

Fighting back against campus anti-Semitism (Book review)

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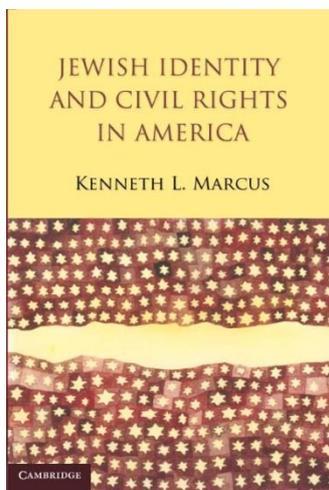
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Fighting Back Against Campus Anti-Semitism



Kenneth L. Marcus

Jewish Identity and Civil Rights in America

Cambridge University Press (2010), Pp xi + 211 paperback \$29.99

Review by Lesley D. Klaff

This review is dedicated to the memory of my Father
Bernard D. Blank
1927 – 2011

Who fought for Israel in Machal's 7th Brigade in the 1948 War of Independence

I was delighted when JSA co-editor Steven Baum asked me to review *Jewish Identity and Civil Rights in America* for this Special 'Campus Anti-Semitism' Issue. This is because *Jewish Identity* is a seminal and comprehensive text on the 'new' campus anti-Semitism, and it was written by this Special Issue's Guest Editor, Kenneth L. Marcus.

Marcus's credentials make him arguably America's foremost expert on the resurgence of anti-Semitism in American higher education. He is the Executive Vice President and Director of the Anti-Semitism Initiative in Higher Education at the Institute for Jewish and Community Research, and was formerly Staff Director of the U.S. Commission on Civil Rights, where he served as the agency's chief executive officer. Prior to that he was delegated authority as Assistant Secretary of Education for Civil Rights, and served simultaneously as Deputy Assistant Secretary of Education for Enforcement in the Office for Civil Rights. He also secured an academic position in 2008 as the Lillie and Nathan Ackerman Visiting Professor of 'Equality and Justice in America' at Baruch College, City University of New York. His experience as civil rights lawyer, policy maker, activist, and academic, inform and illuminate his writing in *Jewish Identity and Civil Rights in America*, resulting in a book which

addresses and deconstructs all the issues pertinent to the re-emergence of anti-Semitism on American college campuses.

Since the start of the Second Intifada in 2000, and exacerbated by the events of 9/11, a “pernicious movement” to defame Israel, Zionism and the Jews has gathered speed and is “trying to flood into America through the classroom door,” (Jonathan S. Tobin, ‘The Reality of Campus Anti-Semitism’ *Commentary Magazine*, 22 April 2011). University sponsored events involving extremist political activities openly vilify Israel and its supporters. Moreover, anti-Israel – and even anti-Semitic – professors have acquired a disproportionate influence in some American universities. These professors conflate academic freedom with political indoctrination and openly express hostility to Israel and its supporters in the classroom. This is not only apparent in academic treatments of the Middle East but is also, unfortunately, a feature of several Jewish Studies departments which have provided a welcome home to Jewish anti-Zionist professors. All this has resulted in the creation of a hostile campus environment for Jewish students wherein they feel harassed and intimidated. Significantly, it denies them equality of educational opportunity, an interest that has been preeminent since the 1954 U.S. Supreme Court decision of *Brown v. Board of Education*.

This situation on campus is the context for Ken Marcus’s book. The author takes as his central theme the failure of the federal government to intervene to protect Jewish students from discrimination, in particular hostile environment harassment, on campus. Drawing on his experiences with the Office for Civil Rights of the United States Department of Education (OCR), America’s primary enforcement agency in cases involving education and civil rights, Marcus offers the reader invaluable insights into the conceptual, legal, and political obstacles that have prevented Jewish students from receiving civil rights protections in American higher education.

