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Freedom of Expression in Israel and the Place of Different Narratives in the Israeli Discourse

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Abstract

Free speech is intrinsically important as a human right, but it also works as an umbrella to protect all other rights. Every democratic state must respect freedom of expression, while simultaneously establishing appropriate limitations. In Israel, free speech has become essential and a fundamental right. Its limitations are legitimated only in a tangible danger to national security or direct incitement to racism. However, despite the parliamentary and judiciary defense of freedom of expression, the government has found ways to limit free speech. It is often unclear how governments do that; a deeper analysis indicates that the Israeli government uses laws and sanctions to limit certain narratives related to the Israel-Palestine conflict. In this thesis, evidence and case studies demonstrate how freedom of expression is limited in Israel, in both written law and its practice. The national policy related to free speech consists of restrictions to different narratives related to the conflict, including the Palestinian narrative and the collective memory, known as "Nakba". This research shows the difficulty in the promotion of understanding and peace when the national discourse omits other such perspectives. At the core of the Israel-Palestine conflict are differences between two extreme and opposing views. There is not only a physical wall dividing the two societies, but also a mindset that prevents them from engaging in negotiations with each other. Recognizing each of the other's opposing narratives and demands is therefore the first step towards peace, reiterating the necessity of freedom of expression.

Keywords

Freedom of expression, Israel-Palestine Conflict, Supreme Court, Reconciliation, narratives, education, civil society

Introduction

The State of Israel and the Palestine nation[1] have been in ongoing conflict since the last century. At the core of the Israel-Palestine conflict are differences between two extreme and opposing views. There is not only a physical wall dividing the two societies, but also a mindset that prevents them from engaging in negotiations with each other: both Palestinian and Israeli leaders deliberately avoid communicating with each other, applying measures of intimidation and promoting their own national narratives. In order to maintain the system as it is, high-level representatives from both parties restrict several aspects of freedom of expression that could potentially foster tolerance and understanding.

In particular, Israel — which self identifies as democratic[2] — often deliberately restricts different narratives related to the conflict. Israeli parties who seek to limit free expression on the national level often claim, convincingly, that it is important to do so because of concerns about national security or incitement to racism. In this thesis, I will critically discuss the use of national security as a legitimate justification for such restrictions, and contextualize this analysis by presenting a series of case studies to better understand the Israeli government's policies limiting freedom of speech.

The discussion about freedom of expression is not simple, and it is often unclear how governments limit citizens' right to it. Free speech is extremely important by itself, but it is also used as an umbrella to protect all other human rights. However, this right is not absolute; according to international law even the most democratic states may limit this freedom in certain cases.

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[1] Some would refer to this region as the Palestine State (UN 2012)

[2] Aharon Barak, 'Freedom Of Information And The Court', Articles In Memory Of Haim Cohen, 2007, 97, http://www.nevo.co.il/books/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%A7%D7%A8%D7%99%D7%AA%20%D7%94%D7%9E%D7%A9%D7%A4%D7%98/%D7%9B%D7%A8%D7%9A%20%D7%92/kiryat-hamishpat-03-095.pdf.

Different historical contexts and security issues allow each state to interpret the right to freedom of expression in slightly different ways, and policies can vary dramatically among them. It is therefore not possible to define inflexible international standards for this freedom, and we must work instead with general rules and guidelines.

Every democratic state must establish appropriate limitations to free speech, but in Israel this task is more complicated by the fact that there is no formal constitution and freedom of expression is not included in the eleven basic laws that may be considered as a constitution.[3] Over time, however, free speech has become essential in official documents, and it is considered a fundamental right. Despite the parliamentary and judiciary defense of freedom of expression, the government has found ways to limit free speech through laws and sanctions. In this thesis, I present evidence and analyze case studies demonstrating how freedom of expression is limited in both a practical and legal sense. I have divided the cases into four main areas: (1) Education; (2) Legislation; (3) Banning of films and plays; and (4) Limiting Demonstrations and excluding public figures. Analyzing these cases helps to understand the national policy related to free speech.

The main conclusion is that the government tries to direct the Israeli discourse by promoting the national Israeli Jewish narrative, and oppressing all other versions. At the same time, the judicial system, which is supposed to protect freedom of expression from being threatened by the government, approves limitations when they are indirect, such as budget cutting and restrictions in public buildings. The main argument for the sanctions that limit free speech and oppress certain narratives in the Israeli discourse is national security. However, this thesis offers a new point of view by showing that free speech limitations are a major cause of, and not a solution for, insecurity in Israel.

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[3] Israeli Knesset, The Existing Basic Laws: Full Texts (Jerusalem: Knesset website, n.d.).

Chapter 1 - The Importance of Freedom of Expression as a Fundamental Human Right in Israel

In a country such as Israel, where so many different groups of people reside, the right to freedom of expression is important to assure that all voices are heard. This basic human right, considered very valuable by most Israeli citizens, is widely protected by national law. However, over the past few years, certain circles — primarily those composed of conservative politicians, journalists, public figures and organizations — have sought to limit freedom of expression and have drastically increased the number of objections to it, demanding that these limiting changes be made.

It is not simple to study, research, or explain the status of freedom of expression in Israel without coming from the international law perspective. As previously noted, freedom of expression is not an absolute right,[4] and interpretations and limitations vary across geographic regions. Moreover, although Israel does not have a single document recognized as a constitution and the basic laws do not clearly grant freedom of expression as a fundamental right, the Supreme Court (SC) of Israel safeguards this freedom as one of the fundamental laws, deriving its authority to do so from previous judgments, political events, Israel's Declaration of Independence, and the ratification of the International Covenant on Civil and Political Rights (ICCPR).[5] In this chapter, I will start by explaining the importance of freedom of expression, then its status within international law and, finally, define the status of this type of freedom in Israel based on the Israeli legal system.

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[4] Ohchr.org, 'International Covenant On Civil And Political Rights', Article 19, 2015, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[5] Daniel Rothstein, 'Adjudication Of Freedom Of Expression Cases Under Israel'S Unwritten Constitution', Cornell International Law Journal 18 (1985): 248.

1. Freedom of Expression in the International Arena

A. The Importance of Free Speech

According to Article 19 of the Universal Declaration of Human Rights (UDHR), everyone has the right to freedom of opinion and expression.[6] This Article allows people to express, manifest, seek, and receive information and ideas as they wish. Freedom of expression is the foundation on which several other rights are built. It is the tool that helps to exposes violations and abuses; without being able to speak freely and report transgressions, it would not be possible to recognize, remedy, or fight violations against human rights. Conversely, the suppression of this specific freedom is the first step towards the constraint of all other human rights. As the American writer, statesman, and social reformer Frederick Douglass once said, "liberty is meaningless where the right to utter one's thoughts and opinions has ceased to exist. That, of all rights, is the dread of tyrants. It is the right […] they first of all strike down. They know its power."[7]

Freedom of expression, in addition to protecting every other human right, also carries important meaning by itself, on both individual and national levels. The individual level points out two concrete rights for individuals: the right to speak and the right to know. As Article 19 of the UDHR states, the right to speak is the key to development, dignity, and fulfillment of every person because it allows people to engage with and learn about the wider world and their place in it. Similarly, the right to know is significant and fundamental in democratic societies: by exchanging information freely with others, citizens feel secure and respected by both the society and the state, and live their lives accordingly. On the national level, freedom of expression is

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[6] Un.org, 'The Universal Declaration Of Human Rights | Article 19', 2015, http://www.un.org/en/universal-declaration-human-rights/index.html.

[7] Frederick Douglass, speaking in the Boston Music Hall after an anti-slavery meeting had been broken up. Philip Sheldon Foner and Robert J Branham, Lift Every Voice (Tuscaloosa, Ala.: University of Alabama Press, 1998): 356.

necessary for a reasonable democratic and civilized society. Such freedom contributes to the quality of the society and the government in four main ways. First, it allows free debate about and among political parties, helping to ensure that talented and honest people will have the chance to administer the state. Second, it promotes a good-willed society by enabling citizens to raise their concerns about and with the authorities and private bodies. Third, it assures that policies and legislation are carefully considered during public debates. Fourth, as Frederick Douglass emphasized, it is the basis of other human rights.[8]

B. Freedom of Expression in International Law and Its Limitations

Despite the importance of the right to freedom of expression as both individual and national concern, it is not an absolute right and, since it applies to an extensive range of human activity, it can be limited. A good example of an absolute right, with no other interests to strike its balance, is the right of an individual not to be subjected to torture: no declaration or treaty allows torture under any circumstance. This is not the situation with freedom of expression. The right to freedom of expression can be limited on behalf of public safety, national security, public order, morality, as well as to protect the individual or collective rights of others. As the precise contours of free speech are malleable, it is often restricted in cases where the aforementioned issues present a grave and imminent danger to maintaining public safety and protecting the rights of others. For example, speech intended to incite violence against a particular group would not be acceptable since it puts that group in real danger; as the popular saying goes, one person's freedoms end where they infringe on the rights of others.[9]

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[8] Eric Barendt, 'Religious Hatred Laws: Protecting Groups Or Belief?', Res Publica 17, no. 1 (2011): 44, doi:10.1007/s11158-011-9142-6.

[9] Rachel Marsden, 'Your Rights End Where Mine Begin | Human Events', Human Events, 2011, http://humanevents.com/2011/09/18/your-rights-end-where-mine-begin/.

The interconnected nature of freedom of expression and other fundamental rights means that restricting the right to freedom of expression through any manner makes restricting any other right even easier. As such, defining the scope of free expression and creating international standards which all states must follow is important.[10] The UDHR is not legally binding, but its application to the national affairs of states has been repeatedly acknowledged in subsequent international treaties, regional human rights instruments, national constitutions, and other laws. Many international treaties mention freedom of expression but, unlike the UDHR, the parties in those treaties understand that it is important to point out the tension between freedom of expression and other human rights, and so limitations are set within the treaties. One of the first treaties to anchor freedom of speech was the International Covenant on Civil and Political Rights (ICCPR), which expanded Article 19 of the UDHR in order to apply three further categories. The first two categories are similar to Article 19 of the UDHR, but the third category presents a limitation on the first two, by saying that it is possible to limit the right to freedom of expression in consideration of the "respect of the rights or reputations of others and for the protection of national security, only if it is necessary to protect the public."[11]

Other regional and international treaties, such as The European Convention for the Protection of Human Rights and Fundamental Freedoms in its Article 10, mention that everyone has the right to freedom of expression within certain civic contexts. In that treaty specifically, the exercise of these freedoms carries duties and responsibilities that contain conditions and restrictions. The restrictions are: interests of national security, territorial integrity, or public safety; pre-

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[10] Dinah PoKempner, A Shrinking Realm: Freedom Of Expression Since 9/11, World Report 2007 (Human Rights Watch, 2007): 64 - 65.

