Bill Barr: Moral Clarity in Massachusetts

FORMER HARVARD PRESIDENT CLAUDINE GAY AT A MENORAH LIGHTING CEREMONY IN THE DAYS FOLLOWING HER CONGRESSIONAL TESTIMONY ON ANTISEMITISM. (PHOTO BY ANDREW LICHTENSTEIN VIA GETTY IMAGES)

A judge stands up for Jewish students—and against Harvard.

By William P. Barr

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Last week, a federal judge in Massachusetts sent an unmistakable message to campus administrators in the United States: when it comes to combating antisemitism, talk is cheap. Judge Richard Stearns greenlighted a student organization's case against Harvard that alleges the university failed to protect the civil rights of Jewish students even as they were harassed, intimidated, and violently attacked by their peers. "The facts as pled show that Harvard failed its Jewish students," Stearns wrote in his 25-page decision.

Harvard urged the Judge to dismiss the case, arguing that campus administrators had done enough to combat antisemitism by issuing condemnations of it, holding listening sessions about it, pulling together a task force on it, and pledging to take action against it. But Judge Stearns refused. He rightly observed that federal civil rights law demands more than denunciations—it requires meaningful action. Dismissal of the case, he reasoned, "would reward Harvard for virtuous public declarations that for the most part, according to the [Plaintiffs], proved hollow."

The plaintiffs allege that the school violated Title VI of the Civil Rights Act, which "prohibits discrimination based on race, color, or national origin." And Title VI imposes a high cost on educational institutions that act with "deliberate indifference" toward discrimination. Any institution that receives federal funding—whether in the form of federal research grants or student loans—must comply with Title VI or risk losing the government's financial support. Not only does Title VI prohibit these institutions from engaging in discrimination themselves, it also imposes a duty to address discrimination by others. So, if a school is aware that students are engaging in discriminatory harassment, it has an obligation to take reasonable steps to combat it. Condemnations, pledges, panel discussions, and hand-wringing are not legally sufficient substitutes for meaningful action.

It is easy to see why ordinary Americans find it difficult to take university leaders at their word when it comes to antisemitism. For starters, there's the moral obtuseness that was on display last December when the presidents of three elite universities, including Harvard, could not bring themselves to admit to Congress that calls for the genocide of Jews violate their universities' codes of student conduct. Then there's the brazen double standard. In the wake of the Hamas massacre, many of the same institutions that breathlessly condemned systemic racism following the death of George Floyd and bias against Asian Americans upon the outbreak of Covid-19 were conspicuously silent about the deadliest day for world Jewry since the Holocaust. And then there's the outright hypocrisy. Having long turned their backs on academic freedom and free speech, the same universities that zealously police speech for microaggressions reconsecrated themselves to the First Amendment, defending the rights of faculty and students alike to call for the murder of Jews.

This is more than a problem of doublespeak. University leaders have both the authority and the means to put a stop to antisemitic conduct, but it appears that they are making a deliberate choice not to. America's colleges and universities are thickly papered over with campus regulations, antidiscrimination policies, codes of conduct, and disciplinary processes. Yet in many cases administrators are suspending the rules when it comes to protecting Jews. For example, campus time, place, and manner regulations prohibit the sorts of encampments we have seen at Harvard, Columbia, and UC Berkeley. (My law firm presently represents two nonprofit organizations in a case against UC Berkeley for antisemitic discrimination.) But campus administrators allowed encampments to stay in place while participants harassed Jewish students, denied them access to areas of the campus, and even physically assaulted them.

On these facts, it can be difficult to tell whether universities have been acting with willful indifference or just willfully. Time—and discovery—will tell. But every now and then we get a bracing glimpse of what the administrators who are responsible for implementing campus antidiscrimination policies really think about Jews. At Columbia, text messages exchanged by a group of deans during a panel discussion about the crisis of campus antisemitism offered some honest insight. While a Jewish panelist was speaking, one of the deans remarked that it was "hard to hear the woe is me" because it was coming "from such a place of privilege." A second accused a Jewish speaker of "tak[ing] full advantage" of the crisis on campus for its "[huge fundraising potential." A third was more concise, if less articulate. She reacted to the panel with a vomiting emoji.

The texts are bad, but the reality they reflect is even worse. They illustrate the moral and intellectual rot that has been gnawing away at our institutions of higher learning for decades. Our universities have long nurtured—and have by now been largely captured by—an ideology that divides the world into victim classes and oppressor classes, and views our legal and judicial institutions as systems of subordination masquerading as neutral arbiters of justice. Under this worldview, Jews occupy a position of unique "privilege" as the apex oppressors on a social pyramid of power and subordination. They cannot—by definition—be victims because they are oppressors. As such, they are unworthy of the same protections afforded to groups at the bottom of the pyramid of social oppression.

If you buy into this worldview, hatred against Jews is justifiable and violence against them is defensible as a legitimate act of resistance—or, at the very least, not worthy of sympathy. That is why it was "hard" for a Columbia dean to hear what she derided as "the woe is me" from a Jewish speaker. It's why another was quick to accuse a Jewish speaker of using his power to exploit the moment for its "fundraising potential."

The current crisis of campus antisemitism has laid bare for all Americans just how dangerous a cultural moment we are living in. The same ideological forces that have unleashed virulent antisemitism on our campuses have also unleashed some of the worst atrocities in modern history. They are antithetical to our nation's core values. Individual liberty and individual responsibility have no home in a system obsessed with allocating collective guilt. And when the rule of law is seen as a racialized system of subordination, equality under the law is a delusion. We've seen this revolution before. It doesn't end well.

Because universities are failing in their responsibility to protect the rights of Jewish students, it now will fall upon the courts to do so. Judge Stearns' decision raises the stakes for universities that fail to take meaningful action to protect the civil rights of all students. Let's hope the Justice system exacts a heavy price.

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Mr. Barr served as U.S. Attorney General, 1991-1993 and 2019-2020. His memoir, One Damn Thing After Another, was a #1 New York Times bestseller.

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