The book has several interrelated topics as its focus. These are the on-campus campaign to delegitimize Israel and why this is anti-Semitic; the failure of the universities themselves to address the problem of anti-Semitism on campus; the traditional reluctance of the U.S. Department of Education’s Office for Civil Rights to investigate allegations of anti-Semitism on campus; the legal and moral basis for interpreting and extending the civil rights legislation to protect Jewish students from anti-Semitism on campus; and the nature of Jewish identity, including what it means to be Jewish, to be the subject of Jew-hatred, and even to be an anti-Semite. Logically structured and lucidly written, Marcus’s study offers a wealth of information and insight in a way that makes its currency transcend recent events even as it delves into the core issue of how anti-Semitism impacts on the dilemma of Jewish difference.

Early in the book, Marcus exposes the reader to the realities of the on-campus delegitimization campaign, which he calls the ‘new campus anti-Semitism,’ with a description of a spate of incidents at the Universities of California at Irvine, San Francisco State, and Columbia University. In the case of UC-Irvine, and during Marcus’s tenure as Staff Director at the United States Commission on Civil Rights, the Zionist Organisation of America filed a complaint against the University with the OCR’s Department of Education. The complaint alleged specific incidents of anti-Israel speech polluted by the blood libel, conspiracy theory, Holocaust inversion, and ethnic stereotypes. In some instances, the speech was accompanied by physical intimidation and threats, violence and vandalism, directed at Jewish students and property. The San Francisco campus sported flyers advertising a pro-Palestinian rally which “...featured a picture of a dead baby, with the words, ‘Canned Palestinian

Children Meat – Slaughtered according to Jewish rites under American License...” (p. 37). At Columbia, professors teaching in the Middle East and Asian Languages and Cultures program allegedly used their lectures to demonize Israel and to advance anti-Semitic stereotypes. For instance, one Professor Hamid Dabashi allegedly wrote that Israelis have “a vulgarity of character that is bone-deep and structural to the skeletal vertebrae of [their] culture” (p. 39). Marcus uses each of these university “case studies” to illustrate the nature and extent of the on-campus anti-Semitic abuse. He makes it clear that what has been happening on the American campus goes well beyond the free exchange of ideas about the Israel/Palestine conflict and instead amounts to the unlawful harassment of Jewish students and the creation of a hostile university environment. Marcus notes the paradox that in a “golden age” for American Jewish students, when there is a proliferation of Hillel Houses, Jewish Studies departments, Israel Studies classes, and Jewish students and faculty, growing anti-Israel extremism on campus is putting Jewish students at risk of physical harm.

Marcus juxtaposes this unacceptable campus situation with the disappointing response of the university officials and administrators who overwhelmingly fail to take seriously student complaints of anti-Semitism. Only the President of San Francisco State, Robert A. Corrigan, denounced the “blood libel” flyers as hate-speech which offended the entire University community. In sharp contrast, the UC-Irvine officials reacted with silence and passivity. For example, when in 2002 one Jewish student expressed her fears to the Chancellor and other campus administrators that she was afraid of being physically attacked if she identified herself as a Jew or as a supporter of Israel, the Chancellor failed to respond to her letter. Instead, an administrator advised the student to seek psychological counselling from student services. Even worse, the Vice Chancellor, Miguel Gomez, sought to challenge the existence of anti-Semitic hate speech by claiming that, “one person’s hate speech is another person’s education.” (p. 19).

Drawing on the work of Deborah Lipstadt, the late Gary Tobin and Gabriel Schoenfeld, Marcus offers several theories as to why academia has become so instrumental in the propagation of anti-Semitic anti-Zionism. The reader learns that the politics of many American college faculties has become overwhelmingly liberal and contemporary anti-Zionism tends to concentrate on the Left. This is because it is an ideology which fits in well with anti-Western, anti-American, anti-war ideologies, and other ideologies that are common on college campuses. For this reason, anti-Zionist groups have actually targeted campuses as an arena for expressing their anti-Israel agenda. The situation is made worse by the fact that extremist voices are disproportionately influential on college campuses “and are frequently able to capture organizational apparatuses even when they do not command majority support.” (p. 51). To compound the problem, as seen in the reaction at UC-Irvine and Columbia, many universities have failed to take appropriate action to prevent the spread of anti-Semitism, largely as a result of bureaucratic inertia. Also, university administrators, officials, and faculty have failed to stand up to the perpetrators of anti-Semitic incidents for fear of inviting confrontation, appearing overzealous, or interfering with academic freedom, or because they do not want to oppose Muslim/Progressive bias on campus, or because, since the Oslo accords, Israel has been depicted as the ‘oppressor.’

