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## Academic Freedom, Boycotts, Definitions, and Democracy

*Kenneth Stern\**

Thirty-two years ago, my first project at the American Jewish Committee (AJC) was to come up with a blueprint for how to tackle bigotry on campus, antisemitism included. This was at a time when the go-to answer for campus bigotry was speech codes, and as Bob Hess—president of Brooklyn College at the time—told me, conferences about campus bigotry devolved into the narrowest of disagreements about what speech is constitutionally protected and what not.

For those who may not recall, there were even debates about what type of speech would be allowed where. On some campuses there were different rules depending on where you were. A classroom would allow more speech, a dorm—more like a home—less. Dining commons fell in between. How universities would apply these rules to a drunken student at 2:00 AM, probably unaware of where he or she was on campus, expecting them to calibrate what they were going to say based on where they stood, was not explained. To me, education is also at its best when students continue classroom discussions over meals, in dorms, and perhaps over drinks.

In any event, with the help of Bob and many others, I prepared a report entitled *Bigotry on Campus: A Planned Response*,<sup>1</sup> and then trained about 200 college presidents on it. Universities, the report asserted, should reject hate speech codes as not only bad law but bad policy.<sup>2</sup> Proscribing what speech university administrations should allow and what they discouraged or chilled was too easy an out for universities, which should instead be looking at things like campus climate, curriculum, training of staff, and so much more. These were things that took more time and money than having a rule that defined what speech was okay and what not.

In tackling antisemitism—my job for 25 years at AJC—I also learned that one size does not fit all. Antisemitism, and what to do about it, plays out differently in different venues. Successful strategies take account of the values and self-perceptions of the institution at play and use them as a cornerstone of action. This is especially true on campus. Michael Brooks, longtime Hillel director at the University of Michigan, used to quip, “If you make it about Jews you lose.” He did not mean ignore antisemitism. He meant for a remedy to work and get buy-in,

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1. KENNETH S. STERN, *AM. JEWISH COMM., BIGOTRY ON CAMPUS: A PLANNED RESPONSE* (2018), <http://kennethsstern.com/wp-content/uploads/2018/09/BigotryOnCampus.pdf> (on file with the *University of the Pacific Law Review*).

2. *Speech on Campus*, *AM. CIV. LIBERTIES UNION*, (Dec. 31, 1994), <https://www.aclu.org/documents/speech-campus>.

it had to be about what the campus should be, not special carve-outs for Jewish students. I can give many examples of why any initiative in this area should have academic freedom as its cornerstone, or at least should not undermine or explain it away. There are a lot of examples in my book *The Conflict over The Conflict: The Israel/Palestine Campus Debate*,<sup>3</sup> but given the time constraint I'll just mention one here. You'll recall that in 2007 the United Kingdom's University and College Union passed a resolution furthering the idea of an anti-Israel academic boycott.<sup>4</sup> The ADL had raised the possibility that if the Brits were going to boycott Israeli academics, maybe American academics should boycott British ones. Think about that. The reason we don't like academic boycotts is that they violate academic freedom. We should value ideas on their merits, not on the nationality of the person who proposes the idea.<sup>5</sup>

Instead, I worked with Lee Bollinger of Columbia, to circulate a statement he drafted,<sup>6</sup> which ultimately over 400 college presidents endorsed, and the *New York Times* printed. This statement said if the UCU were to go down this road it should consider Columbia as an Israeli institution. In other words, if the boycotters were dividing the academic world into Israelis, whom they boycott, and everyone else, count us as Israeli too. Not one president would have signed onto the type of counter-boycott statement the ADL suggested. Bollinger's statement promoted academic freedom; the one ADL thought about would have done the opposite.<sup>7</sup>

Let's talk for a few minutes about the International Holocaust Remembrance Alliance (IHRA) definition.<sup>8</sup> One of the reasons I've opposed applying it on

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3. KENNETH S. STERN, *THE CONFLICT OVER THE CONFLICT: THE ISRAEL/PALESTINE CAMPUS DEBATE* (2020).

4. Manfred Gerstenfeld, *The UCU May 2007 Boycott Resolution and its Aftermath*, JERUSALEM CTR. FOR PUB. AFF. (Sept. 28, 2008), <https://jcpa.org/article/the-ucu-may-2007-boycott-resolution-and-its-aftermath/> (on file with the *University of the Pacific Law Review*).

