

## HowDoWeDefineAnti-JewishDiscrimination.mp4

[00:00:06] **Martien Halvorson-Taylor** Good afternoon and thanks for joining How the Law Treats Hate: Antisemitism, Antidiscrimination. In this conference leading scholars of law, history and Jewish studies we'll rethink pressing questions about antisemitism's relationship to other forms of discrimination and the law's ability to stop hatred. I'm Martien Halvorson-Taylor, associate professor of religious studies at the University of Virginia. And I'm also the co-director of the Religion, Race & Democracy Lab, which is proudly hosting this conference along with UVA's Jewish Studies Program and UVA's Karsh Center for Law and Democracy. Today's conference consists of four consecutive sessions, registration for the next three sessions will remain open until their respective start times. If you'd like to participate in those, please visit our website at [religionlab.virginia.edu](http://religionlab.virginia.edu) for the full schedule and all the registration links. Also, we are recording all the conference sessions and we'll make them available on our website sometime next week. If you're interested in programs like this, we encourage you to join our mailing list and to sample our signature podcast, Sacred & Profane, which is available wherever you listen to podcasts. And we invite you to join our next virtual event on Tuesday, September 22nd, featuring award-winning journalist Maria Hinojosa of NPR's Latino USA and UVA professor Micheline Marcom for a conversation on religion, migration and democracy. Again, more information can be found on our website [religionlab.virginia.edu](http://religionlab.virginia.edu). And now it is my pleasure to turn things over to James Loeffler, Jay Berkowitz professor and chair of Jewish History at the University of Virginia, who so beautifully organized today's event.

[00:02:21] **James Loeffler** Thank you, Martien. As you heard, my name is James Loeffler, the director Jewish studies program at the University of Virginia. And it is my privilege to welcome all of you to today's conference event. I want to begin by noting the origins of this conference in very personal terms when the neo-Nazis came to Charlottesville three years ago. I was 4000 miles away. I was in Jerusalem. And as I watched the violence unfold on television there, it was a surreal experience. Suddenly, the script of modern Jewish history seemed to be flipped. Febrile Jerusalem. So often the site of animus and violence felt like a calm oasis compared to Charlottesville, normally a sleepy college town. A week or so later, I sat in a faculty meeting with colleagues and Jewish studies at the University of Virginia as we tried to figure out how to respond to the events that had violated our town and our community. Even with all of our expertise, we struggled, as many Americans still struggle today to make sense of antisemitism appearance. We mused over the fact that there was no Jewish [00:03:35] slogan equivalent to Black Lives Matter. We wondered if there could be. We pondered how to situate antisemitism in relation to at least to racism and other forms of discrimination and hatred. Should we think of it as something that we had to convey was truly unique? Or could we bring it into dialogue to make sense of the moment? We asked ourselves why it is that events in America had suddenly gotten drawn into a global landscape of debate about the Israeli-Palestinian conflict and the issues thereof. And most of all, we tried to understand how to respond to hate, what could be done to stop it. Three years later, American society is still asking these questions about antisemitism. And American Jews within that society are near desperate for answers. But they are also divided, like Americans as a whole, about solutions and about the role of law in combating anti-Jewish hate. There is much debate these days. There is much political invective. There is much fear. But there is surprisingly little scholarly inquiry. And the goal of this conference, if I could say to you in one sentence, is to substitute that sober analysis and discussion for the soundbites and for the memes and for the Press-play solutions that we often see thrown out as a response to antisemitism, which is a particularly distinct kind of hatred. For that reason, my colleague Maika Schwartzman from the University of Virginia Law School and the Karsh center are delighted to be able to present this

distinguished roster of scholars to you as they engaged in this discussion. Across four sessions, you're going to hear discussions about these core questions that we believe frame much of the conversation on antisemitism and law. And we also think that this is a chance for us to think about what kind of solutions we as a society would like to see and what kind of solutions we would like to design if we could imagine a better way forward. We're going to have these three sessions. And the fourth one, as you will know, is a special conversation between Maika and our guest, Dahlia Lithwick, the renowned legal commentator in which they'll explicitly turn outwards to look at some of the contemporary controversies and live issues as they're actually surfacing in today's Supreme Court and other arenas of the legal world. As you can already tell from the way I described this issue, it's a complex one and it requires different lenses of analysis. So I want to note that we are very pleased in the Jewish studies program to be partnering with the Religion, Race and democracy lab, as you heard, and the Karsh Center for Law and Democracy at the Yale Law School. We want to thank our partners. We want to thank the dean's office, as well as Dean Golubev of the law school and the UVA Democracy Initiative, who basically empowered us to try and pursue these questions with the sophistication and the subtlety that we hope they deserve. Now, let me give you a few very quick housekeeping notes. We want to encourage you, audience members, to engage in the conversation. And the way to do it is to raise questions throughout the program. You're welcome to do that through the Q&A function. If you're new to this form of Zoom, look for the function on the bottom of your screens. We have disabled chat and raise hands. Our goal is to get more on the substance of the matter. But we do want you to be able to engage from your places and you will be able to send through your questions. The speakers will see them, some time will be reserved at the end of the conversation to feel the increase. And importantly, all attendees have the ability to upvote each other's questions. So this is another way also to draw attention to something that you think is an urgent issue. Now, having said all that, it's my pleasure to turn things over to Professor Orit Rozin, who is associate professor in the Department of Jewish History at Tel Aviv University, and will be chairing our first session. Please, Orit.

[00:07:35] **Orit Rozin** Thank you very much, Professor Loeffler. So I'm happy to introduce our two speakers. I just want to reserve all the time for their presentations, my comments and our ensuing Q&A. So Professor Deborah Hellman teaches law at the University of Virginia and Professor David Myers teaches Jewish history at the UCLA, a Professor Hellman. Please go ahead. Thank you.

