

Governing Jews: Antisemitism, Pluralism, and the Role of Law in the Trump Era

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Since October 7, Israel's atrocities in Gaza have fractured Jewish identity, raising urgent questions about its meaning today, as well as its connection to Israel and Israeli actions. US law has sought to provide a definitive answer to these questions, labeling harsh criticism of Israel and of Zionism as antisemitic.

What began as an effort to protect Jewish communities from bigotry has, through a series of legal efforts, become a tool for governing Jewish identity itself. In the name of combating antisemitism, we are observing a pattern not only of gatekeeping Jewish identity, but the active casting out of those deemed "illegitimate" Jews.

As part of this effort, [US policymakers](#) appear to have embraced a new consensus: combating antisemitism requires expanding its definition to encompass certain forms of criticism of Israel, as well as hostility towards, or bias against, Israelis. But many of the measures advanced under this definition of antisemitism have put not only Palestinians, but Jews (and some Israelis), at greater risk.



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The turn to law gained momentum in 2016 with the adoption of the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism. At the time, the definition purportedly sought to reflect a neutral commitment to combat the hatred of Jews. While there have long been [occasional](#) efforts to use the definition to suppress speech, today its institutional entrenchment, through [executive orders](#), [legislation](#), and [university policies](#), has recast the boundaries of Jewish identity in state-sanctioned terms.

Protecting Jewish identity requires first confronting the contested nature of what counts as anti-Jewish hate. It demands careful attention to the distinctions between Jewishness, Israeli identity, and the State of Israel. Above all, it requires a commitment to preserving the plurality and internal dissent that have long characterized Jewish life.

A CHANGING LEGAL LANDSCAPE

While the IHRA definition is framed and was originally intended as a non-binding educational tool, its examples, which include labeling Israel a “racist endeavor” or applying “double standards... by requiring of it a behavior not expected or demanded of any other democratic nation,” to its policies, have been codified into legislation, executive orders, and administrative guidance.

In early 2025, a new executive order [directed](#) federal agencies to “prosecute, remove, or otherwise hold to account” individuals engaged in what it deems antisemitic conduct, using the IHRA definition as its reference point (without explicitly mentioning the definition but by referring to a 2019 executive order that does). Columbia University, one of its first targets, saw \$400 million in research funding withdrawn over its alleged tolerance of antisemitism, a charge largely rooted in pro-Palestinian and anti-Israeli activism on campus. The university recently announced it would pay \$200 million to the federal government to settle claims related to antisemitism, as well as [monitor](#) the compliance of students and faculty. In doing so, it conceded to the government’s terms of debate. Similar investigations and financial threats have followed at other universities, reshaping academic policy under the banner of Jewish safety.

This shift is not confined to higher education. In workplaces, government agencies, and Jewish communal institutions, individuals who criticize Israeli policy, including both Jews and some Israelis, have faced [harassment](#), [termination](#), or [reputational harm](#). Some legacy Jewish groups have made the passage of the proposed Antisemitism Awareness Act a key goal. This would incorporate the IHRA framework into federal law.

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When the law enforces a singular vision of Jewishness, it intervenes in the essence of Jewish identity, cutting against its myriad social, cultural, and political expressions. At the same time, it positions Jews as the symbolic beneficiaries of authoritarian tools: campus repression, speech policing, and surveillance. In this sense, Jews become not only the target of weaponized antisemitism claims, but also their collateral damage.

These developments raise an urgent question: what role should courts play when the very term antisemitism is legally expanded and obscured, often to realize political goals well beyond the protection of Jews?

THE COMPLEXITY OF JEWISH IDENTITY

Unlike many other protected identities in antidiscrimination law, Jewishness has always defied simple categorization along the liberal division between faith and politics. It is religious, but also encompasses a set of dictates prescribing quasi-constitutional values for life within a community.

In “the diaspora”—a term that in the Jewish context is very different from other national diasporas—Judaism has been marked by both belief and peoplehood. In Israel, a country that many but not all Jews embrace as a political expression of Judaism, it is linked to citizenship, nationality, and often state power. Neither side of the church and state divide fully captures its meaning. And no single authority, legal or communal, can fully define its contours.