[11] Ohchr.org, 'International Covenant On Civil And Political Rights', 2015, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

vention of disorder or crime; protection of health or morals; and protection of the reputation or rights of others.[12] The few central exceptions to free expression are incitements to violence or hatred and threats to national security or public order in the above mentioned forms. Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD)[13] and the European Union Framework Decision on Racism and Xenophobia (EU-FDRX)[14] all restrict any kind of incitement of violence against another group and allow freedom of expression to be limited in the interest of national security.

In general, 'limitations' or 'restrictions' are considered to be any action by a public body that has an actual effect on people's right to freedom of expression. According to the aforementioned conventions and treaties, there are three clear conditions that the society or the state has to follow in order to guarantee that such limitations are legitimate. First, the limitations must be provided by the law and not at the whim of any given public official: the limitations must be applied through a clear and accurate law or regulation that is formally recognized by those entrusted with lawmaking. Second, the limitations have to assert a legitimate aim. A list of legitimate aims is provided in Article 19, paragraph 3, of the ICCPR and it is not open-ended: "respect for the rights and reputations of others […] and protection of national security, public order, public health or morals."[15] Third, limitations must be truly necessary to achieve a given legitimate legal

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[12] Council of Europe, European Convention On Human Rights, F-67075 Strasbourg Cedex, 2010, http://www.echr.coe.int/Documents/Convention_ENG.pdf.

[13] Ohchr.org, 'International Convention On The Elimination Of All Forms Of Racial Discrimination Article 4', 2015, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

[14] Council of the European Union, Framework Decision On Racism And Xenophobia, 8665/07 (Presse 84) (Luxembourg: The European Union, 2007); 2. http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/93739.pdf.

[15] Ohchr.org, 'International Convention On The Elimination Of All Forms Of Racial Discrimination Article 19 (3)', 2015, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

aim and should only be pursued where no alternative means exist to achieve the same end without limiting freedom of expression.[16]

C. Different Applications and Approaches for International Law Definitions of Freedom of Expression and Its Limitations

Despite the relative clarity of international laws, there are still differences in the way each region implements freedom of expression and its accompanying limitations, and a state's sense of identity and historical context greatly influence how it limits freedom of expression. For example, the United States of America interprets and implements the law differently than Europe by giving a wider scope to freedom of speech and only forbidding imminent lawless action. That is, the USA limits only expressions that call for or could cause a violent (re)action (e.g: deceptively shouting "Fire!" in a crowded theatre). All other types of false expressions are allowed: the only way to fight them is to rebuff with a true expression, or to seek legal redress for libel or slander after such civil wrongs. In Europe, the situation is somewhat different in that expressions of racism are expressly not allowed. A good example is the case of Otto Preminger Institut vs. Austria, where the judge referred to the social obligation to avoid expressions which "do not contribute to any form of public debate capable of furthering progress in human affairs."[17] Such divisions between American and European notions of free expression have derived from differing historical contexts, specifically because of the latter's experiences from World War II and the

[16] Ibid, "…are provided by law and are necessary."

[17] Otto-Premmger-Institut vs. Austria (European Court of Human Rights 1994): 14.

Holocaust. Similarly, in the USA, it is illegal to burn a cross because of its association with Ku Klux Klan's doings, whereas in Europe no such limitation exists.[18]

In addition to historical contexts, the 'real intention' behind statements plays a major role in the discussion of freedom of expression. When an expression's intent has negative goals and involves violence and hate, it is most likely that a given state will forbid it. When there is no intention to incite violence, but the aim is rather to ask legitimate questions of the state authorities, some limitations should be considered carefully. For example, the historian Bernard Lewis was found liable by a civil court in France for denying the Armenian Genocide after he rejected the use of the term 'Armenian Genocide.' Whether Lewis intended to raise a real academic discussion or to promote other interests is relevant: when the intention is to produce a discourse without incitement the expression should be allowed. However, it is often difficult to truly determine intent, and the French civil court found that Lewis' aim was in fact to deny the occurrence of the Armenian Genocide and fined him for contravening Europe's laws against the promotion of racism.[19]

2. Freedom of Expression in Israel

A. The Problematic Nature of Israeli Law

Israel, unlike the United States, has no single document combining all basic laws together as a constitution and granting the judiciary system the power of striking down legislation which clearly violates constitutional content. As Ruth Levush notes, "the Israeli Declaration of Inde-

[18] Wilson Huhn, 'Cross Burning As Hate Speech Under The First Amendment To The United States Constitution', Amsterdam Law Forum 2, 1 (2009): 19-24, http://amsterdamlawforum.org/article/view/103/184.

[19] Yair Auron, 'Armenian Genocide - Not 'Armenia, Armenia', Not 'Armenian Massacre', From The Journal "History", no. 12 (2015): 57 - 76.

pendence, issued on May 14, 1948, following the termination of the British mandate over Palestine, envisioned the existence of a future formal constitution for Israel. The Declaration, however, has never been viewed as a constitutional document by itself."[20] The Declaration of Independence of Israel's Constituent Assembly was designated to prepare a constitution by October 1, 1948, but entanglements caused by the tension between human rights legislation and religion continue to delay the country's written constitution to the present day.[21] Despite this lack of formal constitution, Israel still has its own set of laws and basic rules that apply to the foundations of government and individual rights. Whilst legislation may be interpreted in several ways, the Israeli SC states that laws should be interpreted in a way consistent with the principles expressed in the country's Declaration of Independence. Thus, the Israeli SC has managed to develop fundamental constitutional principles that in other Western democracies are generally already protected by their constitutions.[22]

By virtue of the Harrari Resolution of 1950, the Knesset (Israel's Parliament) agreed that, once compiled, the Israeli Constitution would contain separate chapters, each termed a "basic law." Eleven basic laws have been passed, and concern the following: the Knesset itself, the Lands of Israel, the President of the State, the Government, the State Economy, the State Army, Jerusalem as Capital of Israel, the State Judiciary, the State Comptroller, Human Dignity and Freedom, and the Freedom of Occupation. In the 1995 landmark case Bank Hamizrahi Hameuchad Ltd. et al. vs. Migdal Kfar Shitufi, the SC of Israel recognized, even before the completion of a single-document constitution, two of the aforementioned basic laws — Human Dig-

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[20] Ruth Levush, 'Features - Guide To The Israeli Legal System - Updated', Llrx.Com, 2015, http://www.llrx.com/features/israel2.htm.

[21] Haknesset, 'Knesset As A Constituent - Constitution And Basic Laws', accessed 19 November 2015, http://main.knesset.gov.il/Activity/Legislation/Pages/BasicLawsAndConstitution.aspx.

[22] Levush, 'Features - Guide To The Israeli Legal System'

nity and Freedom, and Freedom of Occupation — as ones belonging to a higher normative status.

B. Freedom of Expression in the Israeli Law: Historical Context

Remarkably, the right to freedom of expression is not mentioned in Israel's Declaration of Independence or in any of the basic laws: these laws are the legal basis of Israeli society, so a discussion of context and intention is arguably more important and more difficult. However, the SC of Israel is still able to safeguard this fundamental human right.[23] In order to understand the nature of the power of this freedom, it is necessary to follow the development of human rights in Israel. We must look carefully at past decisions under Israeli jurisdiction that developed a certain historical precedent of commitment to freedom of expression.

In 1954, the right to freedom of expression gained protection by the Israeli SC for the first time as part of an intervention in a government decision when the SC protected the right to freedom of expression for the newspaper "The People's Voice." In this case, the SC defined freedom of expression as well as its boundaries. The assigned judge, Shimon Agranat, accepted the petition of the paper against the government's decision to shut down the newspaper. Agranat based his decision on the Declaration of Independence, with a long judgement basing freedom of expression as a supreme constitutional law in Israel. Moreover, he stated for his successors the way they should continue to protect civil rights and freedom of expression when they conflict with other interests. The judgment stated the principle of "near certainty test," whereby freedom

[23] Rothstein, 'Adjudication Of Freedom Of Expression Cases Under Israel'S Unwritten Constitution', 248.

of expression should be withdrawn only when there is a near certainty of substantial and serious harm to other more crucial interests.[24]

Although traces of many different legal systems can be found in Israeli law, it was founded on British Common Law, a relic of Israel's colonial past.[25] Currently, there is little direct influence of British Common Law on that of Israel, but certain historical terms have carried over. One of them is known as "binding precedent,"[26] a method which requires an interpretation of the legislation according to precedents set by the courts — unlike legal systems based on codified law — to find an answer to each case.[27] Therefore, Shimon Agranat's decision in the 1954 case has to be taken into consideration in every ensuing case revolving around issues of freedom of expression.

C. Freedom of Expression in the Israeli Law: Current Days

Subsequently, the right to freedom of expression was indeed protected and promoted by the Israeli legal system, culminating in the 1992 ratification of the ICCPR. By signing the ICCPR, the State of Israel committed itself to freedom of expression and its respective allowed limitations:[28] freedom of expression can only be restricted in cases where a threat to national securi-

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[24] The people's voice v. Ministery of Interior, 73/53 (SC 1953).

[25] "Politics and Government in Israel", p. 194.

[26] Omri Ben-Zvi, 'Precedent As A Philosophical Institution', Laws - Jerusalem, 2014, 777 - 778, http://www.nevo.co.il/books/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%9E%D7%A9%D7%A4%D7%98%D7%99%D7%9D/%D7%9B%D7%A8%D7%9A%20%D7%9E/mishpatim-40-3-777.pdf

[27] Black's Law Dictionary, p. 1059 (5th ed. 1979)

[28] "The Israeli State is committed to the ICCPR since January 1992," B'tselem, 'International Law', 2011, http://www.btselem.org/hebrew/international_law/covenant_on_civil_and_political_rights.

ty or incitement of racism and discrimination is present, and members of Israeli society must be allowed to openly evaluate and criticize the government.[29]

However, since freedom of expression is still not solidly defined within Israeli law, the SC keeps a wide interpretation of the manner in which citizens enjoy this right, considering both international norms and specific Israeli contexts. The SC of Israel intervenes consistently on government decisions in order to maintain its authority over this right. In that regard, a long period without intervention could make the Court's future interventions to be seen as less legitimate.[30] Although the right to freedom of expression is not enshrined in Israel's eleven basic laws, it is still included within their domain. The local Attorney General Guidelines, in discussing the right to protest (which is itself inherent to the freedom of expression), refer to this right as a fundamental one.

