

Defining Anti-Semitism, Threatening Free Speech

In May the benign-sounding Anti-Semitism Awareness Act appeared before the U.S. Congress “to provide for consideration a definition of anti-Semitism for the enforcement of Federal antidiscrimination laws concerning education programs or activities.”

No big deal? Let us see.

S. 2940 is sponsored by Republican Sen. Tim Scott and has four co-sponsors: Republican Lindsey Graham and Democrats Ron Wyden, Robert Casey, and Michael Bennet. The House sponsor of H.R. 5924 is Republican Rep. Peter Roskam, with 41 cosponsors, 30 Republicans and 11 Democrats. Both bills remain in committee. (The Senate passed a similar bill two years ago, but it never reached the House floor.)

Right off the bat, the legislation seems odd: under what Republican Party theory of limited government does Congress propose definitions of words simply *for consideration* for educational purposes? And I thought Republicans don't like federal involvement in education. We'll see that the answer is steeped in irony: the stated purpose is to help education agencies to combat racial discrimination.

While the act is directed at education, the resulting law would reach beyond that realm because it would officially stigmatize as anti-Semitic any speech and activity, public and private, said to fall within the definition. Since this would at least chill the open marketplace of ideas, advocates of free speech should be concerned about the content of the definition and its revealing support material. We must not assume that merely because the definition is said to *brand* something anti-Semitic that it is actually anti-Semitic.

The act states that Title VI of the 1964 Civil Rights Act “prohibits discrimination on the basis of race, color, or national origin” (not, mind you, religion) but that “both the Department of Justice and the Department of Education have properly concluded that title VI prohibits discrimination against Jews, Muslims, Sikhs, and members of other religious groups when the discrimination is based on the group's *actual or perceived shared ancestry or ethnic characteristics* or when the discrimination is based on actual or perceived citizenship or residence in a country whose residents share a dominant religion or a distinct religious identity” (emphasis added). Hence, those departments have managed to shoehorn religion into a statute that does not mention religion.

The proposed definition directly comes from a 2010 State Department Fact Sheet, which in turn comes, with some modification, from the International Holocaust Remembrance Alliance (IHRA) “working definition of Anti-Semitism.” The IHRA has 31 member countries, including the United States, and Israel.

Anti-Semitism, according to the IHRA “working definition,” is “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

This may seem less than helpful — history professor David Feldman, director of the Pears Institute for the Study of Antisemitism at London’s Birkbeck, University, calls it “bewilderingly imprecise — so the IHRA furnished examples (couched in conditional terms such as *could* and *might* and to be interpreted by “taking into account the overall context”). And here the problems continue. Writing in the *Guardian*, Feldman, says of the 11 examples: “Seven deal with criticism of Israel. Some of the points are sensible, some are not. Crucially, there is a danger that the *overall effect will place the onus on Israel’s critics to demonstrate they are not antisemitic*” (emphasis added). That should be of concern.

Among the *possible* examples of anti-Semitism quoted from the IHRA document in the State Department Fact Sheet, but with some modification, are:

- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, *the state of Israel*, or even for acts committed by non-Jews. [Emphasis added.]
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis”
- Applying double standards by requiring of it [Israel] a behavior not expected or demanded of any other democratic nation.
- Denying the Jewish people their right to self-determination, and denying Israel the right to exist.

Two things are worth pointing out here. The phrase “the state of Israel” in first example above does not appear in the IHRA list; that version says only, “Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.” The IHRA does go one to say later that “manifestations *might* [emphasis added] include the targeting of the state of Israel, conceived as a Jewish collectivity” but immediately cautions that criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.” The Fact Sheet, which, again, the legislation incorporates, adds, almost as an afterthought, “*However, criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic*” (italics in original).

Second, the last example differs from the similar IHRA example, which reads, “Denying the Jewish people their right to self-determination, e.g., by claiming that *the existence of a*

State of Israel is a racist endeavor” (emphasis added). I am unaware of criticism of the Fact Sheet or legislation for this key modification. A similar modification has landed the UK’s Labor Party leadership in hot water. (More below.)