[00:08:08] **Deborah Hellman** Thank you. Thank you, Orit. And Jim. And the Karsh center. And the Democracy Center. I'm thrilled to be here. So I want to talk about a particular puzzle with regard to antisemitism. One that illuminates, illuminates excuse me, another puzzle about wrongful discrimination itself. So I want to start with a contrast between two examples of discrimination, only one of which seems wrong, or at least one of which seems more wrong than the other. Suppose an employer refuses to hire a person who is black on the basis of that person's race. Compare that case to one in which an employer refuses to hire someone whose last name begins with H. Both are instances of this disadvantageous treatment on the basis of some trait about a person for race or the letter that begins her name. In that sense, both are discrimination of some kind. If we use the term in a non-moralized sense. But the first seems morally troubling in a way that the second does not. Well, that's my view, which would take more time to explain here than I probably have. But suffice it to say that the second refusing to hire someone based on the letter that begins her name is sufficiently significantly less morally troubling than the first example. If by discrimination we mean the moralized sense of the word wrongful differential, disadvantageous treatment on the basis of some trait and not merely drawing

distinctions on the basis of some trait. Then the first example is far more likely to be an instance of discrimination than the second. Why? What makes that the case? What makes the cases different? Some possibilities come to mind first. The first case is more likely to be motivated by hate. What legal cases refer to as animus. It's also more likely to cause significant negative consequences, reinforcing caste like distinctions in society. It's more likely to convey a message, meaning that is denigrating and it's more likely to contribute to severe and pervasive disadvantage of the kind that makes it the case that people with that trait lack genuine freedom in society. You'll note that I didn't say that discrimination against blacks was more likely to be irrational than discrimination against people whose last names begin with H. That's because, in fact, the opposite is true. H face discrimination seems completely irrational, and race, by contrast, is likely correlated with many traits of interest to employers and others. Less good health, less wealth, less good education, etc. because of the history of past discrimination and injustice toward blacks. And why is an employer who refuses to hire a black person more likely to be motivated by animus, caused severe consequences to convey denigration and to contribute to entrenching the sort of pervasive disadvantage that interferes with freedom, than is the odd and idiosyncratic employer who refuses to hire me because my last name begins with H? Exactly for that reason. The weird one-off ness of the second action makes it less likely to be motivated, motivated by hate. So it could be less likely to cause severe negative consequences. I probably can get a job from someone else who doesn't share that view. Less likely to convey a demeaning message. It's hard to see what it would convey at all and less likely to contribute to the sort of pervasive group disadvantage that interferes with freedom. My point here is that according to several of the most prominent and plausible accounts of when and why discrimination is wrong, it matters whether the trait on the basis of which one distinguishes among people is one that's been used in the past and is currently being used by others in ways that are disadvantageous. Discrimination is in that sense a social phenomenon. In order to wrongfully discriminate and not merely to be odd or stupid from a business perspective, there must be a social phenomenon to which one's actions relate. This brings me to antisemitism, but finally, and I'm sorry it took me so long. I was listening the other morning to Ezra Klein interviewing Isabel Wilkerson about her new book Past. Klein noted that as a Jew with a Brazilian father, he would not have been considered white at an earlier time in American history. But that today he thinks of himself as white and is treated as white. In other words, while being Jew, Jewish has social significance, it doesn't have the same status significance as it did in an earlier period. The puzzle of antisemitism, then, is this: in order for discrimination against Jews to be an instance of wrongful discrimination, being Jewish must be socially understood as disadvantageous, or Jews must be understood as a socially stigmatized group. They have to be more like blacks in the US and less like groups of people whose last name begins with H. If this is right, it generates a few questions. First, whether a group is stigmatized or not is not something with a yes or no answer. Rather, how a social group is perceived and whether it's welcomed is something that comes in degrees. What should we say about these in-between cases? Is Jewish identity one of these in-between cases here in the US? Should a society second? Second question, should a society regulate actions that aren't at the particular historical moment? Wrongful discrimination? Because at that time the social identity is not, or not yet, or not sufficiently stigmatized in order to ensure that it doesn't become so. This seems reasonable. But if so, should we conceive of what the government is doing in these cases as something different than preventing the wrong of wrongful discrimination? Third, what did we learn about discrimination from thinking about such in-between cases such as contemporary antisemitism? In order to think about these cases, suppose not implausibly, that antisemitism is on the rise both in this country and around the world. Yet at the same time, it's still relatively rare here in the United States. U.S. Jews occupy positions of power and influence and are welcomed and