The Attorney General adds that, "District Commander, granting a license to hold a demonstration, does not grace with the applicants, but allows them to exercise a fundamental right, and therefore it is appropriate that the commander gave the license, unless considerations of public safety or public order prevent the grant of a license or require that limits the license's terms and conditions."[31] Another update related to freedom of expression came with the Prevention of Terrorism Ordinance: "an indictment in the case because of the type of expression that falls binding expressions defined in the Ordinance to consider on the one hand the interest in

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[29] Acri.org.il, 'Association For Civil Rights In Israel (ACRI)Freedom Of Expression |', 2015, http://www.acri.org.il/en/category/democracy-and-civil-liberties/freedom-of-expression/.

[30] Rothstein, "Adjudication of Freedom of Expression Cases under Israel's Unwritten Constitution", p. 248.

[31] Attorney General, Constitutional Law Constitutional Rights - Freedom Of Expression; Freedom Of Demonstration (Jerusalem: Haknesset, 2003).

preventing this kind of harsh words, and on the other hand the principle of freedom of expression, which is the basic values of Israel as a free and democratic society."[32]

Further evidence defining freedom of expression as a fundamental and basic law which takes precedence over other legal and governmental documents is found in the instructions for the Authority for Television and Radio. Adopted in 1994, the instructions' aim was to start the discussion about the importance of the freedom of expression's principle in Israel, "including the right to express unpopular opinions or deviations."[33] Also, the Council for Cable and Satellite Broadcasts agreed that it may not shut down a televised show seen as very provocative. The council justified its decision by saying that shutting down such a show would lead to a violation of the principles of freedom of expression in Israel.[34]

The single most influential person in determining freedom of expression as a fundamental Israeli law is Aharon Barak, the President of the SC of Israel from 1995 to 2006. He focused on converting and shaping the existing basic laws and other democratic values into something approaching a constitution. Barak's approach, which was adopted by the SC in 1992, brought values such as the right to equality, freedom of employment, and freedom of expression to a position of normative supremacy and thereby granted all courts the ability to strike down legislation which is inconsistent with the rights embodied in the basic laws and democracy. In his article "Freedom of Information and the Court," he explains that freedom of expression is a supreme

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[32] Attorney General, Directive - 2:11 Approval Of The State Prosecutor And The Attorney General To File An Indictment For An Offense Under The Prevention Of Terrorism Ordinance (Jerusalem: Haknesset, 1997).

[33] The Council of the Authority for Television and Radio, The Instructions For The Authority For Television And Radio (Jerusalem: Haknesset, 1994)..

[34] Council for Cable and Satellite Broadcasts, Decisions Of The Council For Cable And Satellite Broadcasting On The Subject: Television Program "Night Fun" Channel "Beep" (Jerusalem, 2009).

right with a place of honor in the Hall of Fundamental Human Rights. He goes on to explain that this right is an integral part of the Israeli legal ethos, and is a precious element of democracy.[35]

The United Nations website mentions the Israeli implementation of freedom of expression and how important it is that the state continues to consider it a priority. A USA Human Rights Report from 2014 also explained, "the Israeli Law provides for freedom of speech and the government generally respected this right. An independent press, an effective judiciary and a functioning democratic political system combined to promote freedom of speech and of the press."[36] We may conclude that it is consistent with international laws: "individuals may criticize the government without reprisal. The law prohibits hate speech and incitement to violence, and the 1948 Prevention of Terrorism Ordinance prohibits expressing support for illegal or terrorist organizations."[37]

In conclusion, freedom of expression, with its limitations, is considered essential for a democratic state such as Israel. The international community defines freedom of expression as an important right, allowing for constraints only in face of a concrete threat. Israel did not consider freedom of expression in the basic law, but the government and the legal system nonetheless promoted this right as fundamental. Currently, the legal system and the government report that Israel practices freedom of expression and is committed to this right on an international standard.

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[35] Aharon Barak, 'Freedom Of Information And The Court', Articles In Memory Of Haim Cohen, 2007, 97, http://www.nevo.co.il/books/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%9B%D7%AA%D7%91%D7%99%20%D7%A2%D7%AA/%D7%A7%D7%A8%D7%99%D7%AA%20%D7%94%D7%9E%D7%A9%D7%A4%D7%98/%D7%9B%D7%A8%D7%9A%20%D7%92/kiryat-hamishpat-03-095.pdf.

[36] State.gov, 'Country Reports On Human Rights Practices For 2014', 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

[37] Ibid.

Chapter 2 - How Does the Israeli Government Limit Freedom of Expression Regarding the Israeli-Palestinian Conflict?

In this part of my thesis I will discuss how the Israeli government limits freedom of expression related to the Palestinian conflict and the different responses of the SC to each case. In Israel, the legislature and the government rule together with the judicial system and have to consider one another when making decisions limiting freedom of expression. I divide the chapter into the four main fields in which the Israeli government enforces these limitations: education, legislation, art, and protesting. I will present evidence and examples in each field to show both the restrictions and the resistance to the limitations and sanctions as documented by human rights organizations, government opposition groups, and the Israeli SC. In some cases, the judiciary system repeals the government's decisions limiting free speech or reduces the government sanctions significantly, while in other cases, the limitations have been validated.

1. Education

Banning Teaching Nakba or any Elements of the Palestinian Narrative in Schools

The Israeli-Jewish narrative of the 1948 war is promoted in Israel's public eduction system. The war was first perceived as a war of independence: a battle against seven Arab countries who opposed the UN's decision to establish Israel as a nation, a decision that ultimately acknowledged the Jews' right to live in their promised land. However, the Palestinian narrative is different. It sees noting but Israelis expelling hundreds of thousands of Palestinians from their homeland, occupying territories, and destroying villages and civilians. This narrative, called Nakba by the Palestinians, is presented as one long catastrophe. Nonetheless, it must be conced-

ed that a large Palestinian population, comprised of those who were not killed or expelled, were able to remain in their homes in Israeli territory.[38] Nowadays, they are considered a minority and go by the name of Arab-Israelis. This minority and various groups in Israel now want to incorporate Nakba within the Israeli educational system as an appendix to the history of Israel and of its conflict with the Palestinians.

During the 1980s, scholars and historians started to point out the manipulation that Jewish Israeli historiography engages in, and the serious problems it contains in relating to the public educational system. The New Historians movement has been challenging the Jewish Israeli narrative and its historiography ever since its creation. At first, this movement was criticized and not accepted. Due to a vast effort to show the problematic and biased point of view of the Zionist narrative, however, over time the New Historians caused many Israelis to change the way they perceived their history, and worked in many spheres to bring to light other narratives besides the Jewish Israeli one.[39] Only lately, however, has there been considerable discussion about the problems of teaching only the Jewish Israeli narrative in schools, including the Arab-Israeli schools, even though this narrative has always been suspect in Arab-Israeli eyes.

The attempt of both Jewish and Arab educators to bring some of the Palestinian narrative to the Israeli educational system has never been successful. In 2001, Dan Bar-On Sami Adwan developed the idea of the Dual Narrative Teaching Process. According to this technique, Palestinians and Israelis should learn the historical narratives of one another. In 2009, Adwan and Bar-On published a textbook entitled “To Learn the Historical Narrative of the Other.” The textbook presents the central historical narratives of Israelis and Palestinians side-by-side. Each page in

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[38] Nadera Shalhoub-Kevorkian, 'Necropolitical Debris: The Dichotomy Of Life And Death', State Crime Journal 4, no. 1 (2015): 35 - 39, doi:10.13169/statecrime.4.1.0034.

[39] Ilan Pappé, 'Fifty Years Through The Eyes Of ‘New Historians’ In Israel', Middle East Report, 1998.

the textbook is divided into three sections of equal length: the Israeli narrative on the right, the Palestinian on the left, and in the middle are empty lines for students to write their own reactions to the historical narratives.[40] The textbook and The Dual Narrative Teaching Process were globally well-received, and various movements and states showed great interest and adopted their methods. Unfortunately, the textbook was rejected for use in both the Israeli educational system and the Palestinian educational system, with each government claiming the textbooks were inappropriate for their respective national curriculums.[41]

However, after 52 years of teaching only the Zionist narrative in the Arab-Israeli schools, in 2002 the Office of Education announced that it was considering adding some of the Palestinian narrative's elements, but only to the Arab-Israeli educational system. Since Arab-Israelis have strong connections with the Palestinian nation, this seemed to be a natural and required step. The new curriculum thus gave the Arab-Israelis an opportunity to incorporate something of their identity within the educational system. Unfortunately, powerful right-wing parties in the Knesset opposed the move, and in 2007 called for an emergency meeting of the Education, Culture and Sports Committee to discuss their disagreement with the new curriculum.

Yuli Tamir, Minister of education at that time, noted that the curriculum was approved in 2002, prior to her appointment as Minister, but said she supported it in any case. She claimed that the new curriculum would allow the Arab-Israeli students to see themselves reflected in the textbook.[42] Mohammed Barakeh, an Arab-Israeli member of the committee, said in the meeting

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[40] "The Dual Narrative Teaching Process: Palestinians and Israelis Learning the Historical Narrative of the Other," united states institution of peace, accessed Nov 17, 2015, http://www.usip.org/events/the-dual-narrative-teaching-process-palestinians-and-israelis-learning-the-historical-narrati.

[41] "The two narratives of the two people's - chronicle of disqualification of a textbook," the teacher union, accessed Nov 17, 2015, https://www.itu.org.il/?CategoryID=1772&ArticleID=17038.

[42] The Education, Culture and Sport committee, Protocol No. 294 (Jerusalem: The 17th Knesset, 2007).

that after the establishment of Israel in 1948, the Arab citizens did not feel independent. Instead, they felt "Nakba." In other words, they felt displaced and rejected due to the crushing presence of a military government, the expropriation of land, and above all, the anti-Arab discrimination which persists to the present day. This is what the Arab-Israelis remember and this is their heritage. Barakeh added that this narrative should also be transmitted to the Jewish students in order to promote pluralism, democracy and a habit of respectfully listening to one another.[43] Barakeh proved to be a dissenting minority within the committee, for by a six to one vote the committee decided to ban the presentation of two perspectives on Israel's War of Independence from the educational textbooks. Barakeh claimed that exclusion of the Palestinian narrative in the Arab-Israeli curriculum would contribute to the process of their alienation from the state and thereby undermine the coexistence of the Arab-Israelis within the State of Israel.[44]

To this day, it is forbidden to teach the two perspectives in both Arab and Jewish schools. Teachers who instruct parts of the Palestinian narrative do so secretly, in fear that at any moment their jobs could be taken away from them.[45] The explanation offered by Gideon Sa'ar, Minister of Education in 2009, is this: "there is no reason for a formal curriculum of the State of Israel to display statehood as a catastrophe or disaster."[46] Further explanations focus on the dangers of teaching the Arab-Israeli youth about the "war crimes" (unarguable) perpetrated against their previous generations. According to this view, it is highly possible that this type of curriculum could turn the Arab-Israeli youth or any youth against Israel. Similarly, many of those who run Jewish schools claim there is no point in teaching this narrative, since it is not the Jewish-Israeli

[43] Protocol Number 294, 2007

[44] Ibid.