5. Lizette Alvarez, *Professors in Britain Vote to Boycott 2 Israeli Schools*, N.Y. TIMES (May 8, 2005), <https://www.nytimes.com/2005/05/08/world/europe/professors-in-britain-vote-to-boycott-2-israeli-schools.html?searchResultPosition=1> (on file with the *University of the Pacific Law Review*).

6. *Statement by President Lee C. Bollinger on British University and College Union Boycott*, COLUM. UNIV.: OFF. OF THE PRESIDENT (June 12, 2007), <https://president.columbia.edu/news/bollinger-british-university-and-college-union-boycott> (on file with the *University of the Pacific Law Review*).

7. During the Question and Answer session I was asked about the academic boycott being a boycott of institutions, not individuals. That's a disingenuous distinction. First, you can't separate an academic from his or her institution. Universities provide funding for faculty to engage in work, go to conferences, and so forth. As a practical matter, the boycott harms Israeli academics, and has a disproportionate effect on Jewish academics. I cited examples in my book Kenneth S. Stern, *The Conflict Over the Conflict: The Israel/Palestine Campus Debate 107–09* (2020), including of a Jewish Israeli professor with a hyphenated name now feeling compelled to leave out the "Cohen" part when engaged in scholarly work. I might have also mentioned that when the American Studies Association instituted a boycott, one of the first victims was a Palestinian doctoral student at an Israeli university, who couldn't find an American faculty member willing to be an external examiner. And the effect of the boycott is that some professors refuse to write recommendations for students wanting to study in Israel, prioritizing their politics over their duty to their students, depriving their students of the freedom to learn – a core part of what academic freedom means. Interestingly, during the final session Mira Sucharov noted that Dima Khalidi had refused to be on a panel with Yehuda Kurtzer of the Shalom Hartman Institute, citing her belief that doing so would violate the PACBI guidelines for academic boycotts. Sucharov noted that Kurtzer was there as a scholar, in his individual capacity. Yet he was boycotted.

8. *What Is Antisemitism?*, INT'L HOLOCAUST REMEMBRANCE ALL., <https://www>

campus is that it undercuts academic freedom.<sup>9</sup> When Congress introduced the Antisemitism Awareness Act, it was essentially what Trump’s executive order put in place, saying the court has to consider the definition in Title VI cases. Some people promoting it sent materials to members of Congress saying, see, a university suspended a professor for a blog post that the school considered anti-gay, and see, students stopped the showing of the film *American Sniper* because they considered it anti-Muslim.<sup>10</sup> These proponents of the legislation said “protect us too,” in a similar way, instead of seeing an academic freedom and free speech problem. Students need the space to test out ideas and be wrong. They aren’t fragile, and universities should not encourage them to endorse groupthink, which cuts against the purpose of an education.

And there’s a fundamental difference that’s frequently forgotten here: universities should never allow intimidation, bullying, and harassment. Exposing you to ideas which you disagree with and which might even cut you to your core, is what education is at its best—teaching students how to be critical thinkers, to ponder ideas they dislike, to understand people might have a different point of view and to have the intellectual imagination and emotional empathy to think why people might have these views. But when the agenda is to suppress ideas we do not like, rather than create the opportunity on campus to examine them critically, we undercut the purpose of education. Clearly, many outside groups do not value the academy as a place to encourage discussion of ideas.

So it is not surprising that when I testified against the Antisemitism Awareness Act in 2017, it was the mainstream Jewish organizations and Christians United for Israel that testified in favor, whereas the director of both America PEN and the president of the Association for Jewish Studies testified against.<sup>11</sup> There were then, and continue to be, claims that universities should not teach or say certain things, or even assign texts, because they violate the definition, and lawsuits have been brought or threatened. And these are about Israel. When I teach I assign both strong pro-Zionist texts, and anti-Zionist ones. And I tell students up front—I’m a Zionist. And the one way to get a bad grade in my class is to parrot back to me what you think I think—I want to hear what you think. But those who are pushing the definition for campus application, in my view, confuse the question: it is whether one is a good teacher, regardless of politics or identity and whether you cultivate an environment where students should feel free to experiment with ideas.

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.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism (last visited Apr. 2, 2023) (on file with the *University of the Pacific Law Review*).

9. Kenneth Stern, *I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It*, *GUARDIAN*, <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect> (last modified Nov. 1, 2022, 4:19 AM) (on file with the *University of the Pacific Law Review*).

10. Examining Anti-Semitism on College Campuses Before the H. Comm. on the Judiciary, 115th Cong. 12–13 (2017) (statement of Kenneth S. Stern, Executive Director Justus & Karin Rosenberg Foundation).

