A Losing Game

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American Jewish History, Volume 105, Numbers 1/2, January/April 2021, pp. 201-204 (Article)

Published by Johns Hopkins University Press

DOI: https://doi.org/10.1353/ajh.2021.0010

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As Pamela Nadell notes, she wasn’t my first choice for a scholar to testify at the House Committee on the Judiciary’s hearing on campus antisemitism. But that’s only because I did not know her. The Judiciary committee staff had asked me to suggest academics who opposed the Anti-Semitism Awareness Act (ASAA) and would make compelling witnesses. The scholars I had worked with over the years, including fellow members of the Alliance for Academic Freedom, all had other commitments that could not be changed.

“Who else would be good?” I asked the half dozen people who weren’t available. One suggested Nadell. Another said Nadell would be an excellent choice, and that she was “strong and would not fold under pressure.” That’s how, a few weeks before the hearing, Nadell and I had a conversation. She had many questions, and asked for reading material, which I sent. She then reached out to her Jewish studies colleagues and many others for their thoughts, and came to the same conclusion as I—that the Anti-Semitism Awareness Act was ill-advised, and would damage academic freedom and the interests of those involved with Jewish studies.

The committee staff, no surprise, approved Nadell, and we met, as she notes, on that November day at the House Judiciary Committee. The hearing was a study in contrasts. We’re very used to seeing a partisan divide in the US today, some of it playing out before that same committee in that same hearing room. But on the Anti-Semitism Awareness Act, it was obvious that there were members of both parties who supported it, and others who opposed it. It was also clear that those who opposed it did so with less bravado and more caution, aware of the potential political costs. All the Democrats and Republicans, I believe, were supporters of Israel. The issue that divided them was how strongly they valued academic freedom and free speech.

Those who testified were also divided. As Nadell writes, the witnesses supporting the legislation included my friend and former AJC colleague Rabbi Andy Baker, Simon Wiesenthal Center’s Rabbi Abraham Cooper, Jonathan Greenblatt of the ADL, a representative of Christians United for Israel, and a lawyer tasked with promoting the bill, Paul Clement, a former US Solicitor General.
These were all people from outside the academy, each of whom had their own institutional or political interests to articulate. I’m not questioning their sincerity or good faith, only noting that none of the pro-ASAA groups at the hearing, despite their concern with the campus, were campus-based, or to any significant degree campus-linked.

Those opposing the legislation, on the other hand, were stakeholders in the campus. Barry Trachtenberg, a professor of Jewish studies at Wake Forest University, Suzanne Nossel of PEN America (which includes many academic writers among its members), I, and most especially Nadell, either work on campus or directly with campus stakeholders.

Those opposed to the legislation all argued that while there are indeed instances of antisemitism at some campuses, the problem was drastically overblown, that Jewish students were for the most part not victimized by antisemitism, and that the effect of the legislation would be to make matters worse. As Nadell noted, citing a recent Stanford study, when Jewish students “experience discomfort as Jews, they trace it to the stridency of both sides of the Israel-Palestine debate on campus.” In other words, to address the problem, educators should work to reduce the effect of stridency, not buy into the binary of one side or the other, which the legislation does.

As I pointed out in my testimony, there is debate inside the Jewish community about whether Jews who are anti-Zionist are “inside the tent” or “outside the tent.” This isn’t an easy question. Most Jews would likely count Satmar Jews, who are anti-Zionist, as part of the community. Why then exclude young Jews who have an ideological or theological objection to Zionism based on their understandings of Jewish values and social justice? I’m not sure this debate can be decided, but the legislation essentially asked Congress to decide it by effectively declaring anti-Zionism a form of antisemitism, and that it should not do. Nadell was spot on, noting that while there have been problems of antisemitism from time to time on some campuses, her canvassing of Jewish studies colleagues found that when acts of antisemitism occur, “university leaders condemn [them] swiftly and forcefully.” But even if university leaders were acting poorly, the remedy is not to suppress speech.

The bill’s definition of antisemitism, of which I was the lead drafter, was mainly intended to help data collectors in Europe have a common framework for collecting data on antisemitism. It was never intended to punish or chill speech on campus. That is not to say that from time to time there isn’t antisemitism expressed, including antisemitism related

to Israel. But the major problem, as Nadell pointed out when she cited the Stanford study, is the binary in which, for some, Israel can do little wrong, and for the others, Israel—even its very existence—is always wrong. As I review in my book, there is a growing body of research showing that when our identity is wrapped up in an issue of perceived social justice or injustice, our thinking becomes skewed, and we seek out the comfort of an “us” versus “them” worldview.

In the 1983 film War Games, Matthew Broderick plays a hacker who is unwittingly about to start World War III when the military computer he has corrupted cannot tell the difference between a game and the real world. The only way to avoid tragedy was to no longer play the game. Those promoting this legislation are likewise playing a losing game, when the only rational approach is to insist on a different paradigm. While not nearly as ubiquitous as some suggest, there have been disturbing instances where pro-Israel speakers have been stopped from giving presentations; instances of pro-Palestinian groups arguing that Zionist campus groups are so beyond the pale that any joint discussion would be “normalizing” the conflict and that Zionist groups should not be allowed in “progressive” coalitions; and resolutions calling for boycotts of Israeli academic institutions. All of these are attempts to suppress or censor pro-Israel campus expression and activity.

Rather than playing the game of mutual calls for censorship, the answer should be to emphasize that the campus is the ideal place to discuss difficult issues. All points of view should be heard and debated, and attempts to censor, rather than engage ideas—even (or perhaps especially) ideas considered disturbing or hateful—undermine the campus’s core mission.

Yet the Anti-Semitism Awareness Act essentially says the answer to censorship is counter-censorship. It requires the Department of Education to consider a definition of antisemitism that effectively defines anti-Zionism as antisemitism when evaluating alleged violations of Title VI of the Civil Rights Act. We know that a legal equation of anti-Zionism with antisemitism will chill pro-Palestinian speech. Make no mistake—I am a Zionist, and I’ll eagerly explain why to anyone who asks. But even so, I would not want to encourage groups that have filed Title VI complaints in the past based on expression (including complaints about texts used in classrooms and campus speakers) to hunt for instances of anti-Zionist campus speech to file complaints about.

Playing the suppression game only feeds into the binary Nadell highlighted; finding better ways to encourage discourse about difficult issues, such as the Israeli-Palestinian conflict, is a much better way forward. Those teaching Jewish studies can have a central role in re-establishing the campus as a place where examination of contentious issues is seen
as a virtue. If the legislation passes, no doubt Jewish studies professors will instead shy away from teaching about modern Israel, knowing some groups will expand their business model of hunting for and suing over campus speech with which they disagree.

Nadell was right to testify against it.