[45] "Chronicle of disqualification of a textbook."

[46] Protocol Number 294, 2007

narrative. Dov Ben-Meir, a Labor Party member and writer, supports the Ministry of Education's decision, claiming that the dual narrative book distorts Israel's history, and its sole purpose is to deny Israel's legitimacy.

In 2000, prior to the approval of the new curriculum, Eli Podeh explained the central role played by textbooks in the shaping identity of Israeli's young people. In his article "History and Memory in the Israeli Educational System: The Portrayal of the Arab-Israeli Conflict in History Textbooks (1948-2000)" he notes the powerful links between education, history, memory, identity, and beliefs, before explaining how the educational system is responsible for implanting knowledge and values in the younger generation. He warns that a particular textbook or curriculum may alter or rewrite the past in order to suit someone's political needs.[47] Howard Mehlinger, in his article "International Textbook Revision: Examples from the United States" adds that textbooks convey to youths what they should know about their own culture, according to the adults' beliefs.[48]

The Israeli government sees the implementation of its national narrative as an important issue for the new generation, and it creates laws that promote it. However, at the same time, the government oppresses other narratives and bans the Palestinian version of events. The 2007 committee's decision of banning the use of the word "Nakba" in the school's curriculum was never discussed in the court, and the judiciary did not review it or present its opinion. When it comes to protecting populations such as underage students, the minister of education and the government have greater capacity to limit freedoms. The discussion about this decision became

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[47] Elie Podeh, "History And Memory In The Israeli Educational System: The Portrayal Of The Arab-Israeli Conflict In History Textbooks (1948-2000)", History &Amp; Memory 12, no. 1 (2000): 65-100, doi:10.1353/ham.2000.0005. pp. 65 - 66

[48] Howard Mehlinger, "International Textbook Revision: Examples From The United States", In Internationale Schulbuchforschung 7, no. 4 (1985): 287

irrelevant in 2011, when the government submitted the Nakba Law banning all public institutions from mentioning Nakba.

2. Legislation

A. Amendment No. 40 to the Budget Foundations Law – Nakba Law

In 2011, the Nakba Law was introduced in Israeli parliament. This law banned the alternative narratives from being taught — or even researched — in public high schools. This law, serving to further marginalize the Palestinian narrative, was passed as Amendment No. 40 of the Budget Foundations Law, but was named the Nakba Law by the media. The law sates: "If the Minister of Finance sees that an entity has made an expenditure that, in essence, constitutes one of those specified below (in this section — an unsupported expenditure), he is entitled, with the authorization of the minister responsible for the budget item under which this entity is budgeted or supported, after hearing the entity, to reduce the sums earmarked to be transferred from the state budget to this entity under any law: 1. Rejecting the existence of the State of Israel as a Jewish and democratic state; […] 4. Commemorating Independence Day or the day of the establishment of the state as a day of mourning."[49] This law empowers the Ministry of Finance to withhold public funding from institutions such as schools, universities, and local authorities that hold events treating the Day of Independence as a day of mourning. Furthermore, public bodies also would be fined for portrayals of Israel's existence as a non-Jewish democratic State.[50] Thus, starting in 2011, any public institutions' mention of the Palestinian narrative was a risk, even though this narrative interested many scholars and reflected Arab identities. The Nakba Law and

[49] Adalah, Unofficial Translation Of Budget Foundations Law (Amendment No. 40) 5771 (Adalah website, 2011), http://www.adalah.org/uploads/oldfiles/upfiles/2011/discriminatory_laws_2011/Nakba_Law_2011_English.pdf.

[50] Acri.org.il, 'The Nakba Law', 2011, https://www.acri.org.il/en/knesset/nakba-law/.

other forms of legislation have been aimed at undermining any narrative that does not support the official national Israeli narrative. Ideally, denying and banning specific narratives in public institutions, on the one hand, and promoting other specific narratives, on the other hand, should not be legitimized in any way, shape, or form in a democratic state. This law bespeaks the state's lack of recognition of the non-Jewish narratives and legitimizes the continued discrimination against those who disagree with that narrative.[51]

The Association for Civil Rights in Israel (ACRI) explains that the law reduces the freedom of expression of all Israelis, both Arabs and Jews, and limits the effectiveness of public debate. Prior to any effect the law may have had on institutional budgeting, it was used as a warning sign that negatively impacted the freedom of expression in Israel. Infringement on the freedom of expression related to the Israeli-Palestinian conflict existed before the law, but with the law in place the violation was confirmed. The law's broad and vague wording leads public institutions in Israel to self-censor in order to avoid any repercussions.

Associations that organize public-education events dealing with Nakba and the concept of a Jewish and democratic state have petitioned the SC to change this law. However, the Court rejected the petition in 2011, based on Miriam Naor's judgment.[52] Naor argued that, "at this stage, the petition is not ready for judgement because of the absence of the necessary, clear-cut, concrete, complete, and essential evidence needed to make a principled judicial decision."[53] The definition of the law is unclear, and it remains difficult to predict how it will be put into practice. Moreover, "legal mechanisms necessitate the following of tedious procedure before the sanction

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[51] ACRI.org, 'Adalah And ACRI Response To The Nakba Law', 2012, https://www.acri.org.il/he/18987.

[52] ACRI, "The Nakba Law."

[53] The orthodox high school in Haifa Alumni v. The minister of Treasure and the Knesset, 3429/11 (The High Court of Justice Israel 2012).

can come into effect."[54] Enforcing the law is a complex three-level process: (i) first, the Minister of Finance sends the case for review and approval from the Ministry's legal advisor; (ii) second, a consultation is convened with a committee composed of various entities, which must include a representative from the Department of Justice; and (iii) lastly, the institution has the right to request an official hearing before the law is enforced. "Even if, at the end of the day, the law affects the petitioners, we do not yet know to what extent and in what circumstances it will affect them and others."[55] The decision, therefore, was that it would be too soon to oppose the law without having concrete evidences of how the Minister of Finance would use his recently acquired prerogative.

The establishment of such a long process is not a coincidence. In the verdict, Naor describes the evolution of the law: "Initially, the proposal for the Independence Day Law was presented to Parliament. This proposal wished to enforce a ban on referring to either Independence Day or the establishment of the State as a "day of mourning" or "day of grief." This ban called for penalties of up to three years. The proposal was abandoned, and instead Amendment No. 40 to the Budget Foundations Law was presented to Parliament. This, too, was modified before it was accepted."[56] The first proposal was more rigid, but the amendment which was accepted was changed to accommodate practical application. After considering all the perspectives involved, the Court decided to approve the law with small changes related to the amount of the budget that could be cut.[57] The ACRI sees the nature of the law as a violation of free speech and claims that

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[54] The orthodox high school in Haifa Alumni v. The minister of Treasure and the Knesset, 3429/11 (The High Court of Justice Israel 2012).

[55] Ibid

[56] Translation - The orthodox high school in Haifa Alumni v. The minister of Treasure and the Knesset, 3429/11 (The High Court of Justice זמ Israel 2012).

[57] The orthodox high school in Haifa Alumni v. The minister of Treasure and the Knesset, 3429/11 (The High Court of Justice זמ Israel 2012).

the SC missed the opportunity to inform governmental legislators that there is a limit to this attack on freedom of expression. However, the Court believes that until there is evidence of the law put into practice, there is no way to determine if it violates freedom of expression.

The SC eventually approved the law because it is not a direct ban, but a type of sanction that limits free speech in Israel. So far, no one can prove that they have been hurt by the law, and it is too early to judge its effect. The SC contended that this is not a law or clear ban, but sanction which involves budget cutting under a decision of the Minister of Finance. The previous law that involved penalty of prison, on the other side, would not be approved by the SC because it does not address the Israeli freedom of expression standard or the international law. The government changed it and sent it within the SC standards in order to pass the sanction and maintain its policy of promoting the national narrative and marginalize the other ones.

B. The Anti-Boycott Law

In 2011, the Knesset passed the Anti-Boycott Law, which has been used against individuals or organizations who call for a boycott of the state of Israel or Israeli settlements in the West-Bank. Organizations, movements, and even states use boycotts to protest and change policy. Also, movements in Israel use boycotts as a democratic tool to protest Israeli policy related to the Palestinian-Israeli conflict.[58] The law was aimed against NGOs that call for boycotts, and enables the Minister of Finance to impose financial penalties against these institutions. These penalties can include the removal of tax exemptions, and upon consultation with the Minister of Justice, the Minister of Finance may decide — on a case-by-case basis — the appropriate penalty. This is

[58] ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2015).

only done, however, when one knowingly publishes a public call for a boycott against the state of Israel, or commits to take part in one.[59]

Under clause 46 of the Income Tax Ordinance, any organization that is determined to have called for a boycott will not be considered a public institution. Thus, it "will not be eligible to receive money from the Council to Regulate Sports Gambling; will not be considered a public institution under clause 3(A) of the 1985 Budget Foundations Law, regarding the receipt of budgetary support under any budget line item; will not be eligible to utilize guarantors under the Guarantors on Behalf of the 1958 State Law; will not be eligible to enjoy benefits under the 1959 Encouragement of Capital Investment Law, or under to the 1984 Encouragement of Research and Development in Industry Law."[60]

The Anti-Boycott Law attracted high criticism both before and after its approval. Civil society organizations criticized the substance of the law, saying it disproportionately violates values and constitutional rights. In the international arena, the European Union, international civil rights organizations, and even the American government strongly criticized the law. Even the legal advisor to the Knesset, Eyal Yinon, expressed his harsh stance against the law: "Under these circumstances, we believe that the wide definition of 'boycott against Israel' is a violation of free political expression in Israel."[61] The Anti-Boycott Law imposes sanctions on calls and acts of boycott that are both legal actions and a reflection of political points of view, and it does not separate boycotting the state as a whole and boycotting only the settlers. Despite boycotts

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[59] ACRI, Report Of Activities January - June 2015 (ACRI website, 2015), http://www.acri.org.il/he/wp-content/uploads/2015/07/report2015January-June.pdf.

[60] Prime minister office, Department of Justice, Chairman of the Knesset, Law Preventing Harm To The State Of Israel By Means Of Boycott (Jerusalem: Knesset, 2011).