As we’ll see, the inclusion of criticism of Israel in the examples is where much of the danger of this legislation lies. Indeed, Antony Lerman, former director of the Institute for Jewish Policy Research in Britain, who traces the origin and promotion of the IHRA document to the American Jewish Committee and the Simon Wiesenthal Center, both of which routinely conflate criticism of Israel with anti-Semitism, says it was designed to “equate criticisms of Israel with hatred of Jews.” Of course it was; today, being a good *anti-anti-Semite*, like being a good Jew, means little more than being unswervingly pro-Israel and pro-Israeli repression of Palestinians.

By way of additional background and contrast, the legislation cites a 2010 U.S. Department of Education “Dear Colleague” letter on religious bigotry to state and local educational agencies stating that they “must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and its effects, and prevent the harassment from recurring.” However, the legislation states that letter “did not provide guidance on current manifestations of anti-Semitism, including discriminatory anti-Semitic conduct *that is couched as anti-Israel or anti-Zionist*” (emphasis added). That’s right: the Education Department did not mention Israel or Zionism in its letter about combating anti-Semitism. So the authors of the legislation seek to “correct” that “shortcoming.”

The legislation goes to state that “anti-Semitism, and harassment on the basis of actual or perceived shared ancestry or ethnic characteristics with a religious group, remains a persistent, disturbing problem in elementary and secondary schools and on college campuses.”

Is that so? It doesn’t ring true. The Pew Research Center “finds that when it comes to religion, Americans generally express more positive feelings toward various religious groups [including Jews] today than they did just a few years ago. Asked to rate a variety of groups on a ‘feeling thermometer’ ranging from 0 to 100, U.S. adults give nearly all groups warmer ratings than they did in a June 2014 Pew Research Center survey.” For all age groups, atheists and Muslims rank far below Jews. (In another survey, Muslims ranked below atheists.) For Americans 30 years and up, Jews rank at or near the top, and the score has risen since 2014. For Americans 18-29, Jews rank just below top-ranking Buddhists, Catholics, and Hindus. No religious group scored more than 69 “degrees” except for, among people 65 and older, Mainline Protestants, Jews, and Catholics, who scored in the 70s. Where’s the widespread anti-Semitism?

And where’s the evidence of growing anti-Semitism on college campuses? The legislation “finds” that “students from a range of diverse backgrounds, including Jewish, Arab Muslim,

and Sikh students, are being threatened, harassed, or intimidated in their schools,” but it would be interesting to see the groups broken out. One suspects the atmosphere on campus is more hostile to Arab and Muslim professors and students than to Jews. (See examples here and here.) And we cannot discount the likelihood that criticism of Israel is simply interpreted as criticism of Jews qua Jews. Indeed, the lead author of the IHRA definition, Kenneth Stern, said last year in congressional testimony that it is untrue that “antisemitism on campus is an epidemic. Far from it. There are thousands of campuses in the United States, and in very few is antisemitism – or anti-Israel animus – an issue.”

Anti-Semitism exists, of course, but it’s clearly confined to the fringes of American society. It is so disreputable that people have shied away from criticizing Israel for fear of being accused of Jew-hatred, which can destroy careers and friendships. The legislation seems designed to reinforce that fear, which fortunately has been fading in recent years, especially among younger people, in light of Israel’s periodic military assaults on the essentially defenseless people of Gaza. Every so often the word goes out that anti-Semitism is on the rise, but it’s hard not to notice that those alarms follow the broad international criticism of Israeli systematic brutality against Palestinians resisting the 51-year occupation of their property. As Norman Finkelstein, who monitors this phenomenon closely, writes, “Whenever Israel commits another atrocity, its propagandists stage a revival of the ‘New Anti-Semitism’ extravaganza to deflect or squelch global condemnation.” (See Finkelstein’s book *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History*.)