Especially helpful for the understanding of how anti-Zionism has become polluted by anti-Semitism is an entire chapter called “The New Campus Anti-Semitism,” which gives an exhaustive overview of extant scholarship on the phenomenon. Included are official definitions of the ‘New anti-Semitism’,

such as the ‘working definition’ of the European Union Agency for Fundamental Rights (formerly the European Union Monitoring Centre on Racism and Xenophobia), and other sources, such as the United Kingdom’s All Parliamentary Group Against Anti-Semitism. Essential criteria are provided which enable the reader to distinguish between legitimate criticism of Israel and anti-Semitism – and to see how, thanks to the author’s rigorous analysis, campus anti-Semitism has evolved from a sophisticated prejudice to a fully-developed ideology fuelled by the warped criteria of the anti-racist Left.

With respect to the book’s central theme, which is the long-time failure of the federal government to intervene to protect Jewish students from anti-Semitism on campus, we learn that beginning with the administration of President Jimmy Carter, the OCR had traditionally operated a “hands-off” policy with respect to anti-Jewish bias on campus. This is because of its determination that anti-Semitism does not constitute discrimination on the basis of “race” or “national origin” for the purposes of Title VI of the Civil Rights Act 1964. Title VI is a U.S. federal civil rights statute that prohibits discrimination in federally assisted programs and activities in (virtually all) public and private universities and colleges on the basis of “race, color, or national origin.” OCR has conventionally taken the view that Judaism is merely a religion, thus placing Jewish students beyond the reach of Title VI’s statutory civil rights protection. This has deprived them of any legal means of redress with respect to the outbreaks of campus anti-Semitism so vividly described in the book. This is a serious civil rights issue, particularly in the absence of any legislation to address religious discrimination in the educational setting. As Marcus notes, “constitutional rights have little worth if they are not backed by effective enforcement schemes.” (p. 9). While it is true that other religious minority students, such as Muslims and Sikhs, are in the same invidious position whenever they experience discrimination or harassment in public and private universities, for Jewish students “the [problem] is easily solvable because it is well established that anti-Semitism may take several forms, including not only religious, but also ethnic and racial animus.” (p. 9). This has even been recognised by the U.S. State Department which has defined anti-Semitism as “hostility toward or discrimination against Jews as an ethnic, racial, or religious group.” (p. 9.) Indeed, it is in his subsequent exposition on the nature of the anti-Semitic animus as racial and ethnic, as well as religious, that Marcus’s book is at its most illuminating.

Marcus explains the OCR failure to recognise Jews as a ‘race’ for the purposes of Title VI in terms of what the legal scholar Kenneth Karst has referred to as the “dilemma of difference.” (p. 24). This occurs where an “agency like the OCR is faced with an unpalatable choice: either use a racial category and reinforce socially constructed differences and stereotypes, or deny the racial category and deprive the group protection from discrimination”. (p. 29). Marcus notes the views of critical feminist scholar and Dean of Harvard Law School, Martha Minow, who has argued that the latter option – depriving the minority group of the classification needed to afford it legal protection from discrimination – is not an option because it “ironically allows bigots to reinforce the very difference that the agency is unwilling to invoke.” (p. 24). Certainly, from the perspective of someone like myself who is trained in the English legal system where the question of whether or not Jews *should* be regarded as a ‘race’ for the purposes of the anti-discrimination law has never been doubted, I found the OCR attitude to be somewhat short sighted. Whether Jews constitute a race in biological terms is surely not the issue; what counts is their legal status as a ‘race’ in order to give them civil rights protection from discrimination. Indeed, Marcus draws on both English and American case law to demonstrate that judicial recognition of Jews as a ‘race’ for purposes of anti-discrimination law

does not require judicial recognition of the concept of biological race. Nevertheless, the fear of conceptualising Jews as a race because of the genocidal ramifications of the last century - otherwise known as 'Karst's Conundrum' - is perhaps an understandable, if somewhat myopic reason for the OCR's reluctance to investigate claims of anti-Semitism on campus. This evidently remained the case until 2004.