[61] Jonathan Lis, 'The Knesset's Legal Advisor, Eyal Yinon: Boycott Law Violates The Freedom Of Expression', Haaretz, 2015, http://www.haaretz.co.il/news/politics/1.1180028.

being a legitimate way to protest against governmental policy, sanctions were placed against organizations who want to use this tool.[62] Moreover, the law labels the boycotts of both the state and the settlement products as the same act. Therefore, it obscures the line between questioning the legitimacy of Israeli policy related to the conflict — like the occupation and the settlements — and Israel's existence itself.[63] Most of the Israeli organizations who criticized the law argue that they have no intention of harming the State of Israel, but that they want to protest against the government policies and boycott the settlements in the occupied territories that, from their point of view, are illegal.

The law was brought before the SC, and the petitioners argued that boycotts are legitimate democratic tools, akin to demonstrations or processions, and allow citizens to express opposition to the policies of a private or public organization. Thus, the defendant's right to call for a boycott of the State of Israel is violated by the sanctions imposed on those who do so — a violation of the freedom of expression. The respondents justified the law, arguing that it comes under the country's need to defend itself against those who want to destroy it or wish to change its character. According to them, the law is a way of defending democracy and is an integral part of its survival. Eventually the SC, along with a panel of nine judges, ruled that calling for any boycott against Israel is illegal and Israel is within its rights to limit it. The only article that the SC canceled was the article that required compensation beyond the boycott's actual damages.[64]

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[62] ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2012).

[63] Barak Medina and Ilan Saban, 'Protection From The Law', HAOKETS, 2011, http://www.haokets.org/2011/07/12/%D7%94%D7%92%D7%A0%D7%94-%D7%9E%D7%9F-%D7%94%D7%97%D7%95/.

[64] ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2012).

The SC, leaning on the judgement of Judge Hanan Melcer and overviews of similar cases around the world, explained its decision based on Israel's basic laws and the exception to the freedom of expression law. The Judge agreed with the respondents' justification of the law, arguing that the country needs to defend itself from political or economic terror, especially coming from within. He said, "calling for a boycott came within the category known as democratic paradox, which allows to limit the rights of those who wish to enjoy democracy in order to hit it".[65] Moreover, "administrative restrictions against calling for boycotts have their own internal logic where, because those who call for a boycott often receive help in the first place from those they are boycotting."[66]

Essentially, he pointed out that is counterintuitive for organizations which receive benefits from the government to use those benefits to expend their activity against the government. Melcer did not accept the petitioners' claims that the boycott is directed toward governmental policy and not the state as a whole. As a response to the petitioners' claim about calling boycotts only against the settlers who present the "wrong" government policy, Melcer explained that the underlying purpose of the restrictions is "interest in preventing financing from parties, or individuals who call for a boycott against Israel, in a manner that discriminates against citizens, using forceful means, which actually hurts the free market of opinions and seeks to force the victims boycott the boycotters' position."[67]

Lastly, in order to endorse the law, there is a long and complex process: the ministry of finance has to find damages caused by the law, a connection between the damages and the orga-

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[65] A translation of Judge Melcer, ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2012).

[66] Ibid, ibid

[67] Ibid, ibid

nization, and apparent intent or knowledge of causing such damage. This process is similar to the Nakba Law with its role to ensure a minimum violation of freedom of expression.[68] Melcer explains his decision, saying, "it is hard to dispute that the Anti-Boycott Law indeed violates freedom of expression, however there is not a violation of the nuclear component of freedom of expression, even though it is a political statement, because the limitation is relatively limited and applies only to call for a boycott against Israel."[69] Therefore, Melcer determined the law's priority, and that the legislator has the right to withdraw benefits in such a case. Similarly to the Nakba Law case, the SC approved a governmental law that does not directly restrict the free speech in Israel, but involved financial sanctions instead. These sanctions also suit the Israeli national agenda of limiting any narrative that does not support the official narrative and Israeli State policy.

3. Banning Films and Plays that Present Alternative Discourses and Views

A. The Film *Tremor in Gaza*

In the summer of 2015, the legal adviser of Be'er Sheva Municipality told Forum Negev Coexistence for Civil Equality that they could not present the film *Tremor in Gaza* in buildings belonging to the municipality. *Tremor in Gaza* is a Dutch film documenting the meetings of expert trauma care practitioners and aid workers in Gaza who are dealing with mourning and trauma after the summer of 2014. Projecting the film in Israel is an attempt to bring in something from Gaza citizens' narrative into the Israeli discourse. The ban was based on laws that forbid political propaganda within territories of the municipality allocated.

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[68] ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2012).

[69] A translation of Judge Melcer, ACRI, Israel Religious Action Center, Adalah, Yesh Din v. Minister of Finance, Minister of Justice, the Knesset, 2072/12 (The SC of Israel 2012).

The ACRI clarified that the law, concerning political propaganda in public institutions, should be implemented in a limited fashion, so as not to violate the freedom of expression. Indeed, parties should not use public assets in order to maintain party activity, but in Be'er Sheva municipality operations, the act is in fact censorship and violation of freedom of expression of minority groups.[70] Despite this, the municipality's decision was not brought to court and the ban continued. It is important to emphasize, however, that the screening was banned only in buildings belonging to the municipality, making it an indirect and specific restriction of freedom of expression by curtailing alternate viewpoints and opinions. Despite its implications in matters of freedom of expression, this restriction has not received attention from official legal entities.

B. The Film *Jenin, Jenin*

Jenin, Jenin is a controversial documentary from 2002 by the Arab-Israeli filmmaker Mohammed Bakri. The film was prepared following the Israel Defense Force's (IDF) battle in the Jenin refugee camp during the operation "Defensive Shield" in 2002. The documentary provides stories and evidence from the Palestinian residents of Jenin about the attack in the city. Israeli military personnel, artists and scholars were shocked by the perspective presented by Bakri throughout the film. They argue that the film is saturated with lies and events that never happened. The testimonials in the film present IDF soldiers as war criminals.[71] The gap between the narratives of Israelis and Palestinians involved in the battle led to controversy and the prohibition of screening the film in Israel. After the film was screened in the Cinematheque Tel Aviv and Jerusalem, the Film Review Board banned the film from screening in Israel.

[70] ACRI.org, 'ACRI To Beersheba Municipality: Allow The Screening Of "Tremor In Gaza', 2015, http://www.acri.org.il/he/35268.

[71] Mohammed Bakri and others v Film Review Board and others, 316/03 (The SC 2003).

The board explained that the film could significantly impact the feelings of the public, who may mistakenly think that soldiers systematically performed war crimes, which the board considers untruthful.[72]

Bakri appealed the Censor Board's decision forbidding the screening of his movie. The SC decided that the council's decision was inconsistent with the basic law of "Human Dignity and Liberty," and accepted the claim of the petitioner. Justice Ayala Procaccia said that "the restriction does not meet the standard of proportionality. In light of this, the prohibition against the film cannot stand before our judicial review, and we must intervene in the Council's decision."[73] The decision harms the petitioner's freedom of expression and those of the participants in the movie. Justice Dalia Dorner stated, "the Council, like every other government body, has no monopoly over the truth. It was not granted the authority to expose the truth by silencing expression that members of the Council consider to be lies."[74] The public should be free to assess different perspectives of events; they must be exposed to a range of opinions and statements, and freely decide what they believe is true. Moreover, the council has other tools available besides prohibiting the screening in order to protect viewers from inappropriate content.

The discussion about the movie *Jenin, Jenin* illustrates the SC's policy not to allow direct limitation of freedom of expression. Since the council banned commercial screening of the movie in Israeli movie theaters, the SC had to repeal the decision. The Court reprimanded the council because of the attempt to completely restrict a narrative that does not comply with the Israeli national narrative. The SC noted that "the Council could have made use of a less blunt

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[72] Mohammed Bakri and others v Film Review Board and others, 316/03 (The SC 2003).

[73] Ibid, ibid

[74] Ibid, ibid

instrument."[75] A complete ban of the film screening is an extreme measure and serious violation of freedom of expression, and it did not pass the test of proportionality.[76]

C. The Play "The Corresponding Time"

The play "The Corresponding Time" was performed in Haifa's Al-Midan Theater in 2015. It portrays a Palestinian security prisoner named Wadia, who is secretly planning to build a musical instrument called an "oud" to play for his fiancee at their wedding. The play follows the couple's struggle against the Israeli policies and courts to confirm their wedding, and presents the narrative of the security prisoners. The play tries to explore the meaning of being a man in an Israeli prison and to discover the person behind the symbols, statistics, and clichés of the prisoner.[77]

The debate around the play was mainly driven because its writer, Walid Daka, was involved in the murder of the soldier Moshe Tamam in 1984. Tamam's family wrote Facebook posts demanding cancellation of the show, or at the very least an end to its financial support from the Haifa municipality or any public institution. Following pressure from the Tamam family, the Minister of Education, Naftali Bennett, and the Minister of Culture, Miri Regev, of the Haifa Municipality, decided to stop the theater's funding.

The organizations Adalah and the ACRI appealed to the ministers and municipality indicating that stopping the theater budget because of the play would be considered a serious violation of freedom of expression. The play does not contain any incitements against individuals or

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[75] Mohammed Bakri and others v Film Review Board and others, 316/03 (The SC 2003).

[76] Ibid, ibid

[77] The Cameri theater of Tel Aviv, 'The Corresponding Time - Summary', 2015, https://www.cameri.co.il/perfs/%D7%94%D7%96%D7%9E%D7%9F%20%D7%94%D7%9E%D7%A7%D7%91%D7%99%D7%9C.

national security, but presents a historically marginalized narrative. Moreover, the Attorney General sent a message to Ragev to make it clear that she has no authority as the Minister of Culture to decide the contents of culture and art. According to the letter, public financial support is essential to the existence of cultural institutions. Therefore, damaging the funding of a cultural institution can harm freedom of expression. Given the great importance of freedom of expression in Israel, the Attorney General determined that Regev could not intervene.[78]

Following the withdrawal of its funding, the theater, together with Adalah, appealed to the SC. The Haifa District Court accepted the petition, and ordered the municipality to transfer the funds to the theater. Judge Bracha Bar-ziv ruled that the Haifa municipality must restore Al-Midan's financial support. Meanwhile, the theater presented a petition against the Ministry of Culture after its government support had been frozen since the previous June. The budget cut is so far estimated at 2.3 million NIS. The cut has already caused serious damage to the theater; it is in debt and may be forced to close. The theater is currently awaiting a court decision in connection with the freezing of its government funding.[79] The decision of the SC is not clear yet, but the government and governmental officials stick to the new concept of budget cutting instead of directly limiting freedom of expression. Usually the SC does not repeal the decision, like in the Anti-Boycott and Nakba laws, but free speech is still limited through governmental policy.