respected in multiple venues. Both overt and unconscious antisemitism, though it occurs, is not an everyday affair. If we focus only on the present, when we assess whether a trait is one that is more like race or more like the letter of one's name, we missed something. Because of the long history of antisemitism, any new instances like those that that Jim mentioned, Professor Loeffler mentioned, are particularly troubling. Why is that? Perhaps they're troubling because we fear there'll be more in a way. We don't fear that they'll be more crazy people who refuse to hire me because my last name begins with H. Culture has a persistence that makes it easy to pick back up, easy to pick up ancient prejudices or perhaps more difficult to fully defuse them. This cultural residue to mix the category easily inflamed. So while it's true, I believe that treating people differently on the basis is one trait about them isn't always wrong. How else would we keep 15 year olds from driving? And that's the central factor in determining whether a particular instance of discrimination is wrong or not is related to the current social status of the group defined by that trait. This account must be cognizant of the ways in which current social status is tied to history and current social status is open to change and often quite quickly. I want to tie this discussion before I close, which I think I have just a minute or two to law and in particular to the law's treatment of antisemitism. In the nineteen eighty seven case *Shah to be* (?) because the Supreme Court considered whether a plaintiff could sue for the desecration of a synagogue under Section nineteen eighty two, the federal civil rights law that prohibits racially motivated destruction of property. Section 1982 guarantees that all citizens in the US have the same rights as it enjoyed by white citizens to inherit, virtuously sell, hold and convey real and personal property. Well, the statute doesn't use the word race. Cases later interpreted the statute to prevent race discrimination in these contexts. The question the court considered were whether was whether Jews are a race such that they would be prohibited, such that they would be protected excuse me, under the statute. The plaintiff argued that because the defendant regarded Jews as a race, they should be rejected, protected. The court rejected this view, said it was insufficient and it was necessary to allege that the defendant's animus was directed toward the kind of group that Congress intended to protect when it passed the statute. So if Jews weren't to race, they weren't protected. While the court said that, they also emphasized that it mattered, not whether Jews are really a race, as is understood at the time the case was decided, nineteen eighty seven, but whether they were considered a race when the statute was adopted in 1866. And the court noted that what was understood as race at that time included ethnicity and antisemitism and so antisemitic property destruction was covered. In my view, there's something right and something wrong about the way the court analyzed that case. Both What was wrong about the case is that the court seemed to think that in nineteen eighty seven they had a better view of race and a scientific understanding of race would not conceive of Jews as a race. I would say in 2020, we have an even better understanding of race, both from the perspective of biology and social sciences. The conception of race is better understood as a social category that denotes a group of people that are marked in some way, physically or cultural, culturally and are socially subordinate. If this is correct, So that's the part that they got wrong and we have right, then perhaps our understanding of race today is actually closer to that of the 19th century. Remember, the court, the statute that the court interpreted protected anyone who is giving them the same rights as white people. In other words, it referred to kind of a hierarchy and wanted to protect those who were subordinate to white people, giving them the same rights as white people. If that's the understanding of race that it protects those groups that are socially subordinate, then the right question to ask about whether antisemitism is or should be covered involves an investigation of the current social status of Jews in the United States. And I will end there [00:19:40].

[00:19:41] **Orit Rozin** Yeah. Professor. Professor Meyers, please.

[00:19:44] **David Myers** Thank you, Orit. Good afternoon, everyone. Thank you, Debbie, for those very interesting remarks. And thank you to the conference organizers for this most timely invitation. I'd like to jump right in and tell you what I'm going to do. I'm going to do two things today. First, I'm going to describe what I see as one of the key challenges, which is naming antisemitism, which I'll unpack a bit. And then second, I want to examine some of the solutions that have been proposed and why we need to think beyond them. So where does the problem lie regarding present day manifestations of hostility directed against Jews that often go by the name antisemitism? Observers point to at least two sources today. First, the universe of white nationalists for whom Jews continue in the role laid out in the early 20th century. Protocols of the Elders of Zion, namely as a clannish and avaricious cabal intent on world domination. A second source identified, especially in the United States, is that of criticism of Israel and Zionism, which it is alleged denied Jews the right to self-determination, among others since. Each of the two sources that I just noted has its own challenges, tones, conceptual and other challenges, antisemitism from the white nationalist far right is the more dangerous and lethal form, unquestionably having led to murderous attacks in Pittsburgh and Poway, California. It emerges out of an echo system filled with fringe actors who find allies in and draw inspiration from mainstream right-wing media actors and even astonishingly, the president of the United States. This is a vitally important topic, but for the purpose of this this symposium, I will devote myself to the second source of antisemitism asserted in today's public discourse that related to criticism of Israel. That sources I hinted above raises interesting conceptual questions, especially regarding the problem of determining who defines what the words Jew and antisemitism actually signifying Debby's gloss on the Shaari to fill a (?) case, already gave an indication of that there is an ignoble legacy to the act of others naming Jews. That goes back to the late 19th century when the opportunistically antisemitic mayor of Vienna, Kaluga (?), infamously declared It is I who define who is a Jew. Most Jews would beg to differ and grant themselves the right to define themselves. But they have often wildly divergent opinions of what Jewishness is. Which raises the question of whether every subjective expression of Jewish self-definition should be deemed equally valid. Is the law to honor this subjective act of Jewish self-naming by building legal protections around it, closely related as the question of who names what antisemitism is? This is a very thorny, historical and terminological question because antisemitism is notoriously malleable. So much so that the historian, David Engle, has argued in a much discussed article that antisemitism, the term has become an overly broad, even useless, terminological repository for a vast range of expressions and behaviors.

[00:23:16] **David Myers** But given its policy, how can we protect against it? It's like nailing Jello to the wall. This is not an abstract question. It arises every day in very real settings, especially so in one of the most challenging sites of contention today, college campuses, where antisemitism is often seen as indistinguishable from anti Zionism or strong critiques of the state of Israel, pitting Israel's supporters versus supporters of the Palestinian cause.

[00:23:49] **David Myers** Although often presented that way, the conflict is not really a Manichean divide between good and evil. It is a more nuanced conflict, oftentimes between the right to self-identify and the right to free speech. And it does not have a clear resolution. Let's try to concretize the predicament. A notable portion, my guess is that it is a [00:24:13] vocal minority, of Jewish students on college campuses find themselves embattled today. They are proudly committed to Zionism, the state of Israel, which stand at the core of their Jewish identity. They have imbibed these commitments through formal and informal education in schools, camps and synagogues, Jewish communal norms and trips to Israel when they are accused of supporting racism, apartheid and even genocide

for their advocacy of Israel. The allegations cut to the core of their identity, wounding and offending them.