Then in 2004 Marcus as OCR Staff Director issued a series of policy statements announcing that henceforth "OCR would have jurisdiction under certain circumstances to investigate whether discrimination against [] a Jewish student [is] in fact prohibited by the Title VI ban on national origin discrimination." (p. 31). This was an interpretation of federal policy which would extend Title VI protection to Jewish students, as well as to Muslim and Sikh students. Known as the 'Marcus Policy' or the '2004 Policy', it announced that discrimination on the basis of ancestral or ethnic characteristics is no less permissible against groups that also have religious attributes than against those who do not. The 2004 Policy amounted to OCR recognition that anti-Semitism can take several forms, including not only religious but also ethnic and racial animus. Marcus was careful, however, to use the term "national origin discrimination" rather than "race discrimination" in his policy statement because of concern for people's sensitivities to the term "race".

Marcus issued his groundbreaking 2004 Policy just prior to the filing of the ZOA's Irvine complaint described above. It permitted OCR to investigate the allegations, which "described an extraordinary pattern of anti-Semitic intimidation, harassment, threats, and vandalism" (p. 17) on the UC-Irvine campus. Soon after the investigation opened, Marcus left the OCR to take up his position as Staff Director at the U.S. Commission on Civil Rights and his successor, one Stefanie Monroe (somewhat disingenuously, it seems) pulled back from the 2004 Policy because she believed that anti-Semitism is nothing more than religious discrimination, over which OCR lacks subject matter jurisdiction. Her position, apparently endorsed by others in her office, led to the OCR's dismissal of the complaint in November 2007, mostly on technical grounds, even though the career officials who conducted the investigation concluded that a hostile environment for Jewish students had been formed at UC-Irvine. Moreover, Monroe's misguided understanding of the nature of anti-Semitism also meant that between 2005 and 2010, for the duration of her tenure, the 2004 Policy had no impact whatever. This is despite its endorsement in 2006 by the U.S. Commission on Civil Rights, which noted that "[M]any college campuses throughout the united states continue to experience incidents of anti-Semitism" and agreed with the 2004 Policy's conclusion that anti-Semitic incidents on college campuses "when severe, persistent or pervasive...may constitute a hostile environment for students in violation of Title VI of the Civil Rights Act 1964." (pp. 44 - 45). OCR resistance to the 2004 Policy even remained despite prodding from various members of Congress.

As Marcus notes, Monroe's failure to understand what historian Edward S. Shapiro referred to as "the perplexing nature of what it means to be Jewish" meant that she "predetermined the outcome of all cases alleging discrimination against Jews" (p. 12, p. 47). But this was not the only reason for OCR's disinclination to conclude that certain on-campus activity amounted to anti-Semitic abuse: OCR also dismissed the Irvine complaint because its political leadership failed to grasp the extent to which anti-Zionist rhetoric is anti-Semitic and not merely anti-Israel. Accordingly, Marcus uses the Irvine complaint and the OCR dismissal of the evidence as an effective vehicle to pursue two significant topics his book: the nature of Jewish identity and the extent to which anti-Zionist conduct and speech is also anti-Semitic.

Marcus's discussion and analysis of OCR's approach to the investigation of the Irvine complaint is noteworthy for another reason: the reader is treated to a thoroughly interesting and most satisfying never-before-revealed-to-the-public expose of internal wrangles, dissension, accusations, recriminations, personality clashes, and even seemingly justifiable allegations of anti-Semitism made by those who conducted the investigation against their OCR superiors. Marcus presents this gripping expose by drawing on his own experience, as well as on official witness interviews conducted for the purposes of subsequent litigation, which had been obtained by the IJCR under the Freedom of Information Act. We also learn of the OCR leadership's attempts at obfuscation and the disingenuous way in which it conducted the Irvine investigation. The reader is left with the impression of an Office that was wholly ill equipped to extend Title VI to protect Jewish students from anti-Semitic harassment on campus.