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[78] ACRI, 'Attorney General To Regev: You Have No Authority To Stop The Support In Cultural And Artistic Works Due To Their Content', 2015, https://www.acri.org.il/he/35006.

[79] Noa Spiegel, 'Victory To Theater Al-Midan: The District Court To The Haifa Constrain Haifa Municipality To Return The Financial Support', Haaretz, 2015, http://www.haaretz.co.il/gallery/theater/1.2769043.

4. Limiting Demonstrations and Excluding Public Figures due to Their Statements

A. Intolerance in Israel Towards Statements Against the Government's Policy During Summer 2014

Summer 2014 was an intense time for Israelis and Palestinians, who were once again experiencing military conflict. The conflict increased and became what is now known as Operation Protective Edge, or the 2014 Israel–Gaza conflict. The operation was followed by the kidnapping and murder of Israeli teenagers from a settlements in the West Bank by Hamas militant activists. Israel-Hamas agreements were breaking, and the kidnapping only increased tensions. The conflict consisted of seven weeks of Israeli bombardment, Palestinian rocket attacks, and ground fighting, resulting in the deaths of over 2,100 people, the vast majority of them from the Gaza Strip.[80]

Times of crisis, war and emergency, like summer 2014, increase tendencies to silence expressions of criticism toward the government. At the time, Israel was caricatured as intolerant towards expressions perceived as non-patriotic or as expressing disloyalty to the state of Israel or lacking identification with it. The public atmosphere of intolerance, persecution, and incitement began with the abduction and murder of three Israeli youths. Social networks became virtual battlegrounds between left and right, Jews and Arabs. Statements that were regarded as provocative or anti-Israeli led to silencing voices. Anger and rage were aimed at Israeli citizens, both Arabs and Jews, who spoke out against the war or against the Israeli government's steps.[81]

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[80] OCHAOPT, Occupied Palestinian Territory: Gaza Emergency Situation Report (As Of 4 September 2014, 08:00 Hrs) (The mission of the United Nations Office for the Coordination of Humanitarian Affairs, 2014), http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf.

[81] ACRI, Report Of Situation Of Human Rights In 2014 (ACRI, 2014), http://www.acri.org.il/he/33477.

The outrage and intolerance toward speech unfavorable of the war or protesting and critical of Israeli policy were fanned by elected officials and government institutions. Ministers and government officials broadcast a message that it is wrong to criticize the government for its actions (and deceptions) related to the Gaza Strip, or to protest against the fighting. An ACRI report explains that the Internal Security Minister, Yitzhak Aaronovitch, and the mayors of Haifa and Lod acted to prevent demonstrations against the war, although it is their democratic duty to maintain the right of Israeli citizens to demonstrate and protect their freedom of expression. The intolerance towards provocative statements gave the security forces — including the police — a green light to act and arrest citizens for their expressions of dissatisfaction or distrust. Many of the demonstrations were denounced as illegal by local cops without actual legal basis and 1,500 protesters were arrested in one month. Moreover, people were arrested for things they had expressed on social networks, and the police carried out preventive detentions, even of minors, despite its violation of both international and Israeli laws.[82]

It is important to note that, in general, the judicial system did not support many of the arrests and the acts of the police and the government against individuals and freedom of expression. Citizens who spoke against the Israeli national narrative faced sanctions, detentions and different punishments. However, frequently, the jurisdictional system canceled the punishment and reprimanded the police. An example for the judicial system policy is the case of State of Israel vs Ashraf Salomon. Salomon's arrest was the result of a complaint that he posted on Facebook, including slogans against Israel and Jews. Salomon was detained by the police and was brought to court to extend the arrest. The Magistrate's Court in Tel Aviv-Jaffa, However, did not

[82] ACRI, Report Of Situation Of Human Rights In 2014, 8-9

approve the police request to hold Salomon for more days and demanded they think twice before arresting people for their speech. The judge Itai Hermelin explains his decision:

> This is a period of tension and inflammatory social security that often causes people to express aggression and harm the feelings of others. Still, in a democratic country which upholds freedom of expression, there is no place to detain people because of statements as long as those statements are not soliciting an offense or calling for significant harm against another. The court was not impressed by this kind of case; it is, at most, mere statements which are the product of the heat of the moment, which is of course unfortunate. In these circumstances, therefore, suitable alternatives to detention would be enough.[83]

Following the detentions and the requests for extension of detention, the law was amended in 2014 by the Ministry of Justice, who determined that the authority to submit an indictment related to demonstrations will no longer be under police authority, but under that of the court. However, a summons for questioning, even if it does not lead ultimately to an indictment, does produce a chilling effect on freedom of expression. The Israeli judiciary opposed direct limitations of free speech such as arresting people for their speech or preventing protests and demonstrations; therefore, the SC took the power of detention from the police and refused to prevent demonstrations that governmental officials asked to forbid. In a speech given by Attorney General Yehuda Weinstein to the criminal forum National Bar Association in Tel Aviv in May 2013, Weinstein revealed that, "political factors, including the Prime Minister, approached me and asked me to prohibit and prevent certain demonstrations. I never gave up and always rejected their requests."[84]

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[83] The State of Israel v. Ashraf Suleiman, 4587714 (The Magistrates Court in Tel Aviv 2014).

[84] Oren Persico, 'Silencing Even The Attorney General Weinstein', The 7Th Eye, 2013, http://www.the7eye.org.il/64996.

B. Exclusion of Haneen Zohabi from the Knesset for Six Months Because of Her Statement

Hanin Zohabi has been an Arab-Israeli parliament representative (MK) from the HaReshima HaMeshutefet (Joint Party List) since 2009. Henin has appeared several times in the headlines due to her provocative statements relating to conflict and the Palestinians' narrative struggling against Israeli occupation. In July 2014, the Knesset Ethics Committee examined her words and decided to impose the maximum penalty of a six month suspension from the Knesset sessions. However, during this period Zoabi was still able to participate by voting and continued to receive a regular salary as an active member of parliament.

The punishment imposed on Zoabi was mainly due to her statements related to the kidnappers and killers of the settlement youths in the summer of 2014. She said, "they are not terrorists, although I do not agree with them."[85] Zoabi shined light on the kidnappers' narrative in an intense and vulnerable time for Israel, which drew criticism and resistance from the public and government officials. The committee explained its decision to suspend her by stating, "Zoabi exceeded the bounds of legitimate expressions of MK; she performed support for the enemies of the state."[86]

Prior to the Ethics Committee's decision to suspend Zoabi for a six month period following her claim, the Central Election Committee had decided to remove her from the Knesset elections of 2015 for a similar occurrence during the election season of 2013.[87] The SC rejected the decision of the Central Election Commission and ruled that Zoabi may take part in the elections.

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[85] Avi Jacob, 'Listen To MK Zoabi: The Kidnappers Are Not Terrorists', Kol Chai Radio, 2015, http://www.93fm.co.il/radio/116474/.

[86] Lilach Weissman and Chen Ma'anit, 'MK Hanin Zoabi Was Suspended For Six Months From The Knesset', Globes, 2015, http://www.globes.co.il/news/article.aspx?did=1000958995

[87] Adalah.org, 'Israeli Supreme Court Delivers Detailed Decision In MK Haneen Zoabi'S Elections - Adalah', 2013, http://www.adalah.org/en/content/view/8199.

The SC's decision was derived from its typical process wherein the prevention of a candidate's participation in elections is rare.[88] Elimination of a candidate is done only in extreme cases when the system cannot address the issue with ordinary democratic tools, instigated by a situation of doubt or indecision. The democratic system should promote the interest of freedom to choose and be chosen. There was no clear or strong evidence of incitement or support of terror in the petition against Zoabi, therefore the SC had to repeal the Election Committee's decision.[89]

The Ethics Committee instead attempted to "punish" Zoabi. The committee's decision stressed that "Knesset members have the right to express views that are different from the consensus and to express public criticism of the government even during war. However, they should distinguish between criticism and harsh but legitimate protests, and encouraging the enemies of the state. A call to attack Israel's legitimacy and to justify terror against Israeli citizens are not legitimate criticism."[90] Therefore, according to the Committee, Zoabi violated article 1A in the Ethics Norm of the MK, which takes into consideration first and foremost the promotion of the Israeli State's benefit.[91]

Zoabi, with the ACRI and Adalah, submitted a petition to the SC claiming that the commission's decision was not legitimate. The central argument of the petitioners was that the Ethics Committee cannot impose a penalty on a Knesset member for purely political statements as a primary reason for violation of the welfare of the state. Nor are there any threats in Zoabi's words, propaganda or obscenity, slander, humiliation, defamation and/or contempt directed

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[88] Adalah.org, 'Israeli Supreme Court Delivers Detailed Decision In MK Haneen Zoabi'S Elections - Adalah', 2013, http://www.adalah.org/en/content/view/8199.

[89] Jack Khoury, 'Attorney General Opposed MK Zoabi's Disqualification From Running For Knesset', Haaretz, 2015, http://www.haaretz.co.il/news/elections/1.2562996.

[90] Weissman and Ma'anit, MK Hanin Zoabi Was Suspended For Six Months From The Knesset'

[91] MK Hanin Zoabi and others v. The Ethics Committee of the Knesset and others, 670614 (The SC 2014).

against individuals or current political interests represented by the Knesset. Therefore, the decision to deviate from the policy of the Ethics Committee is discriminatory and disproportionate against a Knesset member representing a minority. In addition, Zohabi holds the right of immunity that every MK shares, to enable him or her to express themselves and take action without concern for a future penalty. Penalty against MKs who represent a minority, because of their expression, leads directly to the tyranny of the majority. When the Majority does not accept the minority opinion, it is the end of the democracy.[92]

Unlike the SC's decision regarding the removal of Zohabi from the elections, the SC decided by majority vote not to interfere in the decision of the Knesset Ethics Committee. The court came to the conclusion that Zoabi violated rule 1A of the ethics committee of the Knesset. Punishment is indeed unusual in its severity compared to penalties imposed in the past. However, under the circumstances and in light of the petitioner's harsh words and timing, the Court gave the committee the authority to decide. Moreover, for the majority of the punishment period, the Knesset was in recess, and the SC saw no reason to interfere.[93]

Judge Hannan Meltzer emphasized the distinction between the debate about the disqualification of candidates and parties and discussion of the decision of the Ethics Committee, saying that the "disqualification of political candidate[s] is a serious blow to democracy, therefore the interpretation and application becomes scarce and strict […] However, the choice of the court not to get involved with the Ethics Committee's decision derived from the broad discretion range

[92] MK Hanin Zoabi and others v. The Ethics Committee of the Knesset and others

[93] Ibid, ibid

that the committee holds. The SC is more open to the reasons for the Committee to impose sanctions against Zoabi."[94]

Chapter 3 - Analysis of the Evidence

It is challenging to derive one general conclusion related to the different examples presented throughout this work. At first, it appears that some government actions are inconsistent with the determinations of the SC. The question of whether the government limits freedom of expression beyond exceptional cases is still vague, even after reviewing the evidence. Moreover, the SC is not consistent in its decisions, sometimes approving governmental decisions that effectively limit freedom of expression, and at other times repealing them. For example, in the Hanin Zoabi case, on one hand the SC decided to repeal the Central Election Committee decision of expelling Zoabi out of the election and the Parliament, but on the other hand, for the same charges, the SC decided not to get involved in the Ethic Committee decision to suspend her for six months.

