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This is the Libertarian Podcast from the Hoover Institution.

I'm your host, Tom Church, and I'm joined, as always,  
by the Libertarian Professor Richard Epstein.

Here at Hoover, Richard is the Peter and Kirsten Bedford Senior  
Fellow.

He's also the Lawrence A. Tisch Professor of Law at NYU.

And he's a senior lecturer at the University of Chicago.

Richard, there are three universities

I just listed off there, conspicuously missing  
from the university presidents who were hauled in front  
of Congress yesterday--

presidents of MIT, Harvard, UPenn, others--  
were summoned in front of Congress  
and grilled about anti-Semitism on their campuses  
and various pro-Palestinian rallies taking place,  
disrupting classes, and generally making  
Jewish students feel unsafe.

I'd love to know, Richard--

I'm not sure if you saw these clips of Congresswoman  
Stefanik asking these presidents a very basic question.

I'll ask it to you, and I'd love to get your answer.

And this is the question that was asked of each of them  
over and over.

Does calling for the genocide of Jews  
violate the code of conduct or rules  
regarding bullying or harassment at your university, yes or no?  
And I'd love to get your answer to that, Richard.

I'll give a yes answer to that question.

You would just stop there, yes?

Well, because I mean, I could say yes and why, but you just asked for the yes/no question.

But look, I mean, the most important thing to do is to understand how this kind of word salad game got played by the presidents.

What they said, in effect, is that this would only count as a form of anti-Semitic hate speech that is regulated by cold if you simply went up to somebody in their face and said, I want to kill you because I believe in the genocide of Jews.

But their general view is if it's made publicly to the entire world, that particular statement having no particular target is just another form of freedom of expression that we have to deal with.

What's wrong with that is the very thing they talk about.

They said, you have to put all of this in context.

Well, they kind of gave you the view that context makes the speech better.

There is also another view of this subject, which is the context makes it only worse.

This is done at a time when there were all sorts of demonstrations that are taking place.

Bullhorns are being used.

Students find themselves physically threatened.

Teachers in their classes start to call them

one kind of name or another.

Everybody sort of hides in one way.

And so you see all of this particular context.

What you know is there's a kind of muscle  
behind all this stuff, which makes it much more deadly  
than the words taken by themselves in isolation  
would deal with.

This is not some kind of academic seminar  
in which you're debating, as often is done today,  
is the creation of the state of Israel  
legitimate given the Palestine mandate and everything else  
that happened in 1947.

These are immediate and direct threats.

And let me just give you a tort example.

And I think it kind of helps this.

I always think private law things do.

There's a 1952 case called *Silz and the Gulf*.

And there's a guy who's sitting negotiating with a union.

And essentially what happened was  
that the speech came to him directly, which is fine.

They didn't threaten him with anything.

But they said, you better be aware of what's going  
to happen to you down the road.

And so this is not a technical assault.

That is an offer of force against somebody  
who is within arm's length.

But nonetheless, they say this creation  
of a sort of intentional creation

of emotional distress and anxiety  
is nonetheless actionable.

And that's what's happening here.

The speech may not be directed at a single person.

But it is so pervasive, so obnoxious,  
so deadly in its implications that everybody who hears  
this to say, well, they could be coming after me if they're  
willing to talk like that.

And then what you do is you start looking on campus  
and see whether or not there's any action that's  
been taken by the administration to make sure  
that they even enforce their own rules about various kinds  
of demonstrations.

And it turns out it's not the case.

If you believe in the Hamas situation,  
you march on campus whether or not you get yourself a permit.

If you're not supposed to use bullhorns, you'll use bullhorns.

If you're not supposed to shout out at the top of your lungs,  
you'll shout at the top of your lungs.

So what's happened is there is now  
very concrete evidence on these campuses  
that they're not willing to, in fact, enforce their own rules  
based on the time, place, and manner of the speech.

And given that lax enforcement, it only  
reinforces the impression that they're not  
going to do anything to stop anything else.

At this particular point, it looks about the only thing  
that these presidents have prepared to stop

is the occupation of school building  
by these alien groups, at which point they may call the police.

And obviously, that's more dangerous  
than what's happening here.

But it doesn't follow from that.

What's going on in these particular cases  
is a walk in the park.

It's extremely dangerous.

And as there is less and less resistance  
from the central administration, there  
will be more and more liberties taken by these groups.

Anybody who listens to the kind of pathetic responses that  
were given, particularly by Claudine Day and Liz McGill,  
neither of whom should be president of any university,  
would have to come away from the fact  
that they have no judgment whatsoever.

They are heads of great institutions.

