

THE PROBLEM WITH DEFINING ANTISEMITISM

Kenneth Stern helped write a definition now endorsed by more than forty countries. Why does he believe it's causing harm?

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Illustration by Edmon de Haro

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In November, 2017, Kenneth Stern appeared before the House Judiciary Committee to testify about a bill under consideration, the Anti-Semitism Awareness Act. Approved by the Senate a year earlier, the bill would require the Department of Education to apply a specific definition of antisemitism when investigating alleged cases of discrimination against Jews on college campuses. Stern, a lawyer and scholar who served for twenty-five years as the American Jewish Committee's in-house expert on antisemitism, had devoted

much of his career to highlighting the hatred and intolerance that threatens Jews. He was also the lead drafter of the definition cited by the bill, a definition that he had once urged both State Department officials and foreign policymakers to embrace.

Yet, at the congressional hearing, Stern struck a different note. The definition, which had been written in 2004 and adopted, in 2016, by the International Holocaust Remembrance Alliance (I.H.R.A.), an intergovernmental organization based in Stockholm, was created to help governments collect data on antisemitism, he said. It “was not drafted, and was never intended, as a tool to target or chill speech on a college campus.” Stern was particularly concerned about a section of the definition that listed eleven contemporary examples of antisemitism, among them “denying the Jewish people their right to self-determination” and holding Israel to “double standards” that were not expected of other nations. As this language suggests, Stern believed that antisemitism could manifest as hostility to Israel and Zionism. But he also believed that enshrining such a definition into law would have dangerous consequences, exposing schools to civil-rights investigations simply for allowing lectures, protests, or programs that cast Israel in a negative light. In fact, some groups had already complained that courses critical of Zionism, and even films about Israel’s occupation of the West Bank, amounted to discrimination, based on the I.H.R.A. definition. The proposed bill was a clear threat to academic freedom, Stern warned, placing Congress in the middle of a debate that it had no business adjudicating.

To Stern’s relief, the Anti-Semitism Awareness Act failed to pass. But, two years later, in 2019, Donald Trump signed an executive order specifying that Title VI of the 1964 Civil Rights Act, which prohibits discrimination based on race, color, and national origin, would also bar “forms of discrimination rooted in anti-Semitism.” When enforcing such cases, the order held, federal agencies would consider the I.H.R.A. definition. Since the October 7th

Hamas attack and the start of Israel's war on Gaza, the number of Title VI cases alleging that Jewish students have been subjected to discrimination has risen dramatically. Thirty-three U.S. states and dozens of cities have now adopted or endorsed the I.H.R.A. definition. Many pro-Israel groups see this as an appropriate response to a surge of antisemitism, especially at universities, whose leaders, they claim, have failed to punish students who demonize Israel. According to a coalition of civil-rights and advocacy organizations that support Palestinian rights, including the Council on American-Islamic Relations and Palestine Legal, policing such expression is itself discriminatory. In a recent letter to Catherine E. Lhamon, the assistant secretary for civil rights at the Department of Education, the coalition cited numerous examples in which outside groups had invoked the I.H.R.A. definition to lodge “false accusations of antisemitism” against schools, pressuring them to cancel events such as a Palestinian literature festival that took place at the University of Pennsylvania in September.

Within the Palestine-solidarity movement, there is a widespread belief that defenders of Israel have used the I.H.R.A. definition to censor speech and silence legitimate criticism. What's unusual about Stern is that he shares this concern despite being a defender of Israel himself. “I'm a Zionist,” he told me when we met recently at his home in Brooklyn, where he lives with his wife, Margie, a rabbi. Stern is seventy-one, with a scruffy white beard and a taste for casual attire. On the day I visited, he was wearing house slippers and nursing a slight cold. Since 2018, he has commuted frequently from Brooklyn to Annandale-on-Hudson, where he directs the Center for the Study of Hate, at Bard College. He'd had an unusually busy fall, in part because of the national debate about how universities should address the tensions fuelled by the Israel-Palestine war. Stern's most recent book, “The Conflict Over the Conflict,” is about this very subject. Published in 2020, it received almost no attention when it came out, he told me. But, at a recent Jewish-studies conference, it was “selling like hotcakes,” and Stern suddenly found himself in high demand, fielding a slew of speaking invitations, media

inquiries, and calls from university presidents asking him to address their boards. “It’s been crazy,” he said.

In “The Conflict Over the Conflict,” Stern describes the organized Jewish community’s promotion of the I.H.R.A. definition as “one of the most significant threats to the campus today, and to Jewish students and faculty.” How did one man who wrote that definition come to regard it as a danger?