I won’t try to define *anti-Semitism*; let’s just go with Stephen Sedley’s definition: “Shorn of philosophical and political refinements, anti-Semitism is hostility towards Jews as Jews.” I’ll only add that it has something to do with seeing all Jews as members of a malignant and world-controlling racial or ethnic entity, with each member being responsible for any wrongdoing, real or imagined, by any other Jew. This is rank collectivism that no liberal individualist will accept. We must note the irony, however, that many Jews themselves believe that all Jews without exception constitute a genetic entity, though this is patently absurd. Jews are of many races, ethnicities, nationalities, and cultures and until a couple of hundred years into the Common Era, Judaism was a proselytizing religion with many successes at converting whole kingdoms, nations, and tribes. In other words, many Jews today are descendants of people who converted to Judaism, sometimes unwillingly, and who never were in the Land of Israel.

Note further the irony of the legislation’s condemnation of those who conflate all Jews with the state of Israel. Israel’s recently passed Nation-State Law declares that the “land of Israel is the historical homeland of the Jewish people.” That includes *all* Jews no matter where they were born, where they live now, or whether they ever set foot in Israel. In other words, the government of Israel claims to speak for all Jews, which is an affront to any Jew

who does not wish to be spoken for by a foreign government or who no longer regards himself as a Jew. (If the Jewish people are not a racial or ethnic entity but a diverse religious group, one can stop being a Jew.) It would be wrong for anyone to presume that Prime Minister Benjamin Netanyahu speaks for or acts on behalf of American, British, French, and other non-Israeli Jews, but that is what Israel's Basic Law claims. (Former *Meet the Press* host David Gregory once addressed Netanyahu on the air as the "leader of the Jewish people.")

And this claim, which predates the Nation-State Law passed, is what has given rise to the (dual) loyalty suspicion. So we have yet another irony in The Anti-Semitism Awareness Act's condemnation of statements "accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations." A great way to dispose of the loyalty issue would be for Israel and its supporters to stop pretending it represents all Jews (and former Jews) everywhere.

As noted, the legislation says that "denying the Jewish people their right to self-determination, and denying Israel the right to exist" is anti-Semitic. But what about denying the Jewish people the right to self-determination *on land taken from its rightful owners*, as Jewish and non-Jewish anti-Zionists have long denied? And when will Congress get around to condemning those who deny the right of Palestinians to self-determination? The Nation-State law says that the "right to exercise national self-determination in the State of Israel is unique to the Jewish people." So Palestinians are lesser people than Jews? What's the word for that attitude?

The condemnation of people who "apply[] double standards by requiring of it [Israel] a behavior not expected or demanded of any other democratic nation" is also filled with problems. The first is that Israel's unconditional defenders themselves are guilty of applying a double standard. If any national group treated another group the way the Zionists and Israelis have treated the Palestinians, they would have been condemned by liberal-minded Jewish Americans along with most other Americans. Second, where is the double standard in the criticism of Israel? Name another country that occupies other people's land, recognizes no rights in the occupied population, systematically discriminates against 25 percent of its "citizens," gets billion in military aid every year from American taxpayers, has a highly influential lobby ready to smear any critic, claims to be the most moral military in world, and insists it's the only democracy in its region? When we have another country like that we'll see if Israel's critics apply a double standard.

The example of anti-Semitism allegedly found in "drawing comparisons of contemporary Israeli policy to that of the Nazis" is also worth examination. Is it really the case that Israel's rulers are incapable of acting like Nazis, even when it seizes Palestinians, including children, in the dark of night, holds them indefinitely without charge; tortures them; shoots them or break their bones when they protest their oppression peacefully; requires internal

travel permits; maintains military checkpoints; bars them from much of the land and Jewish-only roads; and destroys homes as collective punishment or to clear land for use by Jews only? What's the theory underlying that claim? Do the oppressed never become oppressors?

And here's another question: are *Jews* who make that comparison also anti-Semites? The fact is that Jews have repeatedly made that comparison, for example, the late Hajo Meyer, a Holocaust survivor, and Yair Golan, the former deputy chief of the general staff of the Israel Defense Force. Indeed, in 1948 Albert Einstein, Hannah Arendt, and other Jews sent a letter to the *New York Times* expressing concern over the emergence of the Israeli "'Freedom Party' (Tnuat HaHerut), a political party closely akin in its organization, methods, political philosophy and social appeal to the Nazi and Fascist parties. It was formed out of the membership and following of the former Irgun Zvai Leumi, a terrorist, right-wing, chauvinist organization in Palestine." That party and the Irgun were led by Menachem Begin, who became prime minister of Israel in the 1970s. The party merged with Netanyahu's Likud party in 1988.

