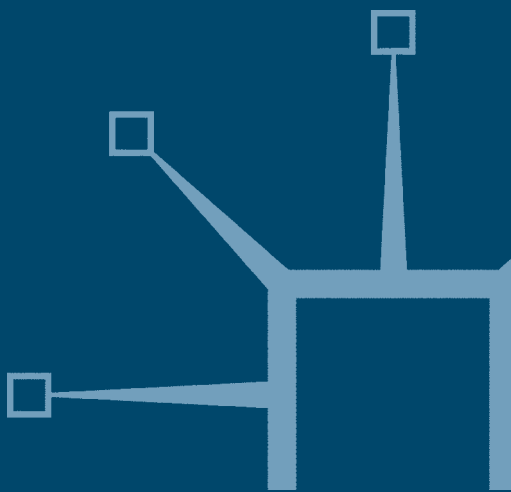
palgrave
macmillan

Speech, Media and Ethics

The Limits of Free Expression

Critical Studies on Freedom of Expression, Freedom of the Press and the Public's Right to Know

Raphael Cohen-Almagor



Speech, Media and Ethics

This page intentionally left blank

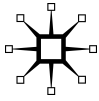
Speech, Media and Ethics

The Limits of Free Expression

Critical Studies on Freedom of Expression, Freedom of the Press and the Public's Right to Know

Raphael Cohen-Almagor

palgrave



First published 2001 by
PALGRAVE
Houndmills, Basingstoke, Hampshire RG21 6XS and
175 Fifth Avenue, New York, N. Y. 10010
Companies and representatives throughout the world

PALGRAVE is the new global academic imprint of
St. Martin's Press LLC Scholarly and Reference Division and
Palgrave Publishers Ltd (formerly Macmillan Press Ltd).

Outside North America
ISBN 0–333–77076–5

In North America
ISBN 0–312–23607–7

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data
Cohen-Almagor, Raphael.
Speech, media and ethics, the limits of free expression : critical studies on freedom of expression, freedom of the press and the public's right to know / Raphael Cohen-Almagor.
p. cm.
Includes bibliographical references and index.
ISBN 0–312–23607–7
1. Freedom of speech. 2. Freedom of the press. 3. Mass media—Moral and ethical aspects. I. Title.

174'.9097—dc21

00–033301

10 9 8 7 6 5 4 3 2 1
10 09 08 07 06 05 04 03 02 01

Printed and bound in Great Britain by
Antony Rowe Ltd, Chippenham, Wiltshire

For Zehavit

This page intentionally left blank

Contents

This page intentionally left blank

Foreword

The principle of free communication is probably the most complex and controversial of all constitutional guarantees. Traditionally it has been spoken of as the Free Speech Principle. But that expression conceals the fact that the principle it enunciates is both narrower and wider than its language suggests. The principle does not protect many things that are in a literal sense speech. On the other hand it does protect many things that are not speech. Defamation, obscenity, and fraud may be perpetrated through speech acts but are unprotected. Marching, picketing, and voting are non-speech activities but the free speech guarantee may in certain circumstances protect them.

In 1994, in *The Boundaries of Liberty and Tolerance*, Raphael Cohen-Almagor published a pioneering study of the challenge to liberal principles of toleration posed by extremist political parties in Israel. In *Speech, Media and Ethics: the Limits of Free Expression*, the examination of the limits of tolerance is extended to embrace the problem of maintaining a free press in the face of challenges from forces that, if left unrestrained, would destroy the institutions of a free society. This is the classic dilemma of liberal toleration. To the extent that liberal theory can distinguish between what John Stuart Mill – the founding father of free speech theory – called discussion, and expressive activities that go beyond discussion, the classic question whether we should tolerate the intolerant has a simple answer. The toleration of discussion or advocacy extends to the advocacy of violent or extremist policies since ex hypothesi it extends to the advocacy or discussion (if that is what it is) of anything. But the application of that principle and the analysis of what it is that carries communicative activities beyond advocacy are complex. It is also best explored, as here, in relation to concrete instances and experiences.

