

NEW YORK

Trump's DOE Vows to Help College Students Restrict Free Speech (About Israel)

Eric Levitz

September 12, 2018

Last year, the Trump administration warned the American people that their nation's system of higher education was becoming an "echo chamber of political correctness." In an address on "the Importance of Free Speech on College Campuses," Attorney General Jeff Sessions lamented the misguided notion that universities have an obligation to shield their students from speech that creates an "offensive educational, work or living environment."

"Who decides what is offensive and what is acceptable?" Sessions asked. "The university is about the search for truth, not the imposition of truth by a government censor."

The Justice Department translated Sessions's sentiments into federal policy. Over the past year, the Trump administration has intervened on behalf of College Republicans who sued the University of California, Berkeley, for infringing on their First Amendment rights (by failing to provide Ann Coulter a speaking venue on the day of their choosing), while also lending its support to lawsuits brought by opponents of Michigan University's rules against racially biased speech, and Pierce College's circumscribed "free speech zones."

The administration's disproportionate focus on the complaints of conservative students have led some to question the sincerity of its commitment to "free speech" as such. But in remarks before Turning Point USA's High-School Leadership Summit this past July, Sessions insisted that "the First Amendment is not a partisan issue. Constitutional rights are for all Americans — not just those in one party or one faction." In truth, the attorney general argued, the censorious environment on college campuses today is hurting young people of all political persuasions by "actively preventing them from scrutinizing the validity of their beliefs," and thus, rendering them "sanctimonious, sensitive, supercilious snowflakes."

But even the Trump administration's tolerance for political incorrectness has its limits. And so, on Wednesday, the Education Department announced that certain beliefs are *too valid* to be scrutinized on campus — and other ideas, too offensive to be voiced in college classrooms.

Trump's Education Department first adopted this position last month, when it decided to change its definition of anti-Semitic speech. In a newly revealed letter, the department's Civil Rights division announced that, from now on, it will use The International Holocaust Remembrance Alliance's "working definition" of anti-Semitism when investigating allegations of discrimination on campus.

That definition names the following speech acts as potential examples of "anti-Semitism in public life":

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.

Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.

In the aforementioned letter, Kenneth Marcus, the head of DOE's Office of Civil Rights, announced that the department will reopen a 2014 investigation into allegations of anti-Semitism at Rutgers — which the Obama administration had previously closed citing insufficient evidence — "in light of the [new] definition of anti-Semitism."

It is hard to imagine a clearer example of a "government censor" imposing an official truth on universities — for the sake of sparing sensitive students the discomfort of scrutinizing their beliefs — than the Education Department's new policy.

Who determines when a person has applied a "double standard" to Israel — or what behavior it is appropriate to expect or demand of democratic nations? For that matter, what gives the government the right to tell college students which nations they can and cannot consider democratic? Millions of Palestinians in the West Bank live under the authority of the Israeli state. The sitting Israeli government claims sovereignty over the region's settlements. And yet, none of the West Bank's Palestinian inhabitants have a right to elect the government that rules them. Is it inherently anti-Semitic to insist that a nation cannot subject ethnic out-groups to martial law and still call itself a democracy?

And is refusing to endorse the Jewish people's right to self-determination (in an ethnically defined nation-state in the Middle East) really tantamount to a civil rights violation? Beyond the fact that anti-Semitism is hardly a prerequisite for opposing state Zionism specifically (a reality reflected by the myriad Jewish groups that have opposed the concept of the Jewish state from before its founding to the present day), the Education Department's new definition would also ostensibly bar college students from questioning the legitimacy of ethnic self-determination and the nation-state, more broadly.

You don't have to be a staunch supporter of the Palestinian cause to question Israel's right to exist as a Jewish state. You could simply believe the human beings should be allowed to freely move across borders, regardless of their race or ethnicity — a position often championed by the CATO Institute, a think tank co-founded by Republican megadonor Charles Koch.

Or else, you could believe that ethno-nationalism is an inherently destructive force, and that no nation-state should have an official ethnic or religious character — an idea endorsed by some of

our republic's founders. Or, one could believe that the nation-state is obsolete, and that, in a world where dominant economic institutions are multinational, and the climate is rapidly warming, human beings must establish a single, globally governed polity.

It is true that the IHRA definition stipulates that one should consider “the overall context” of a remark before determining if said speech act qualifies as anti-Semitic. And the organization isn't wrong to suggest that there are a lot of anti-Zionists whose views on Israel are motivated by contempt for Jews. But since criticism of state Zionism is not inherently anti-Semitic, there is no way to determine whether a given instance of such speech is motivated by Jew hatred unless one possesses separate, dispositive evidence of the speaker's bigotry — in which case, his or her views on Zionism are irrelevant. If a student activist is known to hand out pamphlets on the Jewish World Conspiracy, then she is an anti-Semite, regardless of what position she takes on the Palestinian right-of-return. Which is to say, there is good reason to include anti-Zionist speech in your definition of anti-Semitism, if your intention *isn't* to discredit the former by equating it with the latter. The disclaimer about “overall context” merely offers those who wish to stigmatize opposition to Israel — by equating it with hate speech — a means of denying that this is what they're up to.

The Education Department's new policy is part of a broader crackdown on dissent against Israel on college campuses. These efforts appear to be inspired by the very impulse that the right's free-speech warriors claim to revile — the urge to suppress an argument out of fear that one's position isn't strong enough to withstand debate. The Likud government, and its allies in the U.S., know that America's young people — particularly those enrolled in college — tend to subscribe to a liberal, cosmopolitan, and anti-racist worldview. And they also know that such ideological commitments are increasingly difficult to reconcile with the Zionist project *as it's defined* by Benjamin Netanyahu's governing coalition.

In previous eras, radical activists had to make the case that Israeli policy in the West Bank constituted de facto apartheid; now Israeli government ministers proudly advertise their intention to establish the de jure variety in that region. Earlier this year, Israel's deputy defense minister, Rabbi Eli Ben-Dahan, called for the formal annexation of the West Bank “as soon as possible.” “They want to scare us, that maybe soon we will not be a majority and therefore we have to abandon Judea and Samaria [the West Bank]. This is a grave mistake,” Ben-Dahan told the Israeli newspaper *Arutz Sheva*. “Even if we apply Israeli law in Judea and Samaria, full civil rights are not just given, and certainly not on the first day.”

This isn't empty rhetoric. Israeli legislators and judges are in the process of turning Ben-Dahan's words into law. As Israeli civil rights lawyer Michael Sfard recently explained in *The New York Review of Books*:

[T]he ruling parliamentary coalition has put its lawyers to work drafting numerous annexationist bills. Their latest accomplishments include a law, enacted last year, which instructs the army to confiscate private Palestinian land and assign it to the intruding Israelis who have put up settlements there. This law is not only a naked sanction of land theft; it is also an unprecedented imposition of Knesset legislation on Palestinians who have no parliamentary representation.

There are many political commitments that could lead an administration to defend Ann Coulter's right to university speaking fees, while denying college students the right to advocate for a one-state solution to the Israel-Palestine conflict. A sincere desire to promote "free speech on campus" is not one of them.