Yet one more question: if neither Jews nor non-Jews may liken Israeli policies against the Palestinians to some Nazi policies, why are Israelis and their supporters allowed to claim that any and all perceived adversaries (Nasser, Saddam Hussein, Qaddafi, and Ahmadinejad and the Iranian ayatollahs, for example) are reincarnations of Adolf Hitler?

Since Jews as well as non-Jews often commit the "offenses" specified by the IHRA, maybe the congressional legislation should have been called the Anti-Semitism and *Jewish Self-Hatred* Awareness Act. Or perhaps only men and women with Jewish mothers are to be permitted to do what is forbidden to others. That would be odd view indeed.

No, the Israeli regime does not operate death camps, but it does things that resemble what the Nazi and other totalitarian regimes did to Jews and other groups. Gaza, where the more-than-decade-old Israeli blockade causes two million Palestinians, half of them children, to be undernourished and forced to drink polluted water, has been called a concentration camp and a ghetto by Jews.

Real anti-Semitism is ugly and execrable. And that's why diluting the concept with extraneous elements is what's really dangerous. Sure, some of Israel's critics could be anti-Semites, but some of Israel's biggest fans are too. I would be suspicious of anyone who was eager to pack my bags and shuffle me off to Tel Aviv. There simply are no reasonable grounds for a presumption of anti-Semitism about opponents of Israel, certainly not in people of good faith. Conflating anti-Semitism even with foundational criticism of Israel makes anti-Semitism seem not so bad in some people's eyes. As Antony Lerman wrote, "Rather than make it easier to identify antisemitism, the promotion of the 'working definition' and the entrenchment of the concept of the 'new antisemitism' have so

extended the range of expressions of what can be regarded as antisemitic that the word antisemitism has come close to losing all meaning.”

Why would anyone want to encourage that outcome? Lerman also points out that “if ... only ‘antisemitisms’ would dissociate themselves from the ‘working definition,’ this places a significant number of highly respected Jewish and non-Jewish academics working in the field of antisemitism research in the dock.”

Those who continue to lobby for this conflation are unwittingly pursuing an evil course even on their own terms — unless they intend such an outcome. (Real or imagined anti-Semitism can be useful in deterring Jewish assimilation and disillusionment with Israel.) Moreover, they are encouraging organizations that harass students and teachers sympathetic to the Palestinians’ plight. Free speech and inquiry must be protected. As the ACLU said about the legislation:

The overbroad definition of anti-Semitism in this bill risks incorrectly equating constitutionally protected criticism of Israel with anti-Semitism, making it likely that free speech will be chilled on campuses. The examples incorporated into the bill’s definition of anti-Semitism include actions and statements critical of Israel, including many constitutionally protected statements. As a result, the proposed legislation is likely to chill the speech of students, faculty, and other members campus communities around the country, and is unnecessary to enforce federal prohibitions on harassment in education as such protections already exist under federal law.

As the ACLU letter opposing the legislation notes, even the lead author of the definition, Kenneth Stern, a self-described Zionist, “has himself opposed application of this definition to campus speech.” In a 2016 op-ed opposing South Carolina’s adoption of the definition, Stern wrote,

It is really an attempt to create a speech code about Israel. It is an unnecessary law which will hurt Jewish students and the academy.... It was never intended as a vehicle to monitor or suppress speech on campus. But that’s what some right-wing Jewish groups and individuals behind this legislation seek...

[The legislation advocates'] intent is clear: to have the state define a line where political speech about Israel is classified as anti-Semitic, and chilled if not suppressed....

If the definition becomes law, campus administrators will fear lawsuits when outside groups complain about anti-Israel expression, and the leadership of the university doesn't punish, stop or denounce it....

[I]f the anti-Semitism definition is enshrined into law, what professor will want to walk into this minefield, fearful that the selection of certain texts or the expression of certain opinions will put his or her university's funding in jeopardy?

Indeed, if certain expressions about Israel are officially defined as anti-Semitic, pro-Israel Jewish students will be further marginalized, having gained the reputation for suppressing, rather than answering, speech they don't like.