Though much of this study focuses on the necessary limitation of the communicative and journalistic function, it is written from a liberal rather than a communitarian standpoint. Communitarian critics of liberal ideology sometimes write as if liberal theory in its nature were incapable of entertaining societal considerations or limitations on individual aspiration. Liberals are sometimes said to be committed to a metaphysic of the atomic individual. But – unless it is definitionally so

arranged – there is nothing in the concept of being an atomic, molecular, or just plain individual that determines how such individuals should behave in relation to each other. Separate identity is not inconsistent with mutual restraint. Individual personalities may wish to limit their activities for good reasons for the sake of other individual personalities – in other words, society. In relation to expression, liberal theory is neither in principle nor in practice incapable of accepting limitations on freedom. It is true that some few American constitutionalists have spoken energetically and unreflectively of the First Amendment's free speech guarantee as being absolute within the boundaries of political speech. But that has not been the general consensus, and everywhere courts and commentators in the liberal tradition operate on the assumption that there are principled limitations on expression that may be imposed in a free society and on a free press and, in the latter case, that some of them are best when self-imposed.

It is even possible that defenders of liberal and democratic principles may be too modest in expounding them. Raphael Cohen-Almagor presents his conclusions as principles that are fitted for democratic societies rather than doctrines having universal application. It is of course true that non-democratic and non-liberal societies would reject them. Nevertheless, if such principles are advanced as moral propositions they must be universalisable. That is only to say that they will apply in all societies unless there are good reasons for making exceptions and modifications to them.

Whether there are such reasons and how the relevant principles should be formulated are matters for close argument. But denial of their relevance or validity by non-democratic societies should not persuade democrats to refrain from proclaiming them as universal moral principles. This does not of course mean that they apply absolutely or in uniform fashion in all places and circumstances. But the same is equally true within one society.

Of all the dilemmas in the operation of free governments, the dilemma of free discussion and the delimitation of press freedom are the most intractable. In this book Raphael Cohen-Almagor tackles the dilemma at the points where its complexities are most apparent. Political theorists, politicians, and philosophical journalists (if such there be) will have good reason to ponder what he has to say.

Geoffrey Marshall
The Queen's College, Oxford

Acknowledgements

Chapter 1 contains material originally published in 'Harm Principle, Offence Principle, and the Skokie Affair', *Political Studies,* XLI, No. 3 (1993), 453–70, reprinted in Steven J. Heyman, ed., *Controversies in Constitutional Law*: *Hate Speech and the Constitution* (New York and London: Garland Publishing Inc., 1996) Vol. II, 277–94. Chapter 3 contains material originally published in two essays: 'Disqualification of Lists in Israel (1948–1984): Retrospect and Appraisal', *Law and Philosophy,* Vol. 13, No. 1 (1994), pp. 43–95, and 'Disqualification of Political Parties in Israel: 1988–1996', *Emory International Law Review,* Vol. 11, No. 1 (1997), pp. 67–109. Chapter 5 was published in *Australian Journal of Communication*, Vol. 26, No. 2 (1999), pp. 11–34. Part of Chapter 7 may be found in *Sceince and Engineering Ethics*, Vol. 6, No. 3 (2000). An earlier version of the Appendix was published in Hebrew in *Megamot* (Trends), Vol. 39, No. 4 (1999), pp. 400–19. I am grateful for permission to use these articles.

This page intentionally left blank

Introduction

This volume deals with limits on freedom of expression, defined broadly as including the right to demonstrate and to picket, the right to compete in elections, and the right to communicate views via the written and electronic media. Throughout the book moral principles are applied to analyse questions that deal with liberty and its limits.

In the liberal framework, the concept of 'rights' is understood in terms of a need that is perceived by those who demand it as legitimate and, therefore, the state has the responsibility to provide it for each and every citizen. Rights are primary moral entitlements for every human being. In this context one could differentiate between rights that guarantee certain goods and services, like the right to welfare and to healthcare, and rights that protect against certain harm or guarantee certain liberties, like the right to freedom of expression and to exercise choice. This book concentrates attention on the latter.