However, on October 26th, 2010, shortly after the book's publication, the U.S. Justice Department stated definitively in an Opinion Letter that the OCR should henceforth intervene to protect Jewish students from a hostile environment on campus. At the same time, Assistant Secretary Russlynn Ali affirmed the 2004 Marcus Policy in a guidance letter to recipients of federal funding. Known as the "Ali Policy," the new policy not only adopts the 2004 Policy but also contains some important embellishments that are essential in the fight-back against campus anti-Semitism. This change in the government's policy to campus anti-Semitism is a result of a lengthy IJCR campaign headed by Ken Marcus and followed by other organisations such as the ZOA. Marcus has since stated that the question is now whether the Obama administration will enforce the Ali Policy even in cases where the perpetrators are associated more with the Left than the Right. (Kenneth L. Marcus, 'Fighting Back Against Campus Antisemitism,' *Minding the Campus*, March 28th, 2011).

Perhaps unexpectedly, the Ali Policy was challenged in April 2011 by Cary Nelson, President of the American Association of University Professors (AAUP) and Kenneth Stern, a specialist on anti-Semitism and extremism at the American Jewish Committee (AJC). In a joint AJC-AAUP statement, both contended that recent events on American university campuses, such as those seen at Berkeley, Santa Cruz, and Rutgers, in addition to those previously witnessed at UC-Irvine, do not rise to the level of the EUMC's "working definition" of anti-Semitism. This definition includes as evidence of anti-Semitism any criticism of Israel that is not legitimate, such as comparing contemporary Israeli policy to that of the Nazis, or claiming Israel is a racist endeavour, or using symbols and images associated with classic anti-Semitism to characterize Israel or Israelis. Nelson and Stern stated that the Ali Policy amounts to a censorship of anti-Israel remarks, which stifles on-campus political debate. They claimed that the best way to respond is for the supporters of Israel to argue against these views.

Marcus presumably anticipated this criticism because *Jewish Identity and Civil Rights in America* includes a compelling response to his critics. In his chapter, "Criticism", he argues convincingly that the on-campus delegitimization campaign does not allow for a free exchange of ideas about Israeli policies, but rather creates a spirit of intolerance and an atmosphere of hatred which chills free speech and open debate. The fact is that because of the hostile atmosphere on campus, because of the threats and intimidation, Jewish students and other supporters of Israel are afraid to speak out. Indeed, drawing on the work of notable scholars like Catherine Mackinnon and Stanley Fish, Marcus acknowledges that Title VI does not permit universities to regulate or censor speech that is protected under the First Amendment. If such speech creates a hostile environment, then it must be

dealt with in some other way, other than by penalising the harasser. In fact, OCR itself announced prior to the issuance of the 2004 Policy guidance that its policies should never be interpreted in a manner which conflicts with constitutional protections for speech and expressive conduct. In August 2011, the American Jewish Committee's executive director, David Harris, renounced the organisation's joint AJC – AAUP statement as ill-advised.

This brings us to the key question in the book which is whether there is a moral and legal basis for interpreting and extending Title VI Civil Rights Act 1964 to protect Jewish students. Marcus presents cogent arguments for answering both affirmatively. The moral rationale is that Jew-hatred (or, indeed, hatred of Sikhs and Muslims for whom the case is equally made, if less explicitly) must be treated no differently than bigotry against any other minority group. Moreover, in the absence of federal legislation to prohibit religious discrimination in education, the failure to extend Title VI to ethno-religious groups leaves them without any protection from discrimination or harassment in federally funded higher education programs. For Jews, this is particularly problematic in an age in which “no other group [] on campus has been subjected to such hostile and demonizing criticism.” (Alana Goodman, *Commentary*, 15 March 2011).