11. *Id.* at 12–13, 19–20, 22–24; H. Comm. on the Judiciary, *Examining Anti-Semitism on College Campuses*, H. COMM. ON THE JUDICIARY CHAIRMAN JIM JORDAN (Nov. 7, 2017),

<https://judiciary.house.gov/committee-activity/hearings/examining-anti-semitism-on-college-campuses> (on file with the *University of the Pacific Law Review*).

Jewish Studies professors are rightly worried about the weaponization of the definition. The definition was written after the Second Intifada, when there was an uptick of attacks on Jews in Europe, and there needed to be a guide for the bean counters in different countries to know what to include and exclude in reports—reports intended to take a temperature of antisemitism over time and across borders. The definition had clear language on what constituted an antisemitic crime: selecting a Jewish target or one associated with Jews because it was Jewish. It didn't matter if someone attacked a Jew because Israel did something that angered them. It avoided the type of debate that would ensue when a criminal kidnapped a Jew because they believed Jews were rich, and some would say that was a positive stereotype. There were examples about Israel not to label anyone an antisemite, but because there was a correlation—not a causation—between the level of attacks on Jews and the type of anti-Israel discourse. If we were going to take a temperature over time and across borders, this was a useful data point.

But imagine if there were a parallel definition of racism (which there isn't thank God). If the purpose were to take a temperature, it might make sense to include opposition to affirmative action or Black Lives Matter or the removal of Confederate statues. It would be wrong to say that if you opposed affirmative action you must be guilty of racism, just as it is wrong to say if you had opinions seen as outside IHRA you must be peddling antisemitism or be an antisemite.

Finally, my day job is running a Hate Studies center.<sup>12</sup> One of the lessons we know is that people—especially when they tether their identity to an issue of social justice or injustice—try to make things binary, black and white. People do not like complexity either. And they are drawn to symbols—the push for IHRA that Lara described is whether one opposes antisemitism or not, as opposed to how best to do it. IHRA has become in a sense like a flag.

I have no problem with people ascribing to one narrative or another on Israel and Palestine and seeing one side or the other as more just. I do not like using law to tip the scales or the self-righteousness of those who shut down speakers. I do not like it when pro-Israel folk think they are doing Jewish students a favor—they are not—by promoting a de facto speech code, because they are “obviously right” that anti-Zionism is antisemitism. Or when pro-Palestinian groups argue that there is no conflict here, there is only one way to look at this which is their way, and if you do not you are a racist. From either direction—the self-righteous smugness included—this is something like McCarthyism 2.0. I grew up reading Anthony Lewis and Nat Hentoff (and got to know Hentoff). They—and others today like my friend Nadine Strossen—underscore the importance of protecting the rights of speech with which you disagree. I have always thought that my responsibility too, and I think it is increasingly urgent.

On campus, the job of being a student is to become a critical thinker. Students need to have the space to imagine what they would think if they were in someone else's shoes, even the shoes of someone they find detestable. Otherwise, we are

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12. *About the Center*, BARD: CTR. FOR THE STUDY OF HATE, <https://besh.bard.edu> (last visited Apr. 2, 2023) (on file with the *University of the Pacific Law Review*).

further into our own bubbles, with blinders, including about what may work to counter ideas that scare us. That is why I watch FOX News and Newsmax, to the consternation of my wife, not because I agree with them, but because otherwise how could I understand what millions of fellow Americans are thinking? I have been interviewed a fair amount the last week or two about Kanye West, Kyrie Irving, and Donald Trump's statement about Jews. I argue that we need a wider lens to think about our moment in history. Antisemitism isn't just a matter of what people are saying about Jews. It's about a cultural and political climate that encourages people to see an "us" and "them," and dehumanize or demonize that "them" as a matter of being noble and correct and self-protection. In such a climate—one that also encourages conspiracy theories—antisemitism will likely grow because it is the go-to conspiracy theory, one that says things go wrong because of the machinations of evil Jews.

I also believe that our ability to contest antisemitism and all other forms of hate has much to do with the strength of our democratic institutions, including a free press, respect for the role of the judiciary, respect for free speech, and respect for the role of our educational institutions to produce critical thinkers, which cannot be done without safeguarding the campus as a place where people are not only disturbed by ideas, but encouraged to be disturbed by them, and then examine how to think about their thinking. I see, on the campus and off, the opposite view—that students, rather than engaging and countering certain ideas, should not hear them at all. If we don't model speaking out to protect the rights of people with whom we disagree, we are undermining the strength of our democratic traditions, and again making it more likely that hate—antisemitism included—will grow.

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