Another pertinent distinction is between an individual's rights with regard to the state or government and an individual's rights with regard to his or her fellow citizens. Rights, conceived to be legitimate, that must be met by the state (for example, the right to life, to shelter, and to associate), justify taking political actions to fulfil them. Rights regarding other individuals who act illegitimately justify the use of coercive measures against those individuals either by concerned citizens (right to self-defence or to protect one's property) or by the state.

Furthermore, the claim that citizens have rights that the state or the government is obligated to fulfil does not mean that the state may not, under certain circumstances, override these rights. Citizens have a right to freedom of expression, but the state can limit that right in order to prevent a threat to public order, the security of the state, or third parties in need of protection (such as children).[1]

The right to freedom of expression, including freedom of the media, lies at the centre of this volume. Liberals are quite happy to speak of rights but do not elaborate on the limits of these rights. In the United States, where the tradition of the First Amendment is well established, American scholars often describe free speech and free journalism in absolute terms.[2] Obviously there needs to be very convincing justification to interfere with this essential right and freedom. The debate on the proper boundaries of free speech and communication is still lively,[3]

and many argue that the essence of the First Amendment is to guarantee a free and uncontrolled marketplace of ideas. This book will address the question of proper boundaries.

The boundaries are designed to promote the values of respect for others, and not harming others. Liberal ideology places the individual at the centre: all liberal reasoning derives from seeing the individual as the focus of analysis, and all its reasoning is aimed at the advancement and development of the individual which, in turn, would result in the progress of society. The tradition evolving from the philosophical thought of John Locke (1632–1704), Thomas Paine (1737–1809), Alexis de Tocqueville (1805–59), John Stuart Mill (1806–73) and, in our time, John Rawls and Ronald Dworkin, places the individual, in contrast to the collective, at the centre of analysis, viewing the state as a mere instrument to serve the interests of the individual. The liberal state is conceptualized as a means of protecting society from external attacks, a framework regulating the implementation of the law for the prosperity of the citizens, a sophisticated tool to ensure individual rights.

One assumption of the liberal ideology that this book contests is the assumption of universalism. The hypotheses advanced in this book and the conclusions reached are limited to modern democracies emerging during the last one hundred years or so. I believe that there are some basic universal needs that all people wish to secure such as food, raiment, and shelter. I believe that sexual drives are universal and that people need to have some sleep to be able continue functioning. I also believe that we should strive to universalise moral principles. But sociologically speaking we cannot ignore the fact that universal values do not underlie all societies. Some societies reject the moral notions of liberty, tolerance, equity, and justice that liberal democracies promote. Thus my concern is with liberal democracies which perceive human beings as ends and which respect autonomy and variety. The arguments are relevant to other countries, but because non-democratic countries do not accept the basic liberal principles, because their principles do not encourage autonomy, individualism, pluralism, and openness, and their behaviour is alien to the concepts of human dignity and caring, one can assume that the discussion will fall on deaf ears. Non-liberal societies, based on authoritative conceptions and principles, deserve a separate analysis.

That said, one of the problems of any political system is that the principles which underlie and characterize it might also, through their application, endanger it and bring about its destruction. This contention is obvious when totalitarian/authoritarian regimes are

considered. A well-known dictum holds that you can do many things with bayonets, except one: to sit on them. Given the opportunity, people will rebel against the flagrant denial of their basic liberties. What seems to be obvious for totalitarian countries is conceived as less obvious where democracies are concerned. Because the democratic system of ruling is designed for the people, by the people, employing the positive mechanisms of liberty, tolerance, participation, and representation (in contrast to the coercive mechanisms utilized by authoritative systems), democracy is deemed immune to the above contention that the very principles that underlie the system might bring about its destruction. I would argue that democracy, in its liberal form, is no exception. Moreover, because democracy is a relatively young phenomenon, it lacks experience in dealing with pitfalls involved in the working of the system. This is what I call the 'catch' of democracy.[4]

Part I deals with recent controversies over freedom of expression. The first chapter discusses free expression and its confines when dealing with hate speech. It formulates principles conducive to safeguarding fundamental civil rights, and further employs the theory to analyse the Skokie affair. The focus is on the ethical question of the constraints on speech. I advance two arguments relating to the 'Harm Principle' and the 'Offence Principle'. Under the 'Harm Principle', restrictions on liberty may be prescribed when there are sheer threats of immediate violence against some individuals or groups. Under the 'Offence Principle', expressions which intend to inflict psychological offence are morally on a par with physical harm, so there are grounds for abridging them. Moving from theory to practice, in the light of the formulated principles, the ruling of the Illinois Supreme Court which permitted the Nazis to hold a hateful demonstration in Skokie is argued to be flawed.

