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COMMENT

Anti-semitism and higher education: concerns and challenges

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When first invited to give this presentation, my immediate reaction was one vacillating between mild surprise and consternation. Mild surprise: because the only thing that I have ever come across in Malta vaguely reminiscent of anti-semitism is whenever Shakespeare's play *The Merchant of Venice* is staged anywhere on the island, and dear old Shylock is invariably portrayed, or more likely over-portrayed, by the actor as the quintessential Jew as caricatured in certain quarters of European society right down to the time of the rise of Nazism: miserly, unforgiving, and out for his pound of flesh. But immediately the situation is set right by a disguised Portia with her famous speech on the quality of mercy not being strained – a speech which I would recommend should be read out aloud at the inauguration ceremonies of all heads of governments. The British-Israeli author Harold Fisch[1] has pointed out that the words of Deuteronomy 32:2:

> My doctrine shall drop as the rain, my speech shall distil as the dew; as the small rain upon the tender grass, and as the showers upon the herb,

are echoed in the first words that Portia utters:

> The quality of mercy is not strain'd,
> It droppeth as the gentle rain from heaven
> Upon the place beneath ...[2]

We all know the rest. One of the most important books for Jews – the fifth book of the *Torah* – rushes in to restore what for Shakespeare and for many of us is a Christian virtue, a mirror of God's love for humankind. Would an actor's portrayal,

[1] H Fisch, *Poetry with a Purpose: Biblical Poetics and Interpretation* (Indiana, 1988).
[2] W Shakespeare, *The Merchant of Venice*, Act IV, scene 1.

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or perhaps over-portrayal, of Shylock, expose him or her to prosecution for inciting racial hatred?

Consternation: because I was under the impression that in my country and in all the countries of Europe where the European Convention on Human Rights (ECHR) holds sway, there was, or there could be, no real problem of anti-semitism, whether in higher education or, indeed, anywhere else for that matter. Which is not to say that there is no anti-semitism, but that the anti-semitism that may surface is not regarded as a problem, in other words is not regarded as something that, by definition, would require *more* or *special* government attention, and possibly special legislative or special administrative intervention – both of which – legislative and administrative interventions being in any case, at least in Europe, subject to judicial review under the over-arching umbrella of the European Court of Human Rights (ECtHR). Perhaps I was wrong. Indeed, a study published in November 2023 by the Steering Committee on Anti-Discrimination, Diversity and Inclusion of the Council of Europe (the CDADI), provides some disquieting examples of anti-semitism in Europe that cannot be ignored. The study first refers to conspiracy theories associated with the COVID-19 pandemic, blaming the Jews for deliberately spreading the contagion.[3] And then the study says this:

> Jewish people have also been targeted by hate speech around the rise in the number of arrivals of migrants and refugees, which was depicted as a secret 'Zionist' plan to destabilise Europe or attributed to a Jewish Hungarian American businessman and philanthropist.[4] In connection with the 2015 terror attacks in Europe, specifically the terror attacks in Paris in January and November 2015, it was insinuated, as was done in connection with the terror attacks on 11 September 2001, that Jews were informed in advance of the attacks, and/or were behind them.
>
> According to several stakeholders, antisemitic narratives recycling 'old' stereotypes may have been fuelled in 2022–23 by the Russian Federation's war of aggression against Ukraine, and the targeting of president Zelensky and his Jewish background. The data-analyses for the case study on hate speech in relation to the Russian war against Ukraine found tags clearly making reference to President Zelensky's Jewish roots, the Nazi period in Europe and other references often associated with antisemitism.[5]

But then there have been instances, also documented in this study, of others being targeted – immigrants, Muslims, anyone coming from an Arab country (even if Christian, or specifically because they are Christian, like the Chaldeans from Iraq). And let us not forget that the Arabs are Semites as well. So the phenomenon is not one limited to targeting Jews.

[3] CDADI, *Study on Preventing and Combatting Hate Speech in Times of Crisis*, at 29. The report can be accessed here: https://rm.coe.int/-study-on-preventing-and-combating-hate-speech-in-times-of-crisis/1680ad393b (accessed 1 July 2025).

[4] I think that the reference here is to George Soros.

[5] CDADI (note 3), at 29.

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The study also provides a rule of thumb definition of hate speech which is, by and large, applicable in all countries of the Council of Europe:

> all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as 'race', colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.[6]

It is interesting that in this rule of thumb definition, the word 'race' – which one also finds, for instance in Article 14 of the ECHR and in Article 1 of Protocol No. 12 to the Convention – is reproduced between inverted commas, with the addition of the following footnote by way of explanation:

> Since all human beings belong to the same species, the Committee of Ministers rejects, as does the European Commission against Racism and Intolerance (ECRI), theories based on the existence of different 'races'. However, in this document, the term 'race' is used in order to ensure that those persons who are generally and erroneously perceived as 'belonging to another race' are not excluded from the protection provided for by the legislation and the implementation of policies to prevent and combat hate speech.[7]

What does this really hint at? In my view, this indicates that the presence of anti-semitism – just as the presence of anti-Muslimism and sentiments directed against other minorities or immigrants or gays or whatever – while perhaps to be expected from certain quarters given current circumstances in the Middle East and particularly in Gaza – should not *necessarily* reach the level of concern such as to justify *extraordinary* legislative or administrative measures like those implemented recently by President Trump in the United States. In April 2025, President Trump's administration introduced specific financial penalties to higher education institutions. Those penalties were purportedly aimed at combatting anti-semitism.[8] Such measures, unfortunately, risk undermining the very notion of the Rule of Law – the *Imperium Legum* – to use the expression I have often found in works by American academics – based on the four pillars of Accountability, Just Laws, Open Government and Accessible and Impartial Justice.[9]

What do I understand by 'just laws'? I can imagine you wringing your hands and saying: *Ah, here is the fool rushing in where angels fear to tread*! Yes, I admit I am an incorrigible optimist: if I were not, I would not have spent so much time in Strasbourg writing separate opinions (mostly dissenting) because I felt that justice was not

[6] Ibid, at 10.

