

Opinion To fight antisemitism on campuses, we must restrict speech

By Claire O. Finkelstein

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The testimony of three university presidents before a House committee last week provoked outrage after they suggested that calls on their campuses for Jewish genocide might not have violated their schools' free speech policies. One of them, Liz Magill, was forced to step down on Saturday as president of the University of Pennsylvania, where I am a faculty member.

But their statements shouldn't have come as a surprise. Congress could have assembled two dozen university presidents and likely would have received the same answer from each of them.

This is because the value of free speech has been elevated to a near-sacred level on university campuses. As a result, universities have had to tolerate hate speech — even hate speech calling for violence against ethnic or religious minorities. With the dramatic rise in antisemitism, we are discovering that this is a mistake: Antisemitism — and other forms of hate — cannot be fought on university campuses without restricting poisonous speech that targets Jews and other minorities.

University presidents are resisting this conclusion. Rather than confront the conflict between the commitment to free speech and the commitment to eliminating the hostile environment facing Jewish students on campus, many simply affirm their commitment to both or buy time by setting up task forces to study the problem. Some have attempted to split the difference by saying they are institutionally committed to free speech but personally offended by antisemitism. Others have said the answer to hate speech is education and more speech.

Countering speech with more speech might just mean adding to the hateful rhetoric on campus and would not solve the problem. And university presidents can set up all the task forces, study groups and educational modules they like, but what kind of educational effort could possibly bring together warring groups that are busy calling for one another's violent demise?

In a video message released the day after her testimony, Magill issued an apology in which she suggested that her statements, while legally correct, were insensitive because she was “not focused on” the fact that a call for genocide is “a call for some of the most terrible violence human beings can perpetrate.” While many remained deeply troubled by the insensitivity of her comments, I am most concerned about the legal and policy conclusions Magill endorsed: that speech calling for Jewish genocide does not violate campus policies at the University of Pennsylvania. This is profoundly wrong.

First, Penn, like Harvard and MIT, is a private institution, and as such it is not bound by the First Amendment. In my experience, Penn has never actually followed the First Amendment, even to a close approximation. The same goes for other amendments to the U.S. Constitution. Penn also does not follow the Second Amendment; if it did, our campus would be a war zone, especially given our apparent embrace of hate speech!

Second, even public universities that *are* bound by the First Amendment are not helpless in the face of hate speech. They do not have to stand idly by and wait for such speech to turn into “conduct.” Public institutions can restrict the “time, place and manner” of demonstrations; they can restrict speech that incites violence, that involves threats of violence against specific individuals or that involves the targeted harassment of members of the community.

Universities also have a duty under Title VI of the Civil Rights Act to ensure that their campuses do not descend into “hostile environments” that effectively exclude students of ethnic, religious or racial minorities from receiving the benefit of educational programs and activities on campus. In fact, Penn has already been sued by two Jewish students, alleging that the university has become an “incubation lab for virulent anti-Jewish hatred, harassment and discrimination.”

That underscores the point: With or without the First Amendment, calls for genocide against Jews — or even proxies for such sentiments, such as calling for intifada against Jews or the elimination of Israel by chanting “from the river to the sea” — are, in the present context, calls for violence against a discrete ethnic or religious group. Such speech arguably incites violence, frequently inspires harassment of Jewish students and, without question, creates a hostile environment that can impair the equal educational opportunities of Jewish students.

Though open expression and academic freedom are critically important values in higher education, there are other values that universities must promote as well. For example: encouraging civil dialogue across differences, cultivating critical listening skills, developing the skills to build community relationships, promoting the ability to engage in moral reflection and building resilience in the face of challenge. These normative skills cannot be taught effectively in an environment where students and faculty are hurling calls at one another for the elimination of ethnic, religious or racial subgroups.

Universities must also consider their obligations to the broader society as they prepare young people to assume responsibilities in public life. What values do university presidents think are most important to prepare leaders in a democracy? The ability to shout intemperate slogans or the ability to engage in reasoned dialogue with people who have moral and political differences? Is it any surprise that students educated in an environment of antisemitism would behave as antisemites in their adult lives?

Like all skills, students will become expert at that which they practice most. Privileging free speech on campus relative to other values emphasizes skills that pose the greatest challenge to our democracy and fails to cultivate the skills democratic societies most need.

The crisis of antisemitism in our universities mirrors the crisis in our democracy. Isn't it time for university presidents to rethink the role that open expression and academic freedom play in the educational mission of their institutions?