[00:24:52] **David Myers** It is understandable why they feel under siege. Now, let's try to think of the other side. Palestinian American students who deeply identify with the Palestinian cause, even if they have never visited their family's ancestral home or not been allowed to visit their family's ancestral home, they have a strong sense of connection to Palestinian culture, history and the Arabic language. They regard Israel as a vestige of European colonialism that systematically privileges Jews and discriminates against Arabs on the basis of race. Some are very careful to distinguish between Jews in Israel, the latter of which is the object of their critique. And they support BDS, boycott, divestment and sanctions, which they see as a nonviolent means of protest. And so the battle lines are drawn between the two groups. Each side's position is understandable. But is antisemitism at play, should expressions of Zionism be legally protected? If so, by whom? Is this a clear case of discrimination? Is it intentional or unintentional discrimination? On these last questions, we should defer to Deborah Hellman, who has written wisely about discrimination, noting that, quote, Distinguishing among people on the basis of traits is wrong when it demeans any of the people affected, unquote. Some would say that the claim that Zionism is racism is sufficiently demeaning and discriminatory, that it requires some form of legal protection. Others would say that such a claim is a political critique akin to assertions that the United States is a capitalist, imperialist and colonial power that wreaks havoc in the world. Would proudly patriotic Americans who vehemently oppose this assertion claim discrimination and demand protection under the law? So what to do in light of this messy situation in which one person's antisemitism is another's political critique?

[00:26:56] **David Myers** Some of the most prominent legal responses rolled out over the last few years seemed to me deficient. They include, and this is by no means an exhaustive list: First, state statutes condemning, prohibiting, or even somewhat ironically, boycotting BDS there are over 30 states that have adopted such statutes, beginning with Tennessee, which in April 2015 enacted a law that described BDS as, quote, one of the main vehicles for spreading antisemitism and advocating the elimination of the Jewish state, unquote. The equation of antisemitism and BDS in wholesale fashion is, to my mind, imprecise and specious, not to mention an invitation to violate or constrict the freedom of speech. Another legal instrument was the executive order that President Donald Trump issued on December 11th, 2019. It did two things. First, it extended Title six of the Civil Rights Act of 1964 to Jews based on the assumption that the fact that Jews are members of group that shares common religious practices should not preclude them from being protected under Title six criteria of race, color or national origin. In so doing, it granted protection to Jews from protection on the basis of race or national origin, including, it would seem, on the basis of one's commitment to Zionism. And second, it accepted the contemporary examples of antisemitism laid out in the international Holocaust Remembrance Remembrance Alliance's working definition from 2016. Were there more time I'd offer a fuller analysis of the International Holocaust Remembrance Alliance examples which include some positive features like the first six clauses, but also most problematic one, including seventh, that maintains that claiming that the existence of a state of Israel's arrest, racist endeavor is antisemitic. The effect that the executive orders reliance on the international Holocaust Remembrance Alliance definition is at one level, political. By protecting against or stifling criticism of Israel and audacious in that it enfranchised Zionism as a main form of Jewish identity, it arrogates to the government the right to name Jews and pays little attention to the cacophony of voices and the deep historical and contemporary divisions among Jews about Zionism. What to do? The situation at present is, I think, rotten. Some pro-Israel Jewish students feel understandably aggrieved. Some

pro Palestine students understandably feel unheard. But I don't think that the two legal tools I just mentioned are refined enough to address the problem at hand. So by way of conclusion, I offer the following inconclusive thoughts about the second set of claims about antisemitism that has been the focus of my talk. And I want to just reiterate that I think it's actually the first that is the source of greatest physical threat.

[00:30:05] **David Myers** So first, recognize the distinction, as Nomi Stolzenberg has argued, which we will hear in the coming session. Recognize the distinction between disagreement and discrimination. Sad as it may be, the fact that a student is offended by an epithet hurled her way does not make it a form of discrimination. Expressing strong objection to a political viewpoint, even if the holder believes it defines his identity is this is different from description of demeaning fictive traits such as clannishness, disloyalty, avarice, diabolical self-interest that have a long and nefarious historical pedigree. Second, think more deeply about the act of naming and its consequences. Who gets to name an identity such as that of Jews? Is every member of the group for her or himself? Is it judges, politicians such as Donald Trump who gets to define antisemitism? Do we want courts to decide for us? Legislators? These are difficult questions because naming is an unmistakably subjective act. But if you can't name the group, you can't protect against threats to it. And so I think this conundrum needs to be thought through more with perhaps a blended perspective of various actors taken into account. Third, recognize that the law may not be the best or only means of resolving or accommodating difference. It may be too coarse a tool to decide, for example, whether the question of Zionism and racism is antisemitic. Indeed, it may be that the educational realm where the problem of this particular variant currently lies is also the site of its potential solution, or at least amelioration. What if student groups and high ranking college administrators alike acknowledge and decided to take on the vexing tension between the right to self identification and the right to free political speech? This would require both extending beyond one's own self enclosed narrative, in one case, and resisting external political pressures and the other. I should add that such a group could be aided by a gathering such as this with steroids. Lawyers and theorists working together to address the tricky question of naming Jews and antisemitism, as well as to develop a mechanism for determining when political speech crosses the line into unavoidably injurious speech. And since we're here at UVA, virtually, maybe it is time to come up with a new Virginia charter.

[00:32:38] **David Myers** Thank you.

[00:32:46] **Orit Rozin** Hi. Hi, everyone. I'm back. So I would like to share my thoughts on these two wonderful presentations and my comments on these two thought provoking presentations are not meant to resolve that you seems you both raised, but to present another line of thought altogether. I want to look at two elements. Professor Hellman mentioned one animus are the emotional sources of discrimination and two past experience and its impact on the feelings of the person who is being discriminated. I we also discuss the uneasy feelings of Jews who support Israel when they are facing pro-Palestinian protests on college campuses. So I agree with David Angle's critique of the term antisemitism as a category for historical analysis. And I think that like racism, it is too broad. Scholars surely need to examine historical context carefully and elaborate on the precise emotions, practices and gestures connected to a particular historical event or phenomenon, especially when dealing with events that occurred hundreds of years apart. And yet, modern antisemitism feels like a useful category. When we discuss lived experience, I want to give two examples. One, a prominent Jewish professor of law once mentioned that growing up in New York in the 50s, he was often bullied because he was Jewish and he had very, very vivid memory of these attacks. The second very different

