation-state by its very nature poses a constant and serious threat to human freedom, including freedom of speech, then that very state, whatever the quality of its democratic performance, should never be allowed to set limits on the speech of its citizens, including their hate speech. If this interpretation is correct, it would seem to support the main claim of this paper, namely that (i) MacIntyre's context-based approach seems problematic because it does not take the relevance of different political contexts seriously enough, and therefore (ii) it needs to be modified towards the 'regime-based' model, in which hate speech bans are justified only by the insufficient quality of a given democratic society.

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[16] Max Steuer critically discusses the existing contradictions of increasing legal restrictions on hate speech (what he labels as 'extreme speech') by applying the principles of militant democracy in the context of the Czech Republic, Slovakia and Hungary (Steuer 2019).

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