While the first essay deals with the right to demonstrate with the aim to harm a target group that cannot avoid being exposed to the demonstration, the second addresses the question of picketing private homes of public officials. Immediately after Prime Minister Rabin's assassination a proposal was raised to ban demonstrations outside private houses of politicians. I object to this proposal because of its sweeping language. This chapter reviews the American, English, and Israeli stances with regard to the subject matter, arguing that the Israeli stance is more akin to the American, and that the right to picket cannot be flatly prohibited. Democracy may set regulations of time, place, and manner but it should not proscribe pickets and demonstrations at private places. Democracy has an interest in furthering and promoting

free flow of opinion between the public and its representatives. Sometimes the direct communication between the public and its representatives near private homes of public figures is much more effective both for the public and its representatives. The government and its powers, that is, the police, may require satisfying some procedural measures but they should not set prior restraints on such direct communications.

In deciding whether to grant permission to carry out such a protest we need to weigh the right to picket or to demonstrate, derived from the right to freedom of expression, against the right to privacy. It is asserted that the degree to which interference in a public official's privacy may be tolerated should be a function of his or her political, social, or economic position in society. The more prominent the position, the greater latitude we have for interference with the public official's privacy. We need to strike a balance between the right to communicate and the right to be let alone.

The third chapter discusses the limits of parliamentary representation as it has been tackled in Israel (the rationale, however, is made in principled terms and could be applicable to every liberal democracy). It reviews the decisions of the Central Elections Committee and of the Supreme Court regarding disqualification of lists in Israel. The discussion revolves around the question of what constraints on the right to be elected to parliament should be introduced in order to safeguard democracy. It is argued that democracy does not have to permit a violent list propounding the destruction of democracy to act in order to fulfil its aim. It is neither morally obligatory, nor morally coherent, to expect democracy to place the means for its own destruction in the hands of those who either wish to bring about the physical annihilation of the state, or to undermine democracy. These two are the only cases in which democracy has to introduce self-defensive measures and to deny representation in parliament to violent lists which convey such ideas, and which act to realize them.

Hence, the three chapters that open the volume deal with fundamental liberties, and their limits. They are concerned with different aspects of the tension between the basic inclination to allow as much freedom as possible, and the employment of self-defence mechanisms to safeguard and protect democracy. Together they provide a systematic analysis of some of the most troubling issues confronting modern democracies, and aim to offer moral reasoning that coincides with basic moral principles of justice and humanism.

Part II focuses attention on freedom of communication and media ethics, a very timely concern in the western world. For the past few

years I have been engaged in a comparative study of the main problems of the media in liberal democracies. I examine what issues trouble the minds of media scholars and decisionmakers with regard to the work of the media in their respective countries. In my study I reviewed the relevant literature and, in addition, conducted many dozens of interviews and discussions with judges and academics, media scholars and ethicists, senior media administrators as well as reporters, in Britain, the United States, Canada, and Israel. The lessons and conclusions arising from this comparative study provide food for thought about the relationships between media and democracy as we enter the new millennium.

The four essays analyse some of the basic principles, and fallacies, of the media. All these essays formulate ethical limits on the working of the media, emphasizing that these should be self-imposed rather than imposed on the media from above by the legislature or the courts. Like the three previous essays, they combine theory and practice, and try to set boundaries to free expression. Here the concern lies with the concept of 'the public's right to know' and its ethical constraints.

