

What the University Presidents Got Right and Wrong About Antisemitic Speech

As I watched the presidents of Harvard, M.I.T. and the University of Pennsylvania struggle last week to respond to harsh congressional questioning about the prevalence of antisemitism on their campuses, I had a singular thought: Censorship helped put these presidents in their predicament, and censorship will not help them escape.

5 To understand what I mean, we have to understand what, exactly, was wrong — and right — with their responses in the now-viral exchange with Representative Elise Stefanik, Republican of New York. The key moment occurred when Stefanik asked whether “calling for the genocide of Jews” would violate school policies. The answers the presidents gave were lawyerly versions of “it depends” or “context matters.”

10 There was an immediate explosion of outrage, and the president of Penn, Elizabeth Magill, resigned on Saturday. But this is genocide we’re talking about! How can “context” matter in that context? If that’s not harassment and bullying, then what is? (...)

15 First, let’s deal with the law. Harvard, Penn and M.I.T. are private universities. Unlike public schools, they’re not bound by the First Amendment, and they therefore possess enormous freedom to fashion their own custom speech policies. But while they are not bound by law to protect free speech, they are required, as educational institutions that receive federal funds, to protect students against discriminatory harassment, including — in some instances — student-on-student peer harassment. (...)

20 If Harvard, M.I.T. and Penn had chosen to model their policies after the First Amendment, many of the presidents’ controversial answers would be largely correct. When it comes to prohibiting speech, even the most vile forms of speech, context matters. A lot. (...)

25 So if the university presidents were largely (though clumsily) correct about the legal balance, why the outrage? To quote the presidents back to themselves, context matters. For decades now, we’ve watched as campus administrators from coast to coast have constructed a comprehensive web of policies and practices intended to suppress so-called hate speech and to support students who find themselves distressed by speech they find offensive. (...)

30 Moreover, each of the schools represented at the hearing has its own checkered past on free speech. Harvard is the worst-rated school for free expression in America, according to the Foundation for Individual Rights and Expression. (...) So even if the presidents’ lawyerly answers were correct, it’s more than fair to ask: Where was this commitment to free expression in the past? (...)

35 Universities must absorb the fundamental truth that the best answer to bad speech is better speech, not censorship. Recently I watched and listened to a video of a Jewish student’s emotional confrontation with pro-Palestinian demonstrators at Columbia University. Her voice shakes, and there’s no doubt that it was hard for her to speak. I’d urge you to listen to the entire thing. She seeks a “genuine and real conversation” but also tells her audience exactly what it means to her when she hears terms like “Zionist dogs.”

40 Confronting hatred with courageous speech is far better than confronting hatred with censorship. It is obviously important to protect students from harassment. (...) But do not protect students from speech. Let them grow up and engage with even the most vile of ideas. The answer to campus hypocrisy isn’t more censorship. It’s true liberty. Without that liberty, the hypocrisy will reign for decades more.