In this chapter I will use the definition of freedom of expression in Israel, evidence that was presented in the previous chapters, and additional examples to explain how freedom of expression is implemented in practice in Israel. It is necessary to divide this between the approach of governmental officials and the approach of the judicial system. Each entity reviews freedom of expression and its limitations in different ways and are driven by different interests. I will show that the government tries to emphasize the Jewish national narrative and exclude other narratives from the official discourse. Therefore, the government intends to place laws that limit freedom of expression and the promotion of versions that conflict with its national narrative. The

[94] Translation, Eyal Gross, 'The Reasons For The Court To Remove Zoabi: Training Disappointing Sanctions On A Political Statement', 2015, http://www.haaretz.co.il/news/law/.premium-1.2562182.

SC's main goal is to make sure that the laws and the limitations do not conflict with Israeli democratic laws and the principle of free speech.

1. Freedom of Expression in Israel in Practice

A. Judicial Policy

As mentioned in Chapter 1, the SC considers freedom of expression a fundamental right and follows international standards, even though it is not included in the basic laws of Israel. The SC has to stick to the policy adopted, but at the same time, to deal with governmental and public pressure.[95] The Zoabi case is a clear-cut example of the SC's policies on freedom of expression: the SC did not approved Zoabi's permanent expulsion, but it did approve the sanctions against her. The attempt to ban the movie *Jenin, Jenin* is another example demonstrating that the government or official committees cannot arbitrarily ban a film or a specific narrative from Israeli society. Similarly, the protests that governmental officials tried to stop appear illegitimate in an evaluation of the legal system. The judicial system did not support many of the arrests, as well as acts of the police and the government against freedom of expression.

However, the SC approved the Nakba and Anti-Boycott laws. The Nakba Law states that public institutions, manly schools and universities, cannot mention Nakba or discuss whether Israel is a democratic state or not, otherwise part of their budget will be cut. Similarly, the Anti-Boycott Law determines that NGOs in Israel cannot promote boycotts of settlers' products, or any other Israeli products, as a protest against the governmental policy in the occupied territory, otherwise they will not get NGO benefits. Both laws were approved by the SC because they are

[95] Hezki Ezra, 'MK: Raze The High Court', Arutz Sheva, 2015, http://www.israelnationalnews.com/News/News.aspx/198771#.VlEtXd-rSt8.

not direct banning actions, but sanctions that the ministry of finance may use. Neither of the laws have been used, and when — or if — they are applied there will be a process that the ministry will have to go through activating the sanction. After having the sanctions implemented, most likely the affected party will appeal the decision, and the SC will have to discuss every case individually to determine whether or not the sanctions violate freedom of expression. Ultimately, however, the laws exist and the SC approved them.

B. Governmental Policy

The evidence from the previous chapter can also help us to compare government policies alongside those of the judicial system. Currently, both the legal system and the government report that Israel practices freedom of expression and is committed to this right at an international standard. However, there are examples where governmental institutions limit this freedom or use sanctions against perspectives that are inconsistent with the government's view.

During the summer of 2014, government officials tried to prevent protests and the police arrested a disproportional number of people in demonstrations for their expressions on social networks. Movies and plays that presented the Palestinian side in the conflict were also banned or had to face sanctions. MK Hanin Zoabi were suspended from the parliament for her statements describing the Palestinian narrative. Boycotts are no longer legitimate tools to resist governmental policy. Using the word Nakba is forbidden in schools. Describing the Israeli War of Independence as a bad day, or to question the nature of Israel as a democratic Jewish State, may also lead to sanctions.

Regardless of whether or not these actions have ultimately been approved by the SC, these are clear attempts by the government to control the information available to its citizens and

to limit and discredit any narratives that do not fit within the Jewish Israeli framework. The government promotes the national narrative while simultaneously trying to oppress other views through laws and sanctions. The government is aware of freedom of expression and its role in the Israeli legal system, and has produced laws that do not directly violate freedom of expression, but are instead forms of sanctions that indirectly limit free speech.

The best examples for using sanctions instead of actual limitations are the Nakba and Anti-Boycott laws: The Nakba Law started as a law against everyone who presents the 1948 war as a catastrophe and was more rigid, stipulating imprisonment as one of the penalties. This proposal was abandoned, and subsequently replaced by the Amendment No. 40 to the Budget Foundations Law. The Amendment itself changed over time in order to better adjust to the Israeli reality.[96] The same thing happened to the Anti-Boycott Law: The SC found the law legitimate because its punishment is a financial sanction and it requires a lengthy enforcement process. It seems that the government learned how to limit freedom of expression and still play (nominally) by the democratic roles enforced by Israeli jurisdiction.

A good example of the way government ministries adopted new strategies to limit discourses and narratives that are not consistent with the Israeli Jewish narrative is the response of the Minister of Culture, Miri Regev, to the play "The Corresponding Time." Mrs. Regev ordered the budget of the presenting theater cut. As a justification, she announced to the media that she is not limiting free expression because the director still can present this play, and the theater can

[96] The orthodox high school in Haifa Alumni v. The minister of Treasure and the Knesset, 3429/11 (The High Court of Justice זמ Israel 2012).

still work with its script. However she will not allow her office to support a work that was created by a security prisoner, or in her words, a "terrorist."[97]

Regev used the same technique when she heard that the Arab-Israeli actor Norman Issa had refused to perform in front of settlers in the occupied territories. She threatened to pull out state funding from Elmina Theater, a children's theater in Jaffa that is managed by Issa. Issa said it was unfair to expect him to go against his own conscience and to appear in places which are controversial.[98] Regev called on Issa to reconsider his decision, saying, "I believe in coexistence, and we decided to support his theater, but he does not believe in coexistence himself. If he did, he would go to the Jordan Valley […] If Norman does not withdraw his decision I intend to reconsider the ministry's support for the Elmina Theater which he manages."[99] Regev did not directly limited the free expression of Issa against the settlers, but rather threatened to reevaluate the budget for the theater he manages, effectively using a sanction to limit freedom of expression.

C. The Impact of Sanctions

The Attorney General sent a message to Ragev regarding the Al-Midan Theater, arguing that public financial support is essential to the existence of cultural institutions. Therefore damaging the funding of a cultural institution can harm its freedom of expression.[100] Without this funding the security prisoners would not be able to tell their story and to express their narrative.

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[97] Yair Ashkenazi, 'Culture Ministry Halts Funding To Haifa's Al-Midan Theater', Haaretz, 2015, http://www.haaretz.com/israel-news/.premium-1.661463.

[98] BARRY DAVIS, 'Arab Israeli Actor Norman Issa Refuses To Cross The Green Line', The Jerusalem Post, 2015, http://www.jpost.com/Israel-News/Culture/Arab-Israeli-actor-Norman-Issa-refuses-to-cross-the-Green-Line-405545.

[99] Ibid, ibid

[100] Spiegel, 'Victory To Theater Al-Midan: The District Court To The Haifa Constrain Haifa Municipality To Return The Financial Support'

Public funding is also essential to the children's theater in Jaffa and to most culture institutions. It is difficult for a cultural institution to prosper in Israel without financial support, especially when most other institutions are supported by the government. Israel is a welfare state and most Israeli institutions and organizations are supported by the government.[101] Therefore, it is a threat to freedom of expression when the government decides which institutions will survive and which will fall.

Similarly, public schools and universities cannot thrive without governmental support, so non-profit organizations need the special tax reductions they are entitled to. Most schools in Israel, especially in Arab-Israeli communities, are public and get funding from the government. All universities and many other higher educational institutions also depend on financial support.[102] Therefore, the institutions tend not to take the risk of approving any curriculum that presents the Palestinian narrative or may be considered a violation of the Nakba law. At the same time, NGOs and non profits can no longer use boycotts as legitimate tools to protest against government policies, instead trying to use other methods that do not jeopardize their necessary tax reductions.

The ACRI and Adalah contend that even though the Nakba and Anti-Boycott laws have never been enforced, they are still functioning as a "chilling effect" on freedom of expression because institutions self-censor out of fear of losing funding. The government got its wish, and the space for different perspectives and legitimate tools of protesting against the government are automatically reduced, without enforcing the new laws in practice. Adalah and other human

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[101] Nissim Cohen, Shlomo Mizrahi and Pinni Yuval, 'The Welfare State, Public Policy And Public Opinion In Israel In 2008', Social Security 82 (2010): 47, http://www.btl.gov.il/Publications/Social_Security/bitachon82/Documents/12-cohen.pdf.

[102] Cohen, 'The Welfare State, Public Policy And Public Opinion In Israel In 2008', 47 - 50.

rights organizations highlight this dangerous situation when limitations of free speech are not usually approved by the SC, but sanctions are.[103]

Using the sanctions technique to further marginalize undesired narratives works well for the Israeli government. In spite of the strict policy of the SC concerning free speech, the government has developed a new way to negotiate with the SC by using sanctions in order to avoid narratives and protests that are inconsistent with its policy and ideology. In the next section, I will demonstrate that organizations or individuals that wish to promote an alternative view to the Jewish Israeli narrative face a series of difficulties, including in the financial sanctions.

2. The Debate About Narratives

The main alternative to the Jewish Israeli narrative is the Palestinian narrative. Yet, due to the sanctions mechanism, it is prohibited from being depicted in the public sphere. The expression of those perspectives may result in penalties set by law, even tough various minority groups believe in the Palestinian narrative, or use its elements to develop their own narratives. Given that those limitations cannot be direct, the Israeli government deliberately responds to alternative versions of the Israeli-Jewish narrative by implementing sanctions. Consequently, there is a parallel conflict of narratives and ideas taking place between both sides.