The concept of media ethics is conceived to be an oxymoron. Sadly, many segments of the modern media are stripped of almost all ethical concerns. In a reality of competition, ratings, and economic considerations, ethics becomes a secondary, sometimes irritating issue. The idea, so to speak, is: 'Let me do my job of reporting and don't trouble me with your morals.' Many people in the media industry portray their work as a hack, a trade, and not as a profession, in order to legitimize their moral-free conduct. This moral-free conception should be changed. Ethics, in a nutshell, means taking responsibility for the consequences of one's conduct. People working in the media should be concerned with the consequences of their reports. The second part of the book speaks of the ethical mechanisms that need to be employed in the pursuit of the public's right to know.

The first essay of this part scrutinizes the assumption that objective reporting is good reporting, is ethical reporting. It does so by reflecting on different dimensions that are associated with the concept of objectivity: (1) accuracy; (2) fairness and balance; (3) truthfulness; and (4) moral neutrality. Evidence shows that most media people believe that they are objective. It is asserted that in most cases journalists are not objective in their reporting either because they consciously prefer not to be or because they are being manipulated by their sources. I proceed by an examination of the concept of 'good journalism', which encompasses the requirement of objective reporting. The chapter contends that in

cases of conflict between 'good journalism' and the effort of getting 'good stories' often the latter will enjoy precedence. I close by asserting that the values of not harming others and respecting others should play a prominent part in the considerations of journalists. These are basic ethical standards that sometimes require *normative* reporting. The ethical journalist must be allowed to transcend objectivity by not remaining morally neutral on some issues. Consequently, morally neutral coverage of hate speech, racism, slavery, genocide, or terrorism is a bad idea. It is a false and wrong conception.

The concern of the second chapter is with the limitations that should be placed upon freedom of the written and electronic press. The tragic death of Princess Diana and her lover in August 1997 and the subsequent extensive discussions on the role of the media and the limits on 'the public's right to know' prompted the writing of this essay. Freedom of speech in the media is the guiding rule, one of the foundations of democracy, but at the same time freedom does not imply anarchism, and the right to exercise free expression does not include the right to harm others.

This chapter consists of five parts. I commence by reflecting on ethics in the media, and then the responsibility of journalists to their audience and profession is discussed. Next consideration is given to categorizing events, outlining the boundaries of media coverage. I close with suggestions for media self-regulatory mechanisms and controls that could improve their working.[5]

The third chapter supplements the preceding by devoting attention to the troubling issue of media coverage of suicide. It examines how the media in Canada, Great Britain, and Israel report suicide stories, arguing for caution in reporting both for reasons of sensitivity towards the individuals involved, the suicides and their families, and for ethical reasons: caring for the consequences of reporting. The means by which the suicide was committed should not, generally speaking, be reported. Suicide should not be romanticized. Instead, the media should speak of the emergency signals that people in distress emit, and how to help them through by reassurance and referral to the appropriate agencies where mentally unbalanced people can get help and support. In addition, responsibility requires that teenage and celebrity suicides be viewed as special cases that demand extra caution. This is because teenagers are attracted to sensational headlines about suicide, and they are susceptible to imitation, and because celebrity suicides are the most often imitated.[6] It is maintained that, in any event, suicide should not be reported in real time.

The fourth chapter is concerned with the powers of the press councils in Great Britain, Canada, and Israel. It shows the inherent deficiencies of the councils and proposes some fundamental changes. It is impossible to have voluntary councils, with limited budgets, and yet to expect from them serious work. It is also not feasible to hope that the councils, sponsored by the media, could effectively criticize their sponsors without fear that they might be harmed if their adjudication is not to the liking of editors and publishers. And it is quite pointless to speak of the desired idea and practice of self-regulation without equipping the relevant organization, the press council, with significant powers of sanction. Here I compare the press councils in the three democracies and outline practical recommendations for modifications.

These chapters propose recommendations for better, more ethical media. To paraphrase the words of Tom Kent, who headed the Canadian Royal Commission on Newspapers in 1980, the necessary motto for reformers, in this as in other matters, is: Be prepared for the day when some conjunction of circumstances creates a will for change. Then practical ideas will be handy. If this is understood by some of the people who recognize democracy's need for a better information service from the press, the working principles offered here will be of use.[7]

The Appendix, co-authored with Itzhak Yanovitzky, is also concerned with media ethics and the limits of freedom of expression. However, this chapter differs from all the others in two important respects: (1) it is an empirical study based on short telephone interviews with a relatively large sample of people; (2) because it describes and analyses a public poll that was conducted in Israel, it is difficult to suggest generalizations that will be true for other countries.