The unique nature of Jewish identity can help explain why US law has bound together Jewish identity to Israel and Israelis: It recognized Israel as the political manifestation of Jewish identity, labeling attacks on Israel as attacks on Jews everywhere. If Jewish identity is an amalgamation of faith and politics, and if Israel is the quintessential—perhaps even *only*—recognizable form of this amalgamation, then attacking Israel is attacking Jews.

But the political nature of Jewish identity has never been singular. Throughout history, diverse Jewish communities have incorporated different, and often conflicting, political ideas into their Jewish identities. Some of those ideas draw on anti-nationalist or diasporic traditions; some understood their Jewish identity as compelling them to stand in solidarity with Palestinians and against human rights violations. By codifying a single, state-aligned vision of Jewishness, the definition of antisemitism renders alternative expressions of Jewish identity illegitimate, and, in some cases, unlawful.

HOW LEGAL ACTORS CAN DEFEND JEWISH PLURALITY

The first task for courts is to resist the abuse of the definition of antisemitism. Two distinctions are especially critical here.

First, in cases involving criticism of Israel, courts must stand firm in defending freedom of expression, including speech that is harshly critical of Israeli policy or of Zionism itself. That kind of dissent is protected under the First Amendment and essential to democratic discourse.

Two recent decisions, one from a district court in Pennsylvania and one from a district court in Texas, offer an example of the type of distinction that the legal discourse desperately needs.

Dismissing a lawsuit filed against the University of Pennsylvania for alleged antisemitism, the district court judge in [Yakobi v. Penn](#) stated: “Indeed, I could find no allegations that Penn or its administration has itself taken any actions or positions which, even when read in the most favorable light, could be interpreted as antisemitic with the intention of causing harm to the Plaintiffs. At worst, Plaintiffs accuse Penn of tolerating and permitting the expression of viewpoints which differ from their own.”

In Texas, Students for Justice in Palestine (SJP) directly challenged the constitutionality of the IHRA definition, which was incorporated into the University of Texas policies following an [Executive Order](#) issued by Governor Abbott. Considering SJP’s request for a preliminary injunction, the judge in [SJP v. Abbott](#) acknowledged that “the Court finds the incorporation of [the IHRA] specific definition of antisemitism is viewpoint discrimination,” stating that plaintiffs are “likely to succeed on their claim” that this definition violates the First Amendment.

In cases where courts will face claims of anti-Israeli bias— that is, treating individuals unfairly because of their Israeli nationality or perceived affiliation with Israel—courts should recognize the harm, but address it through the appropriate legal channels. In recent years, Israelis in the US have faced exclusion and discrimination, not only due to their political views, but also because of their very nationality. But while such unjust treatment deserves legal redress, it should not be addressed under the already overstretched rubric of antisemitism. Anti-Israeli bias is a distinct phenomenon, not fundamentally different from discrimination against the citizens of any other country. As such, it is best treated within the conceptual framework of anti-discrimination law.

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To protect Jews in ways that honor the complexity of Jewish life, we must undertake a clear-eyed effort to define not only what antisemitism is, but just as importantly, what it is not. This requires legal frameworks capable of distinguishing between qualitatively different types of harm, as well as between harm and protected expression.

Courts must also ensure that the IHRA definition of antisemitism, pushed by the Trump administration, is not used to punish Jews for expressing dissenting or nonconforming views. This requires doctrinal tools that do not simply protect Jews as a vulnerable minority, but also defend their ability to define themselves, even in disagreement with one another. The US Constitution, as well as other federal statutory protections, offer meaningful tools for this task.

One crucial starting point is religious liberty. Over the last decade, the US Supreme Court has aggressively expanded the scope of religious protections under the Free Exercise Clause. This

jurisprudence has often served conservative Christian litigants. But its underlying doctrinal logic can be applied more broadly. When dissenting Jews are punished for voicing positions rooted in their understanding of Jewish law, ethics, or tradition, courts can and should treat that as a burden on religious exercise. Jews who view solidarity with Palestinians as a religious obligation, grounded in *tikkun olam*, or the pursuit of justice, should be entitled to constitutional protection.