[7] Ibid, n 4.

[8] cf. 'Jewish senators accuse Trump of exploiting antisemitism to target universities', *The Guardian*, 24 April 2025.

[9] On these principles, see further the written evidence submitted to the UK House of Lords' Constitution Committee by the World Justice Project (ROL0011), April 2025, which can be accessed here: https://committees.parliament.uk/writtenevidence/140253/pdf/ (accessed 1 July 2025).

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being served or fully served by the judgment that we were handing down. Ever since my university days in Malta in the early 1970s, when our Professor of Philosophy of Law first introduced us to St Augustine, I have remained under the spell of two core sayings by Augustine, with which I am sure all of you are familiar: one of them, from his *De Libero Arbitrio*,[10] *Mihi lex esse non videtur quæ iusta non fuerit* – to me a law is not law unless it is just; and in *De Civitate Dei*[11] he castigates the state – the kingdom of his days – when he says *Remota iustitia, quid sunt regna nisi magna latrocinia* – if you remove justice, what are kingdoms [states] if not great robber bands?

Fast forward: The World Justice Project[12] gives us an overview of what is to be understood by Just Laws – again, a rule of thumb – a law is just if it is clear, publicised, stable and predictable in its outcome – and I would like to emphasise *stability* and *predictability*. But above all it must ensure that basic fundamental human rights are not trampled upon by that law. And what lies at the very core of fundamental human rights as we understand them in Europe? Human dignity. Human dignity is the most fundamental of ethical principles that must permeate every area of private and public discourse. According to the German Philosopher Immanuel Kant, every person exists as an end in itself and not simply as a means that one can control and use. Kant's idea suggests that a person's worth is not dependent on his or her usefulness or contribution to others, but rather on the person's rational nature and capacity for moral autonomy. Human dignity, however, is not to be equated with the 'person', with someone being born 'alive and viable'. Human dignity transcends both ends of the life cycle – birth on the one hand and death on the other. It is uncanny: so many judgments of the ECtHR are based on the concept of human dignity – think of one of the old 'venerables' of the Court – *Soering v United Kingdom*[13] – but that expression is only found in the preamble to Protocol No. 13 to the ECHR on the abolition of the death penalty in all circumstances. For the Germans it is enshrined in Article 1(1) of the German Basic Law: *Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority*. The Charter of Fundamental Rights of the European Union, even before it speaks of the right to life or any of the other rights, states in Article 1: *Human dignity is inviolable. It must be respected and protected*.

I would have thought that if in any jurisdiction there were a problem with anti-semitism, the authorities have to look at the education system – not higher education, but education at compulsory level – and to see whether at compulsory level they are really addressing in an intelligible and proper way the concept of human dignity. Literacy is important, knowledge and life skills are important, but equally important are core values like a sound concept of human dignity. Or are we shying away from values because they are seen to be somehow 'faith related'? When the 16th century Jesuit Juan de Bonifacio – a humanist, pedagogue and playwright – came out, in one of his programmes of study, with the famous expression *Puerilis*

[10] Bk I, v 5.11.

[11] Bk IV, v 4.

[12] See above, note 9.

[13] *Soering v United Kingdom* (1989) 11 EHRR 439 (a landmark judgment of the ECtHR which established that the extradition of a German national to the United States to face charges of capital murder and their potential exposure to the so-called 'death row phenomenon' violated Article 3 of the ECHR – protection from inhuman and degrading treatment).

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institutio est renovatio mundi (the education of youth is the renewal of the world), he was reiterating something basic and fundamental and in many ways obvious: and yet something that the people have to remind their leaders, and their governments, at regular intervals through the proper use of the democratic vote.

So, if there is a problem of anti-semitism – or, indeed, of any form of hate speech – at higher education level, does this necessarily justify special legislation or special administrative measures? I have to confess I know very little about the American legal system, and next to nothing about how the system of Executive Orders by the President of the United States operates – coming as I do from a former British Colony, I admit that I am more familiar with legislation through the Royal Prerogative of Proclamation or by Order-in-Council. But my nagging feeling is that special legislation and special administrative measures – that is, over and above the ordinary law of the land duly applied even-handedly – often have the opposite effect to that intended: they exacerbate the problem rather than help solve it precisely by giving it the added publicity that it does not deserve. Or, worse, such special legislation and special administrative measures, often in the form of knee-jerk reactions without proper consultation and advice, may be deliberately aimed at causing chaos. History teaches us that the sowing of chaos and confusion is a tactic that has been used by tyrants since time immemorial.

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