

The Trump Executive Order and Antisemitism

by Michael Curtis



Sometimes I wonder why I spend the lonely night dreaming of an end to discrimination. The fantasy haunts my reverie.

It is a sad reality that antisemitism and antisemitic incidents in the U.S., as in a number of European countries, have increased in recent years. Shooting Jews in Jersey City, NJ, in San Diego and Pittsburgh, hate crimes in New York City and Poway, assaults on Orthodox Jews in Brooklyn, attacks on synagogues and Jewish community centers, graffiti painted over posters of Supreme Court Justice Ruth Bader Ginsberg, board members of the Women's March culpable of antisemitic remarks are the new normal. Most deplorable is the predicament that Jewish students continue to face harassment in schools, colleges, and universities.

On December 11, 2019 President Donald Trump issued an "Executive Order on Combatting Antisemitism" largely aimed at fighting antisemitism on college campuses. Symbolically, he signed it at a Hanukkah reception in the White House. He regarded it as a "very powerful document." This, he explained,

is “our message to universities. If you want to accept the tremendous amount of federal dollars that you get every year, you must reject antisemitism.”

The order is based on Title VI of the Civil Rights Act of 1964 that prohibits discrimination on the ground of race, color, and national origin in programs and activities under any program or activity receiving Federal financial assistance. Title VI does not cover discrimination based on religion, but individuals who are members of a group sharing common religious practices may be protected from discrimination on the basis of race, color, or national origin.

The Trump executive order states that the policy of the executive branch shall be to enforce Title VI against prohibited forms of discrimination rooted in antisemitism as vigorously as against all other forms of discrimination prohibited by Title VI.

The order also calls on official agencies to consider using the definition of antisemitism of the IHRA, the International Holocaust Remembrance Alliance which, among other things, includes extreme criticism of Israel, such as that the existence of the State of Israel is a “racist endeavor,” as antisemitism. Israel is not mentioned in the executive order, but the order clearly indicates a policy of outlawing extreme statements aimed at the elimination of the State of Israel.

Before the exact text of the order was published, critics, including the New York Times, responded, saying that Trump by placing Jews in the “national origin” group, was defining Jews as a separate nation. But the order did no such thing. It did

not classify Jews as a separate nationality group. In any case, civil law already forbids discrimination on the basis of "national origin." It also protects members of groups that have both ethnic and religious characteristics such as Jewish Americans and Arab Muslims. Jared Kushner in an op-ed explained the executive order saying it merely says that to the extent that Jews are discriminated against for ethnic, racial, or national characteristics they are entitled to protection by the anti-discrimination law.

The concept of "nation" is not easy to define. Are the Basques or Catalans nations? "Jews" are particularly difficult to define, considering they may embrace factors such as religion, ethnic, tribe, and individual assessment. The issue goes back to *Genesis*, 12.2 where the Lord tells Abram, "I will make of thee a great nation, and I will bless thee, and make thy name great." Jews may not necessarily be defined by race or religion. In one case Jews may be part of a mixed racial group. In another, non-religious observant Jews are still considered Jews. In a third factor Hebrew is the official language of the State of Israel, but it is not the main language of many other Jews.

In essence in what is tantamount to self-determination, Jews belong to a nation if they think they do, and that identity will include cultural, historic, and linguistic factors among others. A remarkable statement on this came from the renowned and highly honored English philosopher Sir Isaiah Berlin who said, "I am a Russian Jew from Riga, and all my years in England cannot change that. That is how I was born, and that is who I will be to the end of my life."

The Trump executive order does not refer to Jewish

nationality, but only indirectly to "national origin" by referring to the Civil Rights Act. That concept is not officially defined but is based, as in the case of Isaiah Berlin, on a nation from which persons originate, regardless of the state in which they currently reside. This is not equivalent to nationality which denotes people with a legal connection and personal allegiance to a specific place. A more encompassing reference to nationality would be to ethnicity, cultural and ancestral descent.

Jews have always been divided politically, economically, socially, ideologically. Nevertheless, research has shown a continuous genetic link between Ashkenazi Jews and the Middle East, thus illustrating that they descended from Jews who fled the area after the Muslim conquest in the seventh century. Jews remained in the area even after the destruction of the Second Temple in 70.

Jews and Judaism are trouble makers for comprehensive definition. They may not fit comfortably in any definitive definition of nation, race, or religion, as Arnold Toynbee once argued, but they are not "living fossils," as he also said. Judaism has been expressed in many forms from the Sadducees, Pharisees, and Karaites to the Conservative, Reform, and Orthodox today, differing on the interpretation of Jewish law, authority of tradition, and on the State of Israel. Clearly, Jews were an ethnic and religious group in their origin in the Middle East. They can in this sense be termed a nation, because of that common religion, history, and culture, though not citizens of a state except 2000 years ago and in Israel today.

Irrespective of any agreed definition of "nation" or even

“national origin,” the Trump executive order did not classify Jews as a “nationality,” thus avoiding any charge of double loyalty, as Rep. Ilhan Omar has insinuated, or abandoning any belief in universalism.

It is evident that much of the criticism of the executive order stems from inherent antagonism to the State of Israel. On May 26, 2016, the International Holocaust Remembrance Alliance, IHRA, in Budapest proposed a working definition of antisemitism, a certain perception of Jews, which may be expressed as hatred toward Jews. The definition includes Holocaust denial, and antisemitism relating to Israel, applying a double standard to actions of Israel. On June 1, 2017 the European Parliament called on members of the EU to adopt and apply that definition.

The IHRA definition was adopted in the U.S. In 2004 , Ken Marcus, then as now in the office of the Civil Rights unit, wrote that the office was aggressively investigating alleged race or ethnic harassment against Arab Muslims, Sikh, and Jewish students, who could be subject to discrimination on grounds of race or ethnicity. Again in 2010 , Thomas Perez wrote that discrimination against Jews, Muslims, Sikh and members of other religious groups violated Title VI when that discrimination is based on the group’s actual or perceived shared ancestry or ethnic characteristics, rather than its members’ religious practice.

The U.S. Senate on June 13, 2019 unanimously passed a bill, co-sponsored by Sen. Ted Cruz and Sen. Tim Kaine, that the Department of Education should “take into consideration” the definition of IHRA as part of the Department’s assessment of whether any practice was motivated by antisemitic intent.

Antisemitism, it held, was a unique form of prejudice stretching back millennia that attacks the equal humanity of the Jewish people.

The bill tries to illustrate the issue by showing useful examples of discriminatory conduct that crosses the line into antisemitism: prohibition of land ownership, BDS and campaigns to boycott or destroy Jewish businesses, denial of the ability of Jews to practice certain professions, limitations on admission to certain educational institutions, and other barriers to equal justice under the law.

The bill resolved that the United States should be committed to combatting all forms of antisemitism. That commitment should be made by the U.S. House of Representatives. One understands that the House, especially Rep. Adam Schiff and Rep. Jerrod Nadler, and is preoccupied with fantasies of collusion with foreign powers but it is disheartening that the House has been unable to pass a resolution similar as that of the Senate straightforwardly and directly condemning antisemitism.