

What The Constitution Does Not Say
By Mark H. Alcott
malcott@alcottadr.com

To those who claim that anti-Semitism is protected by the First Amendment, I ask: When is the last time you read it? Do you know what it really says, and what it does not say? True, the First Amendment prohibits government infringement of speech, but it also protects freedom of religion. In fact, religion is the very first thing protected in the Bill of Rights, because the founders regarded it as our most important freedom. Calls for the genocide of Jews and other anti-Semitic hate speech impede the "free exercise" of religion (as the Constitution characterizes it) and thereby are actually *inconsistent* with the First Amendment.

When rights conflict, there is no constitutional mandate to favor speech. For example, notwithstanding the First Amendment, courts restrict speech in order to protect the Sixth Amendment right to a fair and impartial trial and the Fifth/Fourteenth Amendment rights to due process of law, by such techniques as imposing gag orders on litigants (viz Donald Trump); prohibiting jurors from discussing the case while it is pending; barring media reports of some sensational cases; keeping grand jury testimony secret; etc. Regardless of the First Amendment, the law prohibits, among other things, threats of violence against the President (a federal crime), the exchange of price information by competitors (a violation of the antitrust law), and defamation (a civil tort) — even though all of these activities involve nothing but speech.

Apologists claim that even the most hateful, threatening and damaging anti-Semitic speech must be permitted because of the First Amendment. But that's not what the Constitution says, and not what it does.

That said, it is unfortunate that the current debate about anti-Semitism at our leading academic institutions has been so focused on issues of speech, although that is understandable in light of the outrageous testimony of university presidents. The more profound question is why is there so much hatred on college campuses — hatred that extends to advocating, celebrating and/or disregarding the slaughter, massacre, rape and mutilation of Jews in Israel? Why is there so much ignorance among elite students, who chant "from the river to the sea" but have no idea what river or sea they are talking about; who champion Gaza because of their opposition to Israeli "occupation" and "settlements" but are unaware that Israel has no settlements in and doesn't occupy Gaza; who condemn Israel as a white, apartheid state without realizing that more than 20% of its citizens are Arab, who serve on the Supreme Court, in the Knesset, in the IDF and in great numbers in the professions; who embrace both LGBT rights and Hamas — led Gaza without realizing that Gay Pride Parades in Israel are festive events attended by hundreds of thousands of people, but in Gaza such events are prohibited and gay sex is a criminal offense; who shrug off the multiple terrorist attacks of Hezbollah without realizing that it has been designated as a terrorist organization not only by the United States, Israel and other countries but also by the Arab League.

The answer to those questions lies not in the Constitution but in the hearts and character of college students and the quality of what they are taught. I'm not sure what can be done about the former, but surely something can be done about the latter, including by my once-beloved, once-respected alma mater Harvard.