example is a literary one at a Canticle for Liebowitz, a famous post apocalyptic sci fi novel first published in 1959 and remains in print and popular to this day. Walter Miller junior characters. His character Benjamin is portrayed as a wandering Jew. Why Jewish readers might still enjoy the book as I did, it may be that the ghost of an old unfavorable image of the Jew lingers and that it may cause some readers to feel uncomfortable. So in modern societies of the late 20th and 21st centuries, some forms of antisemitism persist, persist sometimes as a cultural cold, a combination of thoughts, beliefs and emotions as defined by Shulamit Falko. This form may more closely apply to the fringes of the political right. But sometimes, as Paul Nahm recently defined it, antisemitism persists just as an affect and emotional ghost. Susanna Hershel's article exploring the essential and emotional aspects of antisemitism makes a seminal contribution to this line of thought. While introducing David Angle's article to Hebrew readers, Scott Yery and Geim Your Own (Hebrew name) argued recently that a common view among historians today is that antisemitism is a particularly persistent form of discrimination. I would add that this is very much the case in the lived experience of ordinary Jews today, both in Europe and the US. This has enormous effect on how Jews who are attached to Zionism feel when they are exposed to properness Syrian protests on college campuses. Why Professor Myers, like other prominent scholars before him, distinguishes between anti-Semitic and anti-Israel rhetoric. The lived experience of young Jews on campus connects them. We may very well argue that they should understand the difference. But it is hard to argue with it, with their feelings. Why? Cases of actual discrimination, such as a Jewish student being excluded from student council because of their Jewishness and alleged or stated support of Israel, a rare form of social discrimination, which is not a legal offense. And it is beyond the purview of the law, is more rampant. So emotionally for Israelis before the 1967 war, the Nasserite antisemitic propaganda was extremely powerful. It struck a nerve because of the memory of past experiences. This could explain the apocalyptic anxiety as it was defined by foreign diplomats on the eve of the Six Day War. Past experiences or the knowledge thereof, I argue, is what makes pro- Israel's students feel uneasy or even intimidated while facing fierce pro-Palestinian protest since not many other countries attract the kind of negative emotional attention on college campuses that Israel does. It is reasonable to argue that it is not only what critics say, but the emotional message they convey. The emotions driving the pro, pro, Palestinian and anti-Israel criticism, moral superiority, contempt, rage and perhaps even a desire for revenge, affect Jewish students because of the memory of the past and the present antisemitic intimidation on the fringes of the right. Both have an emotional impact and they amplify each other. Whether Israel rightfully deserves this criticism or not, the affected remnants of the past make the attempts to distinguish between these two phenomena futile. So how do we define antisemitism? I would follow the emotions that are generated. Emotions are the basis of morality itself, and they have an enormous impact on our lived experience. What I am suggesting is highly problematic. Practically a minefield. It is far removed from clear cut intellectual categories, but since animus or hate is already in the law books, perhaps it is time not to turn away from the great emotional universe that is practically calling for our attention. Thank you. And to go back to Professor Hellman for her response and then to Professor Myers.

[00:39:17] **Deborah Hellman** Thank you, Orit, for those remarks. So I'm thinking about several different things as you talk. And I think I might be in agreement with some pieces and disagreement with others. So I think I'm in agreement with the importance of it. It's not just what you do today, it's how what you do today links up with history. You know, many people in the South said, oh, well, the Confederate flag, that means to me Southern pride. And I'm not trying to express anti-black animus. And you want to say, well, it doesn't matter what you want to express, that is a symbol that has a meaning that's beyond what your particular intentions are. And that meaning comes from the history of that flag and its



uses. And I think the same is true with things that are expressed today. They don't exist just in the moment today, but they link up with an important history. And I think that's incredibly significant when we talk about whether particular actions today should be viewed as antisemitic. So I that's the part I agree with. I'm less... I guess I want to disagree with the idea that we are going to foreground as the only relevant perspective, the perspective of the hearer or listener and say if he or she is offended or demeaned or has a particular emotional reaction, that that is the one that trumps. I think it's an important ingredient. But I think we can't when we're thinking about what's to be either criticized as a moral matter or prohibited as a legal matter. I do think we have to ask a more objective question. That is, what's the best objective understanding of the meaning of that statement, recognizing that if it picks up on cultural tropes or that it relates to a past history. But I think we're asking an objective question. And I say that with, uh, sympathy for the idea that none of us can be sure we're getting at what the objectively correct answer is. We're all stuck in our partial perspective. But I think it's deeply important to be aiming for that rather than just saying, well, I have this feeling of offense or of insult. And that settles the answer, settles the question about whether a particular act is antisemitic.

[00:41:59] **Orit Rozin** Thank you very much, Professor Myers, please.

[00:42:02] **David Myers** Thank you very much, Professor Rozin for your really interesting remarks and I think the good news is I'm in a certain sense come in between your two perspectives. I think it's really important that you've brought a huge reservoir of empathy to understanding the phenomenon. I think indeed I see it every day on college campuses. I see the injury of students who do feel aggrieved. I see it certainly among Jewish students, since I'm a professor of Jewish history. I have a large pool of students who happen to be Jewish who whom I talk with very often about this problem.

[00:42:41] **David Myers** But I should say that same measure of empathy probably should be applied to the other side as well. Students who support the Palestinian cause, my Palestinian American students, Palestinian students also feel that, say, a similar kind of sense of injury, neglect, misunderstanding. So I think empathy is important, but we probably have to figure out a way to mediate between the empathic pull on one hand and the legal pull on the other hand. We have to take account of the subjective determination of what Jewishness it is. On one hand, and the demands of law to have a single definition or a finite set of definitions, not an endlessly subjective array of definitions. So I think that's really the challenge, is not to privilege the empathic to the exclusion of the legal or the legal to exclusion of the empathic, but try to find some sort of medium between them.