The essay examines public attitudes regarding the conduct of the media. Emphasis is given to the difference between the 'ought' and the 'is'; that is, in the eyes of the Jewish public,[8] what should the roles of the media be? How do the media behave in reality? What are the main factors that motivate the conduct of the media? The article also probes the effect of different sociodemographic characteristics (gender, education, religiousness, ethnic origins, and economic status) on public attitudes in Israel.

A public poll was conducted among Israeli-Jews ($N = 501$). It showed that most people accept the premise of the *public's right to know* as the general principle that should guide the media and that does guide the media in practice. The findings reveal that the only issue in which the 'ought' received a lower score than the 'is' was the *publication of scoops*. In other words, the public thought that the media were paying

too much attention to this factor in their conduct, and that the drive for scoops should be less prominent in their reporting. The most important factor that should guide the conduct of the media in the eyes of the public was *observing state security*. The second most important factor that should guide the conduct of the media was *objectivity*. The Israeli-Jewish public sampled here thought that the media should invest more effort in trying to be objective in their reporting. The only guiding factor for the media in which the difference between the 'ought' and the 'is' was relatively small was *the public's right to know*. In other words, the public thought that the media more or less operate in the name of the public's right to know, as they should in theory. In addition, the Israeli-Jewish public believed that the media should invest more effort in safeguarding individual privacy and social responsibility.

The data further show that education and religiousness have moderate effects on the perception of the media. The more educated have higher expectations from the media than the less educated, and religious Jews tend to be more disenchanted with regard to the conduct of the media than secular Jews.

In sum, all the chapters discuss basic human rights and the limits of free expression in liberal democratic societies. Specifically they address the issue of democratic constraints and limits, which has not been treated adequately by the literature.

This book is the result of work that started a decade ago. I would like to express gratitude to friends and colleagues who conversed with me on pertinent questions, who read parts, or all of my writings, and who supported this project in various ways. Isaiah Berlin was a kind supporter. I greatly miss his friendship, advice, and the intellectual aspiration he offered me when we used to meet in his room at All Souls College, Oxford. I am deeply thankful to Geoffrey Marshall, Wilfrid Knapp, Bob O'Neill, David Heyd, Eric Barendt, Ed Lambeth, Jim Weinstein, Jack Pole, Dave Boeyink, Ken Karst, Rick Abel, and Sam Lehman-Wilzig. I am also indebted to Wayne Sumner, Ronald Dworkin, David Feldman, Yitzhak Zamir, Haim Zadok, Aharon Barak, Zelman Cowen, Adam Roberts, Dick Moon, Valerie Alia, Georg Nolte, Eike-Henner Kluge, David Lepofsky, Ron Robin, Gabriel Weimann, Jonathan Cohen, Rivki Ribak, Cliff Christians, Hugh Stephenson, David Allen, Art Hobson, David Goldberg, Ejan Mackaay, Godfrey Hodgson, Jan Sieckmann, and Conrad Winn for their thoughtful

remarks and incisive comments. Their knowledge, experience, and insight were truly enriching and illuminating.

I also acknowledge with gratitude the generous support of the University of Haifa, the Israel Ministry of Education, the British Council, the Canadian government, the Hastings Center, New York, the Israel Association for Canadian Studies, the Fulbright Foundation and UCLA School of Law.

Last but not least, I express my deep gratitude to my research assistants, Dafna Gold-Malchior, Keren Eyal, and Nathalie Pravedna for their dedicated work and patience. I greatly value their assistance.

This page intentionally left blank

Part I
Freedom of Expression

Freedom of expression is vital in a democratic society. It is in everyone's interests that it should be upheld, provided that this is not at the expense of other important rights. All rights, however, carry responsibilities, especially when those exercising them have the potential to affect other people's lives.