And they cannot bring themselves to say that those people who  
are in favor of beheading and disemboweling women as part  
of a joint in the park are doing something that's morally wrong.  
God protect us.

It's hard to imagine any form of moral relativism  
that is worse than that.

And there is nothing whatsoever about being  
the president of a university or a spokesman of a university  
that forces you to be silent on these issues.

You can recall when there was this trial with respect  
to George Floyd, every university went head over heels

and denounced every kind of systematic American racism  
with respect to the conviction or the events  
that led to the conviction of the various policemen.  
And why, if they could speak out on that case,  
which is much more enigmatic and much less important  
in this case, do they have to remain silent  
in the face of speech waves that only promise hatred and perhaps  
more violence?

It's just absolutely mind boggling to me  
that they hunker into a corner.

Their performances were shameful.

As Ms. Stefanik said, I think you all ought to resign.

She may not have said that about the MIT woman,  
but certainly with respect to what happened at Penn  
and with respect to Harvard.

And she's right about both of these cases.

And you'll much hope that the boards of trustees  
will do something about it.

But what is so depressing about all of this  
is people are supposed to have good business,  
and essentially they're turning into cowards as well.

And so if you find nobody who's prepared to stand up to this,  
everybody who's prepared to say, well,  
you've got to look at both sides of this question.

One of the points about a system of moral beliefs  
is it's not a system of total relativism.

And you can say when there are two sides to a dispute,  
one of you is wrong and the other

has not done those kinds of things.

So unless they can start the show,  
Jewish students marching around campus,  
banging drums, threatening all their leaders,  
they essentially just don't understand  
that parity is not what you need in this case.

What you have to do is to recognize  
that one side on these fundamental issues is wrong,  
and the other side is not, and act accordingly.

This is not saying what you have to believe  
about the long-term history in the Middle East.

Nobody would want the university presidents  
to talk about, quote unquote, "the desirability of a two  
state solution," or how many settlements should be occupied,  
Jews or Arabs in the West Bank.

All of that stuff can be postponed to another day.  
But the current situation, the immediate threats,  
and the justification of ghastly and humane acts  
by these presidents indicate that they're moral cretins.  
And they really do not be presidents  
of any major university.

And it's a sad sign that people of this utter mediocrity  
have been selected to lead elite institutions.

And if they're bad on this stuff,  
chances are they're not good on anything else either.

- Richard, I think it's been pointed out by everyone  
in the last day that if Congressman Stefanik had asked  
the same question but substituted Jews

for any other minority or an oppressed group,  
the answer would have been a resounding yes,  
it's against code of conduct.

And instead, we get context.

However, one question I do want to bring up with you  
is we're talking about some speech issues, right?

There is free speech and then there is code of conduct.

There is universities have more latitude to say,  
this is against our code of conduct,  
or this is bullying, this is harassment,  
we can take punitive action.

How is it that it's Congress's business under,  
I don't know, presumably the First Amendment,  
to be involved in this?

I mean, is this just outrage for outrage sake?

Or why is Congress looking and summoning these institutions?

- Okay, well, you know, it's always the question  
with the eyes of legislative reform.

One of the single most powerful development  
that we have now is oversight as opposed to legislation.

And oversight is looking with this with review  
to some kind of long-term regulation  
of the particular conduct in question.

And it may well have to do, well,  
perhaps you think this is free speech,  
but we think it's a rather dangerous thing.

So what we're gonna do is examine the ties that we have.

When we make grants to you,



you're not gonna take steps against this.  
The federal government will not support  
the way in which these grants are done.  
And somebody could even argue that the terms  
of many of these grants may have been violated.  
You have to look closely to see whether that's true or false.  
And as that's the case, right now,  
some of these institutions should be in effect told  
that either they have to shape up  
or they have to forego the particular income.  
But the other point about all of this  
is these are private institutions.  
Public institutions are a bit more complex.  
And private institutions aren't bound by the First Amendment.  
And they speak up on all sorts of other issues  
of general popular concern.  
And why is this the only case  
in which they refuse to do something,  
whereas all sorts of crazy domestic concerns  
get university situation.  
So just to take another issue  
on which I have rather strong views,  
there's always the question,  
what are we gonna do about global warming?  
And my first thing is make sure  
that Governor Newsom doesn't make it worse.  
But do we want universities to take collective positions  
on global warming?

Well, I think many universities believe  
that we ought to do that.

And I certainly don't believe that.

I think people on both sides should be allowed to do it.

Institutions take their own way.

But you certainly don't wanna ostracize or limit somebody  
who believes that the science is unsettled  
or indeed cuts in the opposite direction.

So at this particular point, what happens is it turns out  
that this is the only area in which we have this stuff.