[00:43:44] **David Myers** And in doing so, I 100 percent agree with Deborah that a decisive consideration that really lends weight and allows us to distill the essence and sift through this large body of data at hand about what really is antisemitism or for that other grievous other grievous forms of discrimination is the burden of historical legacy. Taking account of the accretions of historical burden, I think, help us home in on what is a form of discrimination that is worth building protections around. In doing so, I voiced skepticism about the ability of law alone to find the precise antidote to the problem. But whether it is law or education, the realm of education or some combination between the two or others, it seems to me that we have to find a way to incorporate the perspective of at least three actors, the alleged victim, who can give voice to what it is that she or he felt to be discriminatory. The alleged perpetrator, who, after all, arrives at definitions of the other that often are intended to have an injurious effect. And then perhaps the mythic, neutral bystander, the legislator, the judge, seems to me as we go about trying to think about what can actually help us move towards a mechanism or set of criteria that can allow us to

distinguish between injurious speech that requires protection and political speech that is essential to the functioning of democracy. It's important to bring together those three perspectives. So those three perspectives and indeed others are important for the work of definition. What is it that requires protection or action? And that's step number one is the definitional piece. The second piece is what's the action or remedy that must be introduced. In my world of fantasy in that first and that proposal I made by bringing by imagining the educational realm is not just the source of the problem, but also the solution, I imagined somehow a convening of representatives of two opposing camps coming together with a mix of empathy and an ability to see beyond one's own narrative and some set of non-participants in that direct engagement to try to find some ground rules, some set of guidelines that could inform political conduct and speech on college campuses. That rather than bringing in the law with all of its force, it seems to me that that might be a more appropriate setting that could then be exported to the legal realm, if, indeed, those diverse perspectives could be included and in conversation designed to establish a mechanism to that from which criteria of distinction could be derived. Thank you.

[00:47:55] **Orit Rozin** Thank you very much. And now we're going to move on to Professor Loeffler, who is going to do the be the monitor for the Q and A. So, Professor Loeffler.

[00:48:10] **James Loeffler** Thank you very much. I'm happy to relieve Professor Rozin of her responsibilities and to moderate. We have some time now. Let me remind everyone, we have almost a half an hour, which is wonderful. The speakers have been both concise and extremely informative. And I also want to remind you, the way this works is you can put through in the Q&A box your questions. I invite you to do that. Please don't hold back. And you can also vote up if there's a question that strikes you as something really you'd like to see addressed by really all three of our panelists. So I would like to actually begin by bringing in a question from Professor Naama Rock'em, who is joining us from Chicago, presumably who I'll read this question out. I believe everyone can see it, but I'll just read it, select parts of her questions about empathy and the role of empathy. And I think she's asking us and asking the panelists to think about the fact that people who don't identify as Jews or Palestinians are deeply involved in this debate as well. And there are others in her question that she identifies in the United States, the Christian evangelical Right. We might identify other groups as well. I'm sort of paraphrasing here, deeply invested, might feel targeted themselves, might identify with the cause. And I wonder if I could ask both of you to reflect on that. If we don't have a fully stable category of participant or perhaps victim, if it's not as neat and tidy as we even imagined it, when we when we frame it as a binary. Does that make it even harder to think about these these problems? And does that or does that actually help us to think about this issue of discrimination and defining the parties involved and the harm involved?

[00:50:09] **Deborah Hellman** We'll make it. Picking up something that Professor Myers was just saying about the kind of nuances involved. I think that's related to this question. That is, there's a different answer to how we should think about this morally and how we should think about this legally. I think the law inevitably has to reach for broader categories and rougher categories. If you wanted in my own way of thinking, the question I would ask about some statement that, let's say somebody made in some context would be, does it objectively express denigration, not just of the person, but in a way that suggests that the person is not a person of equal status? And does that speaker have the capacity because of her position or office to kind of put the other down in a genuine way. And that's a very nuanced question that I think would allow the possibility of taking in all those myriad differences about who the speaker is and who the and what exactly was said and what's the kind of trait on the basis of which that the alleged discrimination occurs and all sorts of

parts of that. But that's not the kind of question that the law can address. The law has to pick out categories of people who are protected from differential treatment on these bases and has to do it in a much rougher way that I don't think is going to be able to deal with the kind of issues that that question raises. So we might say, I suspect that some criticism of Israel in certain instances is motivated by antisemitism and socially understood it in the objectively, the best understanding is that it's an antisemitic statement, but still not shoes as a matter of legal prohibitions to treat those statements in that way because you have to ask when you adopt a policy about how those statements are going to be treated on college campuses or wherever, what are they, generally speaking, coming out of, etc. And if they're, generally speaking, not best understood in that way, then you're going to reach a different result. So I just think we have to remember that different kinds of contexts that that question is going to come up.

[00:52:52] **David Myers** So thank you, Professor R, for that question. I wanted divided into two parts. First, the fear of campus culture. Campus life, I think are absolutely right that there are other and deeply engaged stakeholders in the debate over Israel Palestine and that those who can experience and claim injury from campus discourse are not uniquely Jews and Palestinians or Jewish Americans, Palestinian Americans. And that's why I think it's really important to bring different groups together to help think through what can be the parameters of of legitimate political expression that distinguishes between disagreement and discrimination. It's an extraordinarily difficult task. And such efforts have failed in the past. But I guess I'm resisting the impulse to throw it over to other courts or the legislature for a final determination, because that relates to the second point, which is that those processes can be and have been in the context of the definition of antisemitism. Similarly, political processes, which is to say that [00:54:20] the state statutes against BDS, I think can and must be seen as part of a larger political battle between a certain right wing, often Christian evangelical perspective and a certain perspective that is beginning to surface in parts of the Democratic Party that is more critical of Israel and more even handed in its perspective between Israel and the Palestinians. So I think it's those legal legislative acts are very much rooted in that larger political question, and we should be very mindful of them. In similar fashion, the executive order issued by Donald Trump in December 2019, I think is unmistakably part of a larger political battle, part of an alliance between him and the current Israeli regime with the added support of large segments of the Christian evangelical world, not all of them. And so I think we need to see how deeply embedded in in contemporary and fractious politics these actions are. I'm concerned about one of the questioners asked, very concerned about the actual rise in antisemitic expressions and deeds as charted by the Anti Defamation League, the FBI and other reporting agencies. It is undeniable. I'm also concerned about the manipulation or weaponization of antisemitism for political purposes. And I think this is a case where we have to operate with our eyes on both of those sites and not surrender. The battle against one to privilege, the battle against the other. I want to just suggest that although our discussion has focused largely not exclusively around the antisemitism, anti Zionism question on college campuses, the site of greatest concern, I must reiterate, when it comes to antisemitism, is the white nationalist world, which is where one hears calls to kill Jews and indeed actual deeds expressing that venomous political ideology. So we should be mindful of that important consideration as well. And thank you, Norma, for that question.