Stern is hardly unaware that antisemitism can surface at institutions of higher learning. Back in 1990, after a group of Jewish students were attacked at Brooklyn College, he wrote a report for the American Jewish Committee (A.J.C.), where he had begun working a year earlier, about how universities could counteract bigotry. The report recommended a series of actions, from training staff to establishing victim-support services. One move that it did not endorse was the adoption of campus speech codes, which some universities had embraced but which Stern argued against. It was the view of a lawyer and free-speech advocate who was born in 1953 and had grown up in the shadow of McCarthyism, an experience to which Stern alludes in “The Conflict Over the Conflict.” “We knew from our parents, or at least I did, about the horrors of the McCarthy era, when government stripped people of their livelihood and even jailed some because of their political ideas,” he writes. When we met, Stern filled in the details, telling me that his parents, who were both physicians, knew Edward Barsky, a surgeon and political activist who was imprisoned and temporarily stripped of his medical license for refusing to testify before the House Un-American Activities Committee.

But Stern’s aversion to speech codes was also shaped by another, more practical consideration. While working for the A.J.C., he wrote a report about the white supremacist David Duke, who, in 1969, while attending Louisiana State University, gave a speech calling for Black people to be sent to Africa and for Jews to be exterminated—and then, the following year,

paraded around Tulane University in a Nazi uniform, in protest of an attorney who defended the Chicago Seven. These acts were vile, but no one tried to silence or prosecute Duke. Had this been done, Stern concluded, the debate might have shifted from his hateful message to whether such expression should be allowed, enabling Duke to portray himself as the victim of an assault on the First Amendment.

Stern came to believe that it was misguided, and even counterproductive, to fight bigotry by curtailing free speech and academic freedom. He was alarmed when, in 2010, he started hearing that American Jewish organizations were invoking the I.H.R.A. definition to threaten universities with potential lawsuits. His unease deepened as he watched the pattern spread to other countries, including the United Kingdom, which adopted the I.H.R.A. definition in 2016. At the University of Bristol, a professor named Rebecca Ruth Gould was investigated because she'd written an article critical of Israel. (Gould chronicles her ordeal in "Erasing Palestine," a book published by Verso last year.) At another school, a Jewish survivor of the Budapest ghetto was forced to change the title of a talk that compared her experience to the treatment of Palestinians living under military occupation. Under the I.H.R.A. definition, "drawing comparisons of contemporary Israeli policy to that of the Nazis" is considered antisemitic.

For Stern, such cases were a blatant distortion of the definition's purpose. In "The Conflict Over the Conflict," he traces the project's origins to 2004, when the European Monitoring Centre on Racism and Xenophobia (E.U.M.C.), which was part of the European Union, issued a report that acknowledged the difficulty of measuring the prevalence of antisemitism in different countries. As the report noted, one of the reasons for this was the absence of a shared understanding of what antisemitism entailed. To address this problem, the E.U.M.C. began working with a group of scholars and Jewish organizations to create a common definition, one that would include not only attacks on Jews motivated by traditional antisemitic beliefs, such as the perception that Jews are greedy, but also what some scholars referred to

as the “new antisemitism,” fuelled by hostility to Israel. Like the other participants in the drafting process, Stern had no objection to this approach. To the contrary, he believed that, in the past, the E.U.M.C. had sometimes gone to absurd lengths to exclude Israel-related attacks from being deemed antisemitic. At one meeting hosted by the A.J.C., he challenged an E.U.M.C. official to explain why the firebombing of a Jewish school in Montreal, carried out by an assailant enraged by Israel’s assassination of a Hamas founder during the second intifada, did not qualify.

Had the definition that emerged from such discussions been used solely to help data collectors, it would, Stern believes, have served a necessary and constructive purpose. The problem arose when groups started employing it as a hate-speech code instead. In our conversations, Stern described this development as an “abuse,” saying that he wished, in retrospect, that “guardrails” had been installed to prevent it. “None of us anticipated that it would be used as this blunt instrument to suppress pro-Palestinian speech,” he said.

Still, as Stern concedes, the I.H.R.A. definition was not an academic exercise. It was created to help governments and civil-society organizations identify incidents of antisemitism. It’s not surprising, then, that some proceeded to use it to address the problem, often through legal means. In the view of some critics, the real problem is not the definition’s faulty application but its flawed content, in particular its vague examples of anti-Israel speech, which blur the line between antisemitism and anti-Zionism. In 2021, an alternative definition called the Jerusalem Declaration on Antisemitism sought to draw finer distinctions. In the preamble, it stated, “Hostility to Israel could be an expression of antisemitic animus, or it could be a reaction to a human rights violation, or . . . the emotion that a Palestinian person feels on account of their experience at the hands of the State.” The Declaration went on to list some examples that were antisemitic, such as “holding Jews collectively responsible for Israel’s conduct,” and others that were not. “Criticism that some may see as excessive or contentious, or as

reflecting a ‘double standard,’ is not, in and of itself, antisemitic,” it affirmed. “Opposing Zionism as a form of nationalism” was also not, on its face, antisemitic.