Notably, courts have begun to recognize Jewish religious commitments as grounds for legal protection in other contexts, including challenges to conservative agendas such as abortion bans. The same logic could apply in cases where antisemitism law penalizes religiously grounded dissent. Even secular Jews, whose dissent is grounded in their membership in a trans-historical Jewish community, may enjoy such protection.

A related tool is the Establishment Clause, which prohibits the state from intervening in theological disputes or favoring one interpretation of a faith over another. When the state adopts legal definitions that equate criticism of Israel with antisemitism, as it does through the IHRA framework, it effectively enshrines one vision of Judaism over others. Courts have long refused to adjudicate which rabbinic teachings count as “authentic” Judaism. They should extend the same principle to disputes over Zionism and Jewish political identity. A legal regime that rewards Jews for expressing one set of beliefs, and penalizes them for expressing another, amounts to state-sponsored religious orthodoxy.

Beyond First Amendment protections, antidiscrimination law also offers promising and underutilized avenues. Under Title VII and Title VI, courts have recognized two doctrines that could protect US Jews from becoming targets of the new antisemitism discourse: the interracial solidarity doctrine and the stereotype doctrine.

The interracial solidarity doctrine, originating from race discrimination cases, recognizes that individuals may face discrimination for associating with or advocating on behalf of a protected group. Applied here, it suggests that when Jewish students or employees are targeted for expressing solidarity with Palestinians, they are not merely facing political backlash, but they may be experiencing unlawful discrimination based on their interracial solidarity. Courts have recognized such dynamics as unlawful.

Likewise, the stereotype doctrine, developed in the context of sex discrimination in *Price Waterhouse v. Hopkins*, forbids punishing individuals for failing to conform to identity-based stereotypes regarding how they should behave or perform their identity. This logic applies to Jews who are critical of Israel, and thus often reprimanded as “self-hating” or antisemitic. Just as Ann Hopkins was denied partnership for not behaving the way women were “supposed to,” dissenting Jews may be sanctioned for deviating from how Jews are expected to act. When employers or institutions punish Jews for failing to express the “right” kind of Jewish identity—by not supporting Israel, for example—they are enforcing identity performance through coercion. That, too, is a form of discrimination under US law.

In seeking to define what counts as antisemitism, the law has also begun to define what counts as Judaism. The preferred subject of protection is increasingly a Jew who affirms the legitimacy of the Israeli state. Other Jewish expressions, those rooted in diaspora traditions, religious anti-Zionism, or progressive critiques of occupation, starvation or genocide, are rendered suspect. Worse, they are often labelled antisemitic themselves.

Over the last 23 months, Israeli atrocities in Gaza have torn apart any sense of unity within Jewish identity. That Jewish identity has been cast into such crisis is now unchangeable. But how this crisis is negotiated among Jews, and between them and their larger communities, is still an open question. The idea that Jewish identity requires some acceptance of the atrocities in Gaza is a deeply regrettable outcome that will not protect any Jew from antisemitism.

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In an era where Jewish identity is increasingly subject to legal prescription, and flattened into a narrow political loyalty, courts have a role to play. They cannot, and should not, resolve theological or ideological disputes within Judaism. But they can create the space in which those disputes can unfold.

This means protecting Jews not only from threats of violence or exclusion, but also from the state's attempts to decide who is "really" Jewish. It means distinguishing between antisemitism—the very real animus against Jews as such—and the discomfort of political disagreement, including disagreement over Israel. And it means recognizing that anti-Israeli bias, when it does arise, is a separate harm requiring its own legal response; one that should not be tolerated, precisely as other non-voluntary aspects of one's identity can be a ground for discrimination against them.

The courts, for all their limits, may still be one site where that space can be defended. But they cannot do so alone. The project of protecting Jewish identity from both hatred and governance is a shared political responsibility that demands clarity, solidarity, and an uncompromising commitment to pluralism.

If Jewish safety means anything, it must include the freedom to be Jewish differently. That is what democracy promises. That is what law, at its best, can deliver.