And as so many people have said, there have been,  
let us say, just take the number and face fact,  
15,000 deaths in the Gaza area since the start of the war.  
Horrific number.

Compare it to the number of dead and the number of exiles  
that have taken place in Syria over the last 15 years.

There are probably several hundred thousand people  
who've been killed, millions who've been deported  
or have essentially had to find refuge.

And there's not a single person who's prepared  
to attack Israel that's even prepared to comment  
on this stuff or on what's taking place in Yemen  
or essentially about what's happening with respect  
to the massive infringements on civil liberties  
that are taken by Iran in its direct actions  
and through its various proxies.

So they just single out this kind of support.

And so one of the reasons why you think of this

as antisemitism is that there is no uniformity  
of standard that's being applied.

And in fact, the folks who support Hamas  
are doing this in a kind of weird way.

These are the most intolerant people.

They're bigoted with respect to all matters of race,  
all matters of religion, all matters of sexual orientation  
and so forth.

The people who support them if they were in those countries  
would be killed by them.

So it just doesn't make any sense  
to see the way in which it's going.

So it's not just in fact that what we see,  
moral impotence on the part of two,  
maybe even three university president.

What we do is we see stemming from this particular war,  
the most horrendous maneuver, which says that now  
we really think there is a justification  
for what Hamas did.

And therefore, if they were justified in doing that,  
anything else that they do can't be as bad  
as the things they've already done.

And so they get a free reign.

This becomes a really dangerous and corrosive attitude  
to take on these things.

And it's not just a legal issue.

One of the things to understand about antisemitism  
or any kind of hate speech, for example,

the rabid segregationists back in the '50s and '60s,  
speech like this may not call for violence explicitly,  
but it always leads to violence by people who take the messages  
much too seriously.

And therefore, you have to take all the social steps  
that you can to curb this kind of behavior.

And so even if you cannot legally prohibit some  
of the speech that's taking place,  
you certainly can engage in counter speech  
in order to indicate that not only does it not  
represent what we believe, but it's  
a kind of conduct that we find so offensive that we're  
clearing it off campus.

Indeed, my view at this particular point  
is if I were Jewish, I would not care  
if I was banned from staging a small demonstration on campus.

A position which says we're keeping all demonstrations  
associated with Gaza off the table and out of the campus  
is perfectly justifiable, given the huge disparate impact  
that that has.

At the current situation, it leaves many Israelis,  
many Jews feeling very dangerous and exposed,  
and they're not just whistling Dixie.

And stopping these kinds of demonstrations  
on the campus, in the classroom, in the newspapers if need be,  
is I think a palliative measure.

And so they're not bound by the First Amendment.  
It's private institutions.

And I think what they have to do is  
to assert some form of moral authority.  
To put it in another way, the reason  
we don't want private institutions  
to behave as if they're government institutions  
is they have much more knowledge of their own particular  
situations, and they should be allowed  
to act on that administratively in their own capacities.  
It's decentralized authority, not uniform authority.  
And if they, in fact, know more than the federal government  
about what's happening on their campus,  
they should be allowed to act, even if the universities  
themselves cannot.

Richard, I want to ask about the protests going on on campus.  
My question was really, when should these protests  
be shut down, which is a really weird, chilling thing  
to think about.

I don't like shutting down protests.  
But I guess we've seen them clearly go too far  
in some areas.

I guess I want to ask you, how should the, I want to say,  
pro-Palestinian groups be protesting to be effective,  
but not come across as anti-Semitic, not, I guess,  
go down that route?

I do want to point out, someone posted a study,  
I believe this is the Wall Street Journal,  
that 47% of students who embrace the slogan,  
from the river to the sea, could name the river or the sea.

Don't know what it means.

Right, exactly.

But so, I mean, they want to protest.

Even if they think that that is not a genocidal chant,  
and we've talked plenty about that,  
how should they be protesting?

Well, I mean, they should do, first of all,  
leave the campus alone.

And then, but there are very definite rules  
about time, matter, and space restrictions,  
place restrictions, that on public lands.

And that's where most of these protests should be.

Or if they really want to stage a rally,  
they should rent a hall off campus  
and gather under those circumstances  
and do what they will.

But I don't think that the university is  
required to give them a home when  
the speech is that obnoxious.

The other thing, I think, is that, again, the university  
may well have a position which says,  
you behave in this way on campus.

You have to be subject to punishment.

And one of the things that were so exasperating about the talk  
that we heard is they said, well, we  
don't talk about individual student cases.

They weren't asking for individual student cases.

They were asking a simple question.

Has any single student who's been engaged  
in these near forcible protests on campus  
been subject to any disciplinary sanction  
at any of these universities?

And I think the answer to that question is no.