In 2017 testimony before the House Judiciary Committee, Stern elaborated:

The proponents of the legislation have made a business model of seeking out speech they believe transgresses the Department of State Definition. They will hunt for such instances and then press administrators to either suppress or condemn such statements, threatening Title VI cases if they don't act, with the added weight of a Congressionally-endorsed, campus-focused definition behind them.... Armed with a congressional determination that effectively says campus anti-Zionism is antisemitism, ... professors will correctly see themselves at risk when they ask their students to read and digest materials deemed anti-Zionist, whether the writings of leading 20th century Jewish thinkers who were skeptical of Zionism, such as Hannah Arendt and Martin Buber, or of contemporary Palestinians. Professors do not get combat pay. It will be safer and wiser for them

to teach about Jews in the shtetl than Jews in modern Israel, and Zionism as a concept from the late 19th century, rather than how it plays out today.... My fear is, if we ... enshrine this definition into law, outside groups will try and suppress - rather than answer - political speech they don't like. The academy, Jewish students, and faculty teaching about Jewish issues, will all suffer.

The definition has also been faulted, as Lerman put it, for its “go-it-alone exceptionalism as the way of managing heightened fears of antisemitism, rather than pursuing open-hearted collaboration with other minority groups to fight the resurgent racism that blights society.”

If the Anti-Semitism Awareness Act passes and is signed into law, it would threaten free speech in the academy and beyond, notwithstanding its obligatory “Nothing in this Act shall be construed to diminish or infringe upon any right protected under the First Amendment to the Constitution of the United States.”

Moreover, it will make political campaigns even less meaningful than they are now. As it is, American politicians are afraid to defend the Palestinians against Israel or to question the huge annual military appropriation that enables the brutality; candidates have much to lose both in campaign contributions and reputation. Those who slip, like Bernie Sanders, Cory Booker, and Alexandria Ocasio-Cortez, will have hell to pay and will likely be more careful in the future. (Sanders has had his ups as well as downs.) The UK Labor Party and its leader, the life-long anti-racist Jeremy Corbyn, are learning the same lesson.

We must hope that things do not get as bad in the US as they are in the UK, where a hysterical smear campaign against Israel's critics has conjured up the term “political anti-Semitism targeting Israel” (in contrast to “racial antisemitism targeting Jews”) and alarm in some quarters about the alleged “existential threat to Jewish life in this country [Great Britain] that would be posed by a Jeremy Corbyn-led government.” The Labor Party's National Executive Committee has been accused of Jew-hatred because its new code of conduct on anti-Semitism allegedly failed to incorporate the entire IHRA definition of anti-Semitism — hence, its apparent cowardly retreat. Jonathan Freedland of the *Guardian* tweeted, “So Labour have rejected a definition of antisemitism accepted by UK, Scottish and Welsh govts, 124 local authorities, gov'ts around the world and most Jews.”

Note the authority Freedland, like others, vests in the now-holy IHRA definition — as though it were an amendment to the tablets allegedly handed down at Mount Sinai.

But Lerman shows that Freedland's charge is utter rubbish; the executive committee's code explicitly incorporates and quotes the *definition*, but the authors modified some of the

IHRA's *examples* and (like the State Department's Fact Sheet) removed from another the phrase "claiming that the existence of a State of Israel is a racist endeavor."

But can it be anti-Semitic to call Israel a racist endeavor when leading Israeli intellectuals such as historian Benny Morris acknowledge that ridding Palestine of the indigenous Palestinians — that is, ethnic cleansing — was intrinsic to Zionism?

Lerman also shows, as already noted, that by its own word choices, the IHRA suggests that its illustrations may *or may not* qualify as examples of anti-Semitism depending on the context. Lerman notes that defenders of the definition make opposing claims — that the examples both are and are not part of the definition — depending on which position is convenient at the time.

Clearly, the Labor Party leadership stands accused of anti-Semitism purely for adopting a code of conduct that distinguishes anti-Semitism from criticism of Israel.

Is this sort of smear campaign store for members of Congress who vote against the Anti-Semitism Awareness Act?