In terms of the legal justification for the 2004 Policy, Marcus asks pointedly whether it is plausible that in the United States, Congress would choose to exclude Jews from one of its most important civil rights acts when, in the words of US Supreme Court Justice Felix Frankfurter, they have been “the most vilified and persecuted minority in history.” (p. 29). He believes that the answer is ‘no’ and provides cogent legal support for his conclusion with a brief review of US Supreme Court jurisprudence. In particular, he discusses the 1987 cases of *Shaare Tefila Congregation v. Cobb* and *Saint Francis College v. Al-Khazraji*. In both the Court found that based on the intent of the Civil Rights Act 1866, “race” could include “ethnic and ancestral groups, including Jews and Arabs, who are not understood today to constitute distinct racial categories.” In other words, in interpreting racial and ethnic categories, the question is not whether Jews are a distinct racial and ethnic category in contemporary terms, but whether they bear the characteristics that the Equal Protection Clause was established to protect from discrimination. As for the Civil Rights Act 1964, Marcus reasons that this was passed as a mechanism to enforce those rights enshrined in 1866. Accordingly, anti-Semitic harassment may be considered to be “racial” discrimination for the purposes of affording statutory civil rights protections, and the OCR's decision to abandon the 2004 Policy between 2005 and 2010 was based on a misunderstanding of the applicable law. The Obama administration's October 26th 2010 Opinion Letter confirmed the legal correctness of Marcus's ‘original intent’ analysis. Further, on January 3rd 2012, in a case involving allegations of anti-Semitism on the UC-Berkeley campus, a U.S. District trial judge ruled that Title VI of the Civil Rights Act 1964 does extend its protections to Jewish students.

However, Marcus is not content to rely on a purely legal determination that Jews are a “race” for the purposes of Congressional intent when it passed the 1964 Civil Rights Act. He also considers the “historically and emotionally fraught question” (p. 13) of Jewish identity from two other perspectives, namely, whether Jews are a “race” according to modern scientific notions, and whether Jews are a “race” as that term is properly understood or used in common parlance. It is in this part of the book that he delves most deeply into the nature of Jewish identity. In so doing he discusses several recent fields of scholarship, including anthropology, biology, population genetic demography, race theory, including Critical Jewish Studies, and cultural theory. This part of the book

is highly illuminating and extends its appeal way beyond the question of legal intervention against campus anti-Semitism. It in fact makes *Jewish Identity and Civil Rights in America* a must-read for anyone who has ever questioned the “dilemma of Jewish difference.” (p. 17)

Although population genetics are now providing an interesting if controversial insight into the question of Jewish identity, Marcus regards scientific approaches as ultimately unsatisfactory. Jurists therefore turn to the public understanding of “race” as the default position and here Marcus demonstrates that public attitudes overwhelmingly suggest that notions of racial distinctiveness are deeply held by Jews and non-Jews alike. While for Jews themselves the racially distinct self-identity appears to be merely an expression of group bond, for non-Jews it informs the anti-Semitic animus. I was reminded of a comment made by a member of the Cambridge University Appointments’ Board about a Jewish undergraduate in the 1950’s, when he recorded in his interview notes: “I fear an unattractive chap – if only because one is instinctively drawn to feel this about the chosen race from which he must surely stem. Small, sallow, raven hair and fleshy nose.” (Stephen Aris, *The Jews in Business*, London 1970). Marcus’s discussion of the social perception of Jews is equally fascinating for the fact that they have variously been perceived as black, Asian, or white, depending on the nature of the perceiver’s bias. This emphasises the precarious position that Jews have been subjected to in a culture based on the black/white paradigm. It is useful to contrast the social perception of Jews with the scientific material presented. Marcus discusses the controversial research of David B Goldstein and his team of molecular geneticists and microbiologists at Duke University, who have discovered a genome-wide genetic signature of Ashkenazi Jewish ancestry. Jews may well be a biological race after all, but their designation as an objectionable, inferior race is a socially constructed sentiment that is peculiar to the anti-Semite.