The Jerusalem Declaration on Antisemitism has been signed by three hundred and fifty scholars, including the historian Omer Bartov and Susannah Heschel, the chair of the Jewish-studies program at Dartmouth. Stern has not signed it, nor has he formally repudiated the I.H.R.A. definition. Yet to listen to him speak these days is to wonder which definition he considers a more fruitful guide. One evening in January, I attended a talk he delivered at the West End Temple Sinai Congregation, in Neponsit, Queens. Stern was dressed in chinos and an oversized wool blazer; Margie, who served as the congregation’s rabbi for fifteen years, until 2020, watched from the audience.

The topic of Stern’s talk was “Antisemitism and Anti-Zionism.” A few weeks earlier, the U.S. House of Representatives had adopted a resolution affirming that these two things were indistinguishable. Since October 7th, the leaders of many Jewish organizations have done the same, seizing on the rhetoric of groups like Students for Justice in Palestine, whose national steering committee distributed a tool kit that described the Hamas attack as a “historic win for Palestinian resistance.” In November, Jonathan Greenblatt, the director of the Anti-Defamation League, proclaimed that the “tsunami of anti-Jewish hate” on America’s campuses “clarified and confirmed that fanatical anti-Zionism from the hard left is as dangerous to the Jewish community as rabid white supremacy from the extreme right.”

At the West End Temple, after a Shabbat service that ended by honoring members of the congregation who were about to go to Israel, Stern offered a more tempered view. There were times when anti-Zionism “clearly is antisemitic,” he said, and other times when it was not. He noted that many Jews did not identify with Zionism or even see it as compatible with Jewish

values. “Imagine if you were a Palestinian,” he said. “How would you think about Zionism?” Stern peered around the sanctuary and asked if anyone had ever spoken with a Palestinian about the subject. About half the hands in the room went up. “I don’t see Palestinians as antisemites at all when they say, ‘Look what Zionism did to me—it stopped my ability to control my land,’ ” he said.

For those wishing to hear an unswerving defense of Israel, Stern’s speech was likely disappointing. (As he left the stage, Margie leaned over to me and whispered, “They’ll *never* invite him back.”) But Stern has rarely agreed with Israel’s blind cheerleaders, even as he identifies as a Zionist. In the seventies, while attending Willamette University’s law school, in Oregon, he joined the National Lawyers Guild, where a debate arose about a resolution to recognize the Palestine Liberation Organization as the sole representative of the Palestinian people. This was not an idea that many supporters of Israel—which did not recognize the P.L.O. until 1993, when the Oslo Accords were signed—would have backed at the time. Stern voted for the resolution, a decision consistent with his leftist politics, which were reflected in the causes taken up by the law practice he launched in Portland. Among his clients was Dennis Banks, a founder of the American Indian Movement (AIM) who, in 1976, was arrested for the possession of illegal weapons. Stern would eventually tell Banks’s story in “Loud Hawk,” a gripping book about the case and a damning indictment of the bigotry that Banks and other members of the AIM movement endured.

But, if Stern has never been a dogmatic supporter of Israel, he has no more felt at home among its unsparing critics on the left. In 1982, after the outbreak of the Lebanon War, he resigned from the National Lawyers Guild. Stern opposed the war and even attended some demonstrations against it, but he bristled at the way some of his fellow-progressives spoke about Israel, which one colleague told him was behaving exactly like the Nazis. In its preoccupation with Jewish power, the discourse of some left-wing activists reminded Stern of the pamphlets he’d seen distributed outside the county

courthouse in Portland by the Posse Comitatus, a right-wing extremist group that believed Jews controlled the media and banking system.