A. National Security as a Justification for Limitations and Sanctions of Free Speech

Israeli parties that seek to limit free expression in Israel frequently claim, convincingly, that there is anxiety about national security or incitements to racism. In the Nakba case, beyond

[103] Acri.org.il, 'Association For Civil Rights In Israel (ACRI)High Court Ignores Chilling Effect Caused By The "Nakba Law" |', 2012, http://www.acri.org.il/en/2012/01/05/high-court-ignores-chilling-effect-caused-by-the-nakba-law/.

claiming that the Nakba is a total lie, Israeli parties go further and appeal to concerns of national security. Similarly, one newspaper reported this issue as a "political-security" matter, saying that the State of Israel has the right to defend itself from the hostility of those who do not believe in the right of its existence.[104] According to the mentioned parties, teaching Arab citizens about, or even mentioning, Nakba increases the sense of alienation and the negative attitude to Arab-Israelis. The same reasoning applies to the educational system, the Anti-Boycott Law, and the sanctions on films, theaters, and social media postings.

Limor Livnat, former parliament member, said the following about the Nakba Law: "once we taught the Arab-Israeli students that the Jews expelled them from their homes, they would conclude that they should go out armed, struggling against Israel. The result will be the fact that we grow in our own hands a fifth column."[105] The Israeli government sticks to this argument to avoid any promotion of conflicting narratives. According to government officials, the argument that Israel is not a Jewish and democratic state poses a threat to the very existence of the state, since those are its fundamental principles. The point being made is simply that the restrictions represented by the laws and sanctions show us that the Israeli government believes it has the right to limit this kind of speech.[106]

In other democratic countries, mostly those not experiencing an ongoing conflict, limiting freedom of expression and narratives would not be seen as legitimate or necessary. Given Israel's special situation, however, the argument of risk posed to the national security and limiting expressions may appear reasonable. As was mentioned by Livnat, other parliament members, and

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[104] Shay Doron, 'Nakba Law 2: Parliament Member, Alex Miller Demands To Ban The Activities Of The 'Nakba Day' In Academic Institutions', Nana 10, 2014, http://news.nana10.co.il/Article/?ArticleID=1081468.

[105] Moran Zelikovich, 'Nakba Entered Israel Textbooks,', Ynet, 2007, http://www.ynet.co.il/articles/0,7340,L-3428171,00.html.

[106] Doron, Nakba Law 2: Parliament Member, Alex Miller demands to ban the activities of the 'Nakba Day' in academic institutions,

the SC judges, the state has to defend itself from its enemies and potential threats. According to this argument, the Palestinian narrative, boycotts against Israel, and demonstrations against the government during turbulent periods represent a threat to national security; to limit it, in this context, is one to the overall exceptions of freedom of expression. Therefore, the government has the right to stop funding or to cut the budget of institutions that express themselves against its policy or present controversial narratives.

A deeper analysis is required to check if Livant's argument is consistent with the values of Israeli law. Livnat contends that there is a wide gap between acknowledging different narratives and protesting against government policies, to tangible security threats against the state. The Israeli SC has determined again and again that limiting freedom of expression is justified only in extreme cases where there is a very high probability of harm being done to the state's public security. Therefore, limiting the right of free speech in Israel by sanctions due to a hypothetical national security threat sets a worrisome precedent. Moreover, it is naïve to think that pushing out the Palestinian narrative from the educational system and cutting the budgets of organizations which promote it will prevent people from spreading the Palestinian narrative.[107]

However, it is very likely that the parties which supported the sanctions are genuinely concerned for the survival of the state of Israel. As Sa'ar, former education ministry says, "Israel does not look objectively at the whole picture, but first of all thinks about its own interest."[108] Considering that 20 percent of Israelis are actually Arab-Israelis who used to be Palestinians, it is necessary to take actions to forestall hostility. The Jewish Nation and the Israeli State are predicated on the fact that someone, ever since the dawn of the history, has always tried to

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[107] Umut Koldas, 'The Nakba In Palestinian Memory In Israel', Middle Eastern Studies, no. 476 (2011): 947-959.

[108] Protocol Number 294, 2007

eradicate them. It started with Pharaohs, the kings of ancient Egypt, continued in Europe with the Inquisition, and culminated in the Holocaust. Those threats erupted again with the 1973 war, and are still going on with the Iranian nuclear-weapon threat.[109] Therefore, it is conceivable that promoting the Palestinian narrative, or protesting against government policy is frightening to politicians in the Israeli government. The sanctions are just one of many expressions that match this anxiety.

B. Rethinking the Palestinian Narrative as an Obstacle to Peace and Security

Nevertheless, contemporary authors cast doubt on the efficacy of Israeli attempts to repress the Palestinian narrative with laws and sanctions in order to safeguard national security. Research done by Elazar Barkan and by Sarah Maddison shows that allowing freedom of expression and narratives increases peace in an area. Barkan developed his "shared narrative theory" which poses that peace can only be achieved if the conflicting parties reconcile their historical narratives. Barkan points out that, in conflicts, the more powerful party's narrative is considered legitimate, preventing the less-powerful party's narrative from being shared and acknowledged, and undermining the possibility of understanding between the parties. No attempt to achieve reconciliation in a conflict situation will succeed without efforts to build trust between the two opposing parties and reconcile their historical narratives.[110] Sarah Maddison adds the notion of "agonistic democracy," arguing that open educational debates can play the role of non-

[109] Ophir Jacobson, 'Anti-Semitism Through The Ages', Amigo Magazine, 2015, http://www.e-mago.co.il/magazine-206.htm.

[110] Elazar Barkan, 'Introduction: Historians And Historical Reconciliation', AM HIST REV 114, no. 4 (2009): 899-906, doi: 10.1086/ahr.114.4.899.

violent conflicts within reconciliation efforts that accept conflict as both enduring and necessary.[111]

Similar research about the role of collective memory and freedom of expression in reconciliation has also been done among youths in Israel. In his article "Who is Afraid of the Nakba" for the newspaper Haaretz, Uer Kashty presents research that shows that a critical study of both narratives would help to promote the understanding between young students from both sides. Dr. Tsafrir Goldberg, who did the research, explains that critical discussion about the history of the Palestinian-Israeli conflict raises the ability to have a dialogue. However, the research was ignored by the government, which dismissed the study claiming that an illegal textbook had been used on it. The textbook was illegal because it portrayed both narratives, presenting a critical review of the Zionist narrative.[112]

John J. Mearsheimer explains in his article "The False Promise of International Institutions" that security will be better guaranteed with coexistence, reconciliation, and peace.[113] Sanctioning narratives and denying the identities of minorities cannot lead to reconciliation or coexistence. Coexistence, however, does not have to come from either the shared narratives or the agonistic democracy theories, but rather could come from simply listening to, and thereby respecting, the other side. In his article, Barkan mentions South Africa's Peace-Making Commission and other such commissions where people talked, told their stories, and listened to each other, saying that those constitute a very simple first step toward peace.[114] Similarly, Dov

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[111] Sarah Maddison, 'Indigenous Identity, 'Authenticity' And The Structural Violence Of Settler Colonialism', Identities 20, no. 3 (2013): 288-290, doi:10.1080/1070289x.2013.806267.

[112] Kashty, who is afraid for the Nakba,

[113] John J. Mearsheimer, 'The False Promise Of International Institutions', International Security 19, no. 3 (1994): 5, doi: 10.2307/2539078.

[114] Barkan, "Introduction: Historians and Historical Reconciliation," 902

Khenin and Mohammed Barakeh said at a meeting of the Committee of Education, Culture and Sport Committee in 2007, that it is in Israel's interest to allow different narratives in the Israeli discourse.[115] Doing so in schools and public institutions would allow citizens to grow up and live in a pluralistic and democratic society. People do not have to agree with all narratives, but rather listen and understand the other side's emotions and feelings. According to Maddison's thesis, arguments between Israelis and Arab-Israelis will continue, based on the disputes between Arabs and Jews. However, debates and the conflict will be less violent, finding a peaceful place of expression within the democratic sphere.[116]

[115] Protocol Number 294, 2007

[116] Maddison, "Indigenous identity, 'authenticity' and the structural violence of settler colonialism," 288

Summary

Freedom of expression has an intrinsic value as an umbrella to protect all other human rights, and is also used for conflict resolution and assisting in the reconciliation process. According to theories of agnostic democracy and shared narratives, to put a lasting end to conflicts, both parts must be allowed to express themselves. When just one side has free speech privileges, the restrained society may opt for more extreme actions, such as armed conflict and terrorism. In this case, limitations of free speech are not solving national security issues but rather causing them. Currently, there is not an equal place for both narratives on the Palestinian-Israeli conflict. Instead, both sides use a lot of resources to promote their point of view and to oppress the competing narrative, strengthening alienation between the two societies.

Israeli governmental institutions often use laws or sanctions to limit the Palestinian narrative in the national discourse. Having their perspective recognized gives each side the legitimacy to act and to fight for their rights, which encourages the Israeli government's restrictions to the Palestinian narrative in different levels and areas. Aiming at making the Palestinian perspective illegitimate, and the Israeli perspective dominant, the Israeli government arrests people for their speech, bans Palestinian movies, and creates laws and sanctions that restrict the Palestinian narrative. However, limiting the Palestinian discourse, is not consistent with the democratic values Israel wants to endorse. The Israeli SC finds itself repealing governmental decisions that restrict freedom of expression because they are not consistent with both international human rights law and the Israeli legal system.

The SC repeals official decisions that directly restrict freedom of expression, although the officials argue that they are protecting national security concerns, which can be a legitimate reason to limit freedom of expression. At the same time, the SC approves sanctions and indirect lim-

itations for that same reason. Given that the Israeli government has to consider the SC's policies while creating limitations that oppress the Palestinian narrative, they have introduced sanctions to indirectly restrict the Palestinian narrative. Similarly to direct limitations, the main argument for the sanctions is tangible danger and national security issues. Because the sanctions are leaning on the gray area of free speech limitations, the SC does not stop them, allowing the government it to promote its agenda and oppress narratives that are inconsistent with the official Jewish Israeli narrative.

However, as emphasized by Barkan and Madison, research and past experiences from other countries show that endorsing the discourse of one side while oppressing competing views is a major cause of conflicts. The a step in conflict resolution is to recognize that there are multiple points of view and interpretations. It is important for each side to be recognized and, at the same time, to be open to the other side's version of the facts. Finding a shared narrative that contains both stories can bring both sides to a dialogue. Unfortunately, the Israeli government chooses to go in the opposite direction by sanctioning any narrative that is not consistent with its own. This policy polarizes both sides of the conflict, thereby exacerbating and perpetuating mutual tension. In order to solve the conflict, both societies must be allowed to express themselves freely.

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