Marcus then discusses what it means to be an anti-Semite. He does this by suggesting that instead of bias victims having to prove that they are members of the group that Congress intended to protect, which places an unfair burden on the victim and is frequently analytically difficult as in the case of Jews, that the courts and agencies like the OCR should take a subjective approach and ask whether the perpetrator of the bias is racially motivated. In discussing the advantages and disadvantages of this approach, Marcus offers a thorough exposition of the racial character of anti-Semitic conduct. Again, this is fascinating material, which highlights the extent to which the racial character of anti-Semitic conduct is not always readily apparent, especially in the context of anti-Zionism and anti-Israelism.

Finally, Marcus discusses what it means to be the victim of Jew-hatred by suggesting a novel approach to the question of whether anti-Semitism is “discrimination on the basis of race.” He suggests that instead of focusing on whether Jews are a “race” or whether the perpetrators are “racist”, we can ask whether Jewish students suffer a distinctly “racial” harm as a result of the climate of anti-Semitism that exists on some university campuses. He draws on recent work in the fields of cultural studies, race theory, and Critical Jewish Studies to explain the possible range of such harms. These include the injurious aspects of “racial formation” and “re-racialization” that occur when groups are subjected to racial stereotypes, group defamations, and resulting forms of racial misperception. This material is not only interesting from an academic point of view but it also has a strong resonance for any reader who has experienced anti-Semitism, whether traditional or contemporary. With respect to the latter and much more prevalent manifestation of anti-Semitism in today’s post-racist world, Marcus deconstructs the new anti-Semitism as “a technology of

dehumanization.” (p. 180). A victim of the new anti-Semitism myself, and having researched and written about it in the context of the UK campus, I believe that this is an accurate and perceptive characterisation, which breaks new ground.

One of the most useful aspects of Marcus’s analysis is that it provides a clear and comprehensive answer to the question of whether anti-Semitism is “discrimination on the ground of race” for the purposes of Title VI of the Civil Rights Act 1964. He convinces the reader that the answer is “yes” whether one approaches the question from a legislative history perspective, a biological perspective, a public perception perspective, or a ‘racial harm’ perspective. One has to agree with the book’s major finding that the OCR has been “paralysed in its ability to enforce equal opportunity by its inability to resolve a problem that is entirely conceptual: that is, the meaning of the phrase “*discrimination on the ground of race*” as that term is used in a particular statutory context and as it is applied in a particular social context.” (p. 16). By the end of the book, one has to wonder whether this paralysis was informed, as Marcus insightfully suggests, by the unarticulated fact that “some officials may [have been] reluctant to extend civil rights protections to the socially and economically successful Jewish community. After all, many view civil rights as compensation for disadvantages that other Americans groups have experienced to a far greater degree.” (p. 11).

As for the practical impact of Marcus’s pioneering work, OCR agreed to open an investigation into anti-Semitism at UC Santa Cruz on 7th March 2011, following a complaint alleging that the University has violated Title VI of the Civil Rights Act 1964 by creating a hostile environment on campus with respect to Jewish students. The OCR also opened an investigation into allegations of anti-Semitic harassment at Rutgers University in December 2011. These are the first major cases to follow the new OCR anti-Semitism policy and, as Marcus has noted, they will test the federal government’s commitment to addressing hate and bias in federally funded higher education programs.

Meanwhile, because of doubts that it may not be properly enforced, Marcus has taken action in an attempt to provide stability to the new anti-Semitism policy. On May 13, 2011, he testified before the U.S. Commission on Civil Rights and recommended it to urge Congress to pass legislation banning religious harassment in federally funded education programs and activities. This would close the statutory loophole in Title VI of the Civil Rights Act 1964. He is also engaged in important academic work to re-establish the boundary between academic freedom and political indoctrination.

In the UK, we have a clearly written statute which unequivocally affords protection to Jewish students from hostile environment harassment on campus. This is because Jews are recognised as a protected “racial group” for the purposes of affording them civil rights protections. However, despite the prevalence of the new anti-Semitism on several UK university campuses, the statute has never been used to bring a law suit against an offending university. This is because we have no one like Ken Marcus who is prepared to initiate and lead the fight-back against campus anti-Semitism.

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member of United Kingdom Lawyers for Israel (UKLFI) and Scholars for Peace in the Middle East (SPME) Legal Task Force.