And I think the answer to that question will continue to be no  
if they continue to hem and haw in this particular fashion.

It becomes, I think, absolutely critical  
to recognize that when people make local rules  
and they do so for political reasons,  
that compounds the felony.

It doesn't excuse it.

So the early warning sign on this  
was when President Gay at Harvard presided over  
the commencement meeting.

Several Palestinian students rushed up to the podium  
and started to attack Harvard on the grounds  
that it supported apartheid and invested in Israeli companies  
and so forth.

At that point, they had to punish.

You want to say that in some other way?

Fine.

Disrupting ceremonies, blocking bridges, and all that stuff,  
it's just not there.

And what they did, in effect, is they just sloughed it off  
and they made excuses.

But what happens is there's a kind of aversion  
today of the broken windows hypothesis

that applies to speech.

If you don't stop the little stuff,

people are going to say, well, maybe they won't stop stuff.

That's a little bit bigger.

And so they'll go a bit tougher.

And then they'll go tougher, Phil.

And unless you stop this stuff at the beginning,

you're going to face what you do now, a genuine tidal wave.

And the tidal wave of anti-Semitism in this country

is much more difficult to stop, in part

because we have demonstrable failures on the part

of major university president.

And on part because the forces who

are backing all this stuff are so entrenched,

it's not at all clear what can be done.

This has become an existential struggle

for the soul of the United States.

And it's being pushed, I mean, in a situation

where there's no moral equivalence between the two

sides.

And everything that Hamas has done

in terms of speech and behavior has been crude.

It's been false.

It's just been one horror story after another.

And we're supposed to sit by and get really mad at Mr. Netanyahu

because of his positions on judicial reform

in the state of Israel.

This is just not where we need to be



at this particular point in time.

And that testimony, I hope, will be  
an alert to the best people in this country.

I mean, it may influence the presidential election  
because if you're Jewish, as I am, and you look around  
and you see the Democrats, your strong Democratic supporter  
is Joe Biden, who waffles on a whole variety of substantive  
issues and subordinate issues.

And all of your strong dependents  
turn out to be evangelical Christians or Trump supporters.

I mean, this is one of the really weird inversions  
that have started to take place, that it turns out  
that everything the Democrats believed about civil liberties  
and about the dangers of red baiting and so forth  
in the 1950s, they now practice the very things  
that they condemned 60 years ago.

This is not the party of my parents.

It's not the party of my youth.

This is a party that we don't need at all.

And so it's very, very frightening  
to see this thing happen in the way in which it does.

And I'm kind of, to put it mildly, slightly  
obsessed and appalled, but I do hope and seriously hope  
that Harvard and Penn basically decide to do things again.

And if they don't, their board of trustees  
should resign en masse.

And students should not go there.

Let me just mention one thing.

I have many research assistants.

Some of them still come from the major Ivy, some quite brilliant students, including one recently from Penn and another one recently from Yale, who I recommend to anybody.

But there are also students every bit as good from Grove City's College, Hillsdale, Beaumont, static Henry College, and so forth.

And I asked them, why did you go to these places?

And their answer is, why would I want to go to Harvard?

And now after this event, you see the point.

And this is going to only make things worse.

Sensible Jewish students, sensible conservative students will give that place a wide berth, at which point their selective admissions policies will inbreed this.

I cannot tell you how deadly it is to have these DEI policies, because what DEI policies do is you have a filter now so that only people on the left wing of American politics could have major university positions, only ones who could teach students, and then they admit students who think the way that they do.

So that what you do is you get yourself universities, which instead of being representative of a cross-section of American ideals and ideas, it turns out that 90% of it is far left in the way in which it operates.

And everybody there supports it and praises it, because they all think exactly the same way.

Intellectual diversity cannot survive the kind  
of political programmatic stuff that takes place on too  
many campuses too often today.

And this is the simple truth.

Most of the people who work with me, who sign letters with me,  
and so forth, they were all over 70.

I wonder why, because we don't think ourselves  
of being subject to the retaliation.

But time and time spare no man.

And in 10 years from now, my guess  
is that most of us will be out of this particular business  
and that the tide will continue to work.

And so the great American universities  
will become a hollowed out shell,  
which will be known for its lack of intellectual distinction.

And this has to be stopped now.

And the only way it could be stopped  
is to get rid of the shilly shelling  
that we see from eminent university  
prep-residents, two of whom at least have no business holding  
their current job.

You've been listening to the Libertarian podcast  
with Richard Epstein.

As always, you can learn more if you head over  
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we publish on [definingideas@hoover.org](mailto:definingideas@hoover.org).

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For Richard Epstein, I'm Tom Church.

We'll talk to you next time.

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