[00:57:02] **James Loeffler** So to take another question, Linda Seltzer has asked some a number of pointed questions about how to think about who Jews are and where their lived experience in the United States. And also the question about comparing the Jewish student experience to that of Chinese students. And here I want to just build on her question and possibly reframe it. We now see early signs that there are divisions inside

Chinese students in America between those who come from China and often have strong identification with the regime and want to defend it and other students who may be Chinese American or may be here and intending to identify much more with criticism of China. Right. I'd love to ask that the speakers to reflect a little bit on is the Jewish question unique? Or is it actually anticipating trends that do happen for other transnational diasporas? That we know exist and that will probably only expand with, you know, in terms of what a global edged higher education will look like, what American society will look like, where we will find communities split as well as splits between student factions based on identification with different sides of geopolitical conflicts. So, you know, this is another way of asking that horrible question about, you know, let's go back to the question, the uniqueness of antisemitism. But I would like to ask about this and how both of you think about that and what we could speak to other policymakers and thinkers who are beginning to see those parallel problems emerge.

[00:58:47] **Deborah Hellman** So I don't know. Did you want to go first? David? I think that's a great question. And my kind of thought my first thought is that Jews are not unique in that way and that there will be a multitude of experiences or different Jews and that, in a way, our paradigm example or our paradigm case for a kind of under caste in our society, in U.S. society today is African-Americans. And I think they're because they are so mistreated, their experience is more cohesive, more similar. And that once we move beyond that divide in our society, I think things become complex. I think one of the questions, and I think it was one of her questions, was also about the intersection between [00:59:51] just antisemitism and the treatment of Jews who have lighter or darker skin. And I think that that's probably a huge divide in people's lived experience because of the importance of race in America. So I do expect that people's experiences would be diverse and that that's important. The second thing I would say that I was thinking about when Professor Rozin was talking about ways, different ways that people experience statements about, say, the trait, the politics of Israel. [01:00:33] That is also not unique to Jews and really not even unique to issues around racial groups. That that debate about what whether kneeling for the American flag is insulting to veterans. People think many people think, myself included, that it's a legitimate way to protest America's failure to live up to its ideals and to have racial equality. And some others think that it's an insult to the country because you're being you're criticizing the country in an unfair way and especially denigrating the sacrifice of veterans. I've been at an event where the spouse of a veteran who was disabled broke down in tears in relief because some other people were supporting the protests of people of athletes kneeling. And so it's ubiquitous in society for people to have different experiences of what certain acts of protest or expressions of about politics convey. And I don't think that's unique to antisemitism at all.

[01:01:55] **David Myers** Yes. Thank you, Linda Seltzer, for that and the other questions you've raised, all of which are very interesting. I think you raised a good point about other campus based conflicts, say, between pro-mainland China students and say students supportive of Taiwan or Hong Kong pro-democracy and pro CP supporters. I think it's a really good question. I don't think yes, there is no BDS movement, as far as I know yet. But I don't think that means there won't be coming up. I mean, there is very considerable tension and even violence between such groups in the United States, in Australia, in other parts of the world. And I think as mainland China continues to crack down on Hong Kong, it's likely that friction will continue to grow and tensions will rise. And I wouldn't be surprised. I wouldn't preclude from consideration that something akin to the BDS movement would take rise. One place where it has, interestingly, is in the campus based conflict between Armenian and Turkish students or between students supportive of the Republic of Armenia and the support of the Republic of Turkey, especially around the

question of recognition of the genocide. So, for example, at UCLA, there has not been a resolution. That's true, maybe there was one note. I can't remember if there has actually been a resolution passed. A pro-Israel Palestine BDS resolution passed. I think perhaps not. There have been a series of BDS resolutions passed by the student government against the Republic of Turkey. Now, to be sure, this is not nearly as publicly visible as the Israel-Palestine conflict, but it is interesting to note that other student groups have used that instrumentality in cases where the enmity was just as deep and not as publicly prominent. And I think that points to the prominence of Israel Palestine. I mean, the disproportionate prominence of Israel Palestine for all sorts of reasons that make it. And make the tactics and strategies used in the conflict so exaggerated in significance. I should just I suppose, for the sake of this conversation, lay out my own view. I am not a supporter of the BDS movement. But I don't support attempts to criminalize it or to render aspects of it beyond the law, as has occurred in this the very state legislative acts. I am very concerned about this is another question that came out about the rise in antisemitic deeds and expressions, much more so than the rise of antipathy among the American public, in part because that which is most concerning to me comes from one identifiable source now empowered by the Internet, allowed to have free reign, and I think producing very dangerous and sometimes lethal results.

[01:05:33] **James Loeffler** Thank you both. There's a question here from Professor David Luban, one of our speakers. We'll hear from him in the next session. It picks up on something framed by others, which is the, I think professor Luban who benefits there can actually speak for himself as one of our core participants. Can you hear me? Yes, go ahead.