By 1989, Stern had begun working for the American Jewish Committee, where he would spend a quarter of a century, publishing numerous studies on antisemitism, including a book about Holocaust deniers. Stern speaks fondly of this period and of the person who hired him, Gary Rubin, who would go on to become the head of Americans for Peace Now, a left-wing nonprofit. Slowly, though, he grew alienated again, this time by the pro-Israel orthodoxy that he sensed taking hold at the A.J.C. In “The Conflict over the Conflict,” he describes learning, in 2005, that the organization was planning to issue a press release calling for Rashid Khalidi, a historian at Columbia University, to be removed from a training program for New York City public-school teachers, alleging that his presence would turn them into “Israel-haters.” When Stern reached out to some professors at Columbia, they told him that Khalidi, who is Palestinian, was a gracious colleague who invited pro-Israel faculty to address his class. He also learned that the A.J.C. was going after Khalidi because he had called Israel’s occupation of the West Bank “an apartheid system in creation”—a view that numerous Israeli politicians have echoed in recent years. (The A.J.C. declined to comment.) Stern was asked to draft the press release himself. He resisted doing so, which did not stop Khalidi from getting removed from the program, an act the A.J.C. praised. Stern later apologized to Khalidi for the incident.

A few years later, in 2011, Stern co-authored a letter that criticized outside groups for using the I.H.R.A definition to “silence anti-Israel discourse and speakers.” The letter was approved by the A.J.C.’s senior staff, but after publication it sparked a backlash from various activists and donors on the right. Their efforts paid off, prompting David Harris, the A.J.C.’s executive director, to withdraw support from the letter, calling it “ill-advised.”

Stern tells this story in “The Conflict Over the Conflict,” a work that is unlikely to please partisans. The book makes the case for bridging

differences and recognizing nuance. It also describes Israeli-Palestinian history as an “ideal subject” to teach at universities, precisely *because* it is so divisive. At the West End Temple, Stern reiterated this belief. “On college campuses, students have an absolute right to expect they’re not going to be harassed, they’re not going to be bullied,” he said. “But to be disturbed by ideas is O.K.: we want students to be disturbed by ideas and to figure out how to think about them.”

Stern knows this view works against the prevailing culture on many campuses today. He’s also aware that advocates on both sides of the Israeli-Palestinian conflict can sometimes prefer to hear only opinions that mirror their own. In 2021, he experienced this firsthand, when the Zionist Organization of America and the Philadelphia chapter of the A.J.C. pressured Temple University’s Feinstein Center for American Jewish History to withdraw its support for a panel discussion about the I.H.R.A. definition which featured Stern and Joyce Ajlouny, a Palestinian American and the general secretary of the American Friends Services Committee, a social-justice nonprofit. Some time later, Stern’s participation in a Barnard event sparked yet more controversy, this time when Jewish Voice for Peace sought to deplatform him because he’d written the I.H.R.A. definition. “I’ve given the Z.O.A. and J.V.P. at least one thing to agree on,” he joked.

For Stern, the impulse to silence people with opposing views reflects a craving for “bright lines”—moral partitions that sort the good from the bad, making it easy to dehumanize the other side. He’s explored this theme in numerous books, including a 1995 study of the American militia movement that appeared nine days before Timothy McVeigh, an anti-government extremist, blew up a building in Oklahoma City, killing a hundred and sixty-eight people. The seductiveness of binary thinking, Stern says, is what attracts individuals like McVeigh to hate groups, where this proclivity takes extreme form. Yet its appeal is hardly limited to them. All human beings are susceptible to this urge, not least the members of his own tribe. “We crave

simplicity,” he told the congregation at the West End Temple, “and we tend to downplay what our side is doing that’s bad.”

In “The Conflict Over the Conflict,” Stern disputes the notion that universities are awash in anti-Jewish hatred. “The campuses aren’t burning,” he writes, pointing out that there are far more pro-Israel programs each year than anti-Israel ones. During a Q. & A. session at the West End Temple, he elaborated on a point he’d made during his talk: some of the anti-Zionist protesters on campuses, far from feeling antipathy toward Jews, actually were Jews. Many of those he’d spoken to, he said, were the children or grandchildren of former officials in mainstream Jewish organizations. They’d been raised to care deeply about Judaism and Israel. Then they went to college and “heard about this thing called the occupation.” “And what do they feel?” Stern asked. “Betrayed. They feel they’ve been lied to. ‘Why was I not told about this?’ ”

The story underscored why Stern didn’t want the I.H.R.A. definition to be used to brand individuals as bigots. “Who am I to say that their view of what being Jewish means is something that I can define as antisemitic?” he said, of the students. Stern told me that his own views about Israel have evolved in recent years, as he watched settlements expand and discriminatory measures such as the 2018 nation-state law—which affirms that only Jews can exercise “self-determination” in Israel and describes the promotion of settlements as a “national value”—pass. His view of the usefulness of defining antisemitism appears to have shifted, as well. A month earlier, he told me, he’d spoken to a journalist who wanted guidance: “ ‘Is this antisemitic, is that antisemitic?’ ” Stern replied that this was the wrong question. “The question is, Why is this so binary that we want to label it this way or that way?” ♦