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Zuckerberg was right about how to handle Holocaust deniers

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Facebook founder and CEO Mark Zuckerberg got into trouble recently when he said he wouldn't remove Holocaust deniers from his platform, claiming some aren't "intentionally getting it wrong."

In response, the Anti-Defamation League charged that Facebook has a "moral and ethical obligation" to prevent the "dissemination" of Holocaust denial. Others attacked Zuckerberg for not taking growing anti-Semitism seriously. Zuckerberg later clarified that he wasn't defending the intent of Holocaust deniers.

The free-speech challenge that Facebook and similar platforms with global reach face is immense. Since World War II and especially since the Cold War, more countries have enacted legislation –with references to history, religion, culture, social peace and security concerns– that undermines a common understanding of what free speech entails. This has made free speech advocacy increasingly difficult on the international level.

This is a paradox. Due to increased migration, rapid urbanization and developments in technology, more people are becoming virtual and physical neighbors. Yet while this increases the need for shared norms about free speech and its limits, the world seems to be moving in the opposite direction.

Facebook has over 2 billion members from every corner of the planet — all communicating within the context of vastly different legal systems, histories, cultures, religions and social norms — creating an overwhelming amount of competing priorities. To illustrate this point, consider the contrasting norms in the two countries with the most Facebook users: the United States and India. While it's not controversial in Texas to tell others that you slaughtered a cow and had some great steaks, doing so in India could get you killed. The cow is sacred in Hinduism, and in parts of India, killing a cow is punishable by life imprisonment. Just a couple of months ago, a man was beaten to death in India after a mob accused him of slaughtering a cow. What should Facebook do if somebody in India establishes a group for beef-lovers?

Or what about the profound differences in nudity norms in countries like the United States and Denmark? In Denmark and other European countries, nudity is not by definition seen as pornography or as explicit sexual content. It was therefore not controversial when a well-known Danish author included nude photos in a book a few years ago and published some on Facebook. In the United States, though, both Apple and Facebook censored the photos for violating community standards. Facebook notified the author that if he didn't take down the offending content, his account would be permanently deactivated. More recently, Facebook made a joke of itself by removing museum ads for Peter Paul Rubens's paintings of naked women. Not even a painting of a half-naked Jesus on the cross was able to escape its censors.

It is easy to laugh at this as some odd conflict that should not be that difficult to solve. But Holocaust denial and what to do with it is of course no laughing matter. "It's a form of anti-Semitism," the respected Holocaust historian Deborah Lipstadt said in response to Zuckerberg's comments. "It's about attacking, discrediting and demonizing Jews."

In spite of this, Lipstadt has never been in favor of criminalizing and banning Holocaust denial. She has argued that the best way to defeat deniers is through open exposure and establishing the facts. When British Holocaust denier David Irving lost a libel suit to Lipstadt and was later imprisoned in Austria, Lipstadt said she was "uncomfortable with imprisoning people for speech. ... I don't think Holocaust denial should be a crime. I am a free speech person. I am against censorship."

Lipstadt is right. Bans and criminalization are simply not the most effective way to fight anti-Semitism.

First, a ban risks turning deniers into martyrs of free speech, which they are not. They deserve to be denounced, mocked and ridiculed in every possible way, but that becomes more complicated if it can be framed as a free speech issue.

Second, criminalization of Holocaust denial may amplify conspiracy theories rather than undermine them. People who are already generally skeptical of government might think it is trying to hide the "real" facts by banning Holocaust denial.

Third, a ban risks weakening our ability to defend the historical truth with facts and documentation. A ban may turn the truth about the Holocaust into something akin to a religious dogma, of which we just know it's true because it's true and no questions can be asked. This is what happened to the Catholic Church at the time of the Reformation, when many Catholics were totally unprepared for the theological challenge from the Protestants.

Criminalization and bans also have a negative effect on free speech. For example, when Germany passed a law demanding Facebook and others to take down hate speech within 24 hours or risk a fine of about \$58 million, Russia later copied the legislation, which it will likely apply in a far less liberal way. As another example, ten years ago, the European Union made it mandatory for all members to pass Holocaust denial laws and toughen the laws against hate speech. So far, 16 member states have done so. These laws against hate speech have triggered a

wave of memory laws in Europe and beyond, intended to protect certain versions of history against criticism. It is identity politics on the governmental level.

In Eastern Europe, several countries passed laws criminalizing the denial of crimes under Communism. Others passed laws criminalizing the denial of the Armenian genocide. A Turkish politician was prosecuted in Switzerland for saying it was a lie to call the mass killing of the Armenians a genocide. The Latvian parliament passed a law criminalizing the denial of Latvia's occupation by Nazi Germany and the Soviet Union. Post-Maidan Ukraine made it a criminal offense to insult the memory of Ukraine's 20th century freedom fighters, among whom were organizations and individuals who participated in the mass killings of Jews in the Nazi-occupied territories during World War II.

In May 2014, Russian President Vladimir Putin signed a law that made the denial of Nazi crimes and "wittingly spreading false information" about Soviet activity during World War II criminal offenses. The most recent example of legislation inspired by European Holocaust denial laws is Poland's criminalization of the expressions "Polish death camp" and "Polish concentration camp" when referring to Nazi death camps in occupied Poland during the war. After severe criticism, the Polish parliament softened its stance and reduced this violation to a civic offense.

There is little doubt that anti-Semitism as a general trend in Europe has been on the rise. At the same time, a growing number of E.U. member states have criminalized Holocaust denial and passed other laws targeting hate speech against Jews and other minorities. In 2007, Italy's cabinet approved a law making Holocaust denial a crime with a possible four-year prison sentence. Nevertheless, a recent report found that anti-Semitic incidents across the E.U. have increased between 2006 and 2016.

We should be careful to draw sweeping conclusions, but the limited data we have indicates that banning Holocaust denial isn't the most effective way to fight it and similar incidents of anti-Semitism. Maybe Zuckerberg had a point after all.

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