[01:05:56] **David Luban** Yeah. The question was to David Myers. You identified two sources of antisemitism in contemporary America. One is white nationalists, the alt-right. And the other is segments of the campus left. And I am wondering whether there are other places in which or other segments in American society at large that there is any hint of increased antisemitism. And the things I had in mind, I don't know whether there is polling or whether there is employment discrimination or bullying in schools. You know, all of the indices, the rise of Holocaust denial and so on are in the larger society. I mean, do we detect any growth in antisemitism apart from the segment you identified?

[01:06:55] **David Myers** Yeah. Thank you. I was actually trying to answer that at the end of my remarks just a minute ago. I want to say that. Just an important framing piece. I think that whatever we call it, antisemitism, anti-Judaism, anti-Jewishness, Judeophobia exists palpably on the right in the form of white nationalism. I'm very I'm loath to use that description to describe the pro Palestinian movement in the United States. I think there are cases that can be perhaps can be identified. But I want to just make clear that in public perception, these and in public discourse, these are two sites that are noted. So I don't want to equate them in terms of the actual US nature of antisemitic expression.

[01:07:55] **David Luban** Understood. And I agree.

[01:07:58] **David Myers** OK. So, you know, what the data show for the most part is relative stability in in attitudes towards Jews. I don't have statistics in front of me, but there are you know, everything is, as you know, with survey questioning lies in the formulation. And so Jews are once their, their antisemitism is relatively minimal in American society. And I just have to say one very interesting thing about rates of antisemitism globally. Rates of antisemitism tend to be highest where there are no Jews. So where there are Jews, you see significant declines in the rates of antisemitism. I'd say it's I'd say for the most part,

antisemitism is at remains at a relatively low level with two important countervailing data points. One is that when asked certain questions about Jews in power, numbers begin to rise in the American public. At the same time, and in pointing in a different direction, Jews, I think, remain the most admired group in American society, or certainly one of the most two or three most admired groups in American society.

[01:09:26] **David Myers** So what we're seeing in talking about the phenomena that we've been talking about today are, I think, outliers from that larger pool of the American mainstream. That said, in times of social, economic and political stability, as we have seen amply many different forms of group hatred, xenophobia and antisemitism tend to begin to boil up. And so this being such a period, it's not surprising that we're seeing quite overt manifestations, particularly from the right. And what's most troubling to me is the blur-increasing blurriness between extreme actors and mainstream when it mainstream media personalities when it comes to these forms of the group hatred, xenophobia that tend to take rise now. And even in some instances, antisemitism with assertions of Jewish globalism and global power emerging and surfacing. One thing I'll say just by way of conclusion is that in that world, sort of on the right end of the spectrum, I think we have seen traces of a new amalgam which about which we should pay attention, which is pro-Israel, antisemitic, that is, say, the absorption of longstanding stereotypes, negative stereotypes about Jews, combined with an appreciation for Israel as a bastion of a set of values with which a certain white right-wing sensibility resonates. And that's something very concerning.

[01:11:31] **David Myers** Jim, I think you're muted.

[01:11:34] **James Loeffler** Excuse me, we're just about the end of our time here. I. I want to ask Professor Hellman if she would take one more minute and maybe pick up on what Professor Myers just said, which is what we might call philosemitism and affirmative discrimination. Right. Which is something that we can anticipate will probably continue in some strange ways in the years to come in American society, whether it is in the form that Professor Myers describes of people who have complex attitudes of dislike and like for for Israel or Jews or those who may profess ideological attachment to Jews and Jewishness in ways that make many Jews feel uneasy. I don't know if you have any concluding thoughts you might share with us, though.

[01:12:18] **Deborah Hellman** I mean, this is a little and in a way, you're asking me to be a social critic, which is not my not my expertise. But I will say the phenomenon of a group that suffers discrimination also being put on a pedestal is clearly not unfamiliar.

[01:12:38] **Deborah Hellman** That's the situation with regard to women for many years, right. So that's a common combination. And it's a it can be problematic. But I want to marry that with a recognition that I don't think all stereotyping is necessarily bad.

[01:13:00] **Deborah Hellman** When I had a sabbatical right after my older daughter was born and we went and lived in Italy for six months, and when I tell people that we went there maybe three months after she was born, I tell people that. And they said, how did you travel and live abroad for six months with a newborn baby? And I say wasn't a problem. Italians love babies. OK, I am totally stereotyping there, but I don't think most of us think that is morally problematic what I just did. So it is true that the positive stereotype can be the flip side of the negative one in a way that's morally troubling. But I don't think all positive stereotypes or indeed all stereotypes are morally troubling. And if any of my discrimination theory students are here, they'll know we're spending several weeks

philosophically investigating what is a stereotype and what makes it wrong. It's a rich area of kind of moral and political philosophy and I think not easy to answer.

[01:13:59] **James Loeffler** Thank you. Professor Myers, a final quick comment?

[01:14:04] **David Myers** Yeah. I just want to pick up on something that Alexander put forward, which I think is really important, which is that since 2015, then from 2015 to to 2016 to 2018, there was one hundred percent rise in the number of antisemitic instances, which I think includes both deeds and expressions as chronicled by the anti-defamation laws. So we're in a period in which antisemitism indeed should be of real concern. While, I think those actions and deeds issue from a very, very small portion of the population. There is a very demonstrable rise about which we must be vigilant.

[01:14:47] **James Loeffler** Thank you very much. So I'm going to conclude now by thanking our panelists Orit, Debbie, and David and all of you for joining this conversation. A reminder, this is being recorded. It's available next week on the website of the Religion, Race & Democracy Lab at the University of Virginia, [religionlab.virginia.edu](http://religionlab.virginia.edu). So if you want to go back and review this, we hope you're going to continue to join us this afternoon. We reconvene at 2:00 p.m. Eastern Time. Our panelists then will discuss the question of how can law protect groups? A reminder, too, if you have not registered for that, you have to do it for each session because of Zoom technicalities. So please do that. Thank you again. We'll see you soon.