Report of the Committee on Privacy and Related Matters, Cm 1102 (June 1990), para. 17.16

This page intentionally left blank

1
Harm Principle, Offence Principle, and Hate Speech[1]

Introduction

The aim of this chapter is to confront the ethical question of the constraints of speech. Focus is put on the harm or the offence caused by the speech in question: can we say that sometimes the harm or the offence brought about by a certain speech constitutes such an injury that it cannot be tolerated? More specifically, under what conditions can preventing offence provide adequate reason for limiting freedom of expression?

The plan for confronting these issues is the following. The discussion is divided into two major parts: theoretical and practical. In the first part, I shall try to formulate the restrictions on freedom of expression in the clearest and most precise fashion possible. Too vague and overly broad a definition might lead to administrative abuse on the part of the government in its attempt to silence 'inconvenient' views. An imprecise definition might have a snowballing effect, paving the way for a syndrome whereby freedom of speech might become the exception rather than the rule. Moreover, the restrictions cannot be occasional. We have to seek a criterion that could serve both as an evaluative guideline and be suitable for a range of cases, covering different types of speech (racist, ethnic, religious, and so on). In this quest I shall avail myself of the Millian theory on liberty, which continues to inspire the free speech literature, discussing in brief the well-known Harm Principle, and then proceed by formulating the Offence Principle.

In the practical part of the essay I shall attend to a hate speech case, which arouses much controversy, the Skokie affair, evaluating the court decision in the light of the two principles. My suggestion will be that

there are grounds for abridging expression not only when the speech is intended to bring about physical harm, but also when it is designed to inflict psychological offence, which is morally on a par with physical harm, provided that the circumstances are such that the target group cannot avoid being exposed to it. The term 'morally on a par with physical harm' is intended to mean that just as we view the infliction of physical pain as a wrongful deed, seeing it as the right and the duty of the state to prohibit such an infliction, so should we set boundaries to expressions designed to cause psychological offence to some target group. It will be argued that in either case, when physical harm or psychological offence is inflicted upon others, four considerations are pertinent:

– the content of the speech.[2]
– the manner in which the speech is expressed.
– the intentions and the motives of the speaker.
– the circumstances in which the speech takes place.

I further assert that when no consideration is paid to these aspects, then freedom of speech might be abused in a way that contradicts, to use Dworkin's phraseology, fundamental background rights to human dignity and equality of concern and respect, which underlie a free democratic society.[3] The view enunciated in this study is similar, in various respects, to that of German law. Article 5 of the Basic Law limits the right to freedom of expression by the right to inviolability of personal honour[4] and the German Penal Code (section 130) makes it an offence to attack the dignity of other people (*inter alia*, by inciting racial hatred) and thus prevents the possibility of exploiting democratic principles.[5]

Before contemplating the Millian theory, one preliminary methodological note has to be made concerning the Offence Principle. The common liberal interpretation of Mill is that any speech that falls under the category of 'advocacy' is immune to restrictions. Only forms of instigation which bring about instant harm are punishable, and these cases constitute the exception to the Free Speech Principle. My view is different. I shall argue that Mill introduced an exception to advocacy, holding that there is a category of cases of advocacy that has to be restricted. These are concerned with offensive conduct that is performed in public. Thus I will show that there are certain offensive expressions which may be considered advocacy but which nevertheless should be prohibited. However, it seems that my view and the common liberal view differ only in terminology, not in essence. That is,

there are certain utterances which do not induce anyone to take a harmful action but which should still be excluded from the protection of the Free Speech Principle because of their imminent offensive effects on those who are exposed to them. Some liberals would probably not agree with my vocabulary, and would not consider what I call advocacy to be such. They would rather put the case under the rubric of instigative speech. But I think that they would agree with my conclusions.

The Millian theory and freedom of expression

Mill proffered two main qualifications for the immunity which freedom of expression should, as a general rule, enjoy, and in an earlier article concerning freedom of the press he formulated two other qualifications.[6] He did not introduce them systematically, but in an *ad hoc* way, allowing for interference in what he conceived to be special cases. The first qualification proposed in *On Liberty* is concerned with the case of instigative speech. The second qualification considers the case of indecent conduct that is performed in public. Let us first examine the case of instigation.

As a consequentialist, Mill acknowledged that speech loses its immunity when it constitutes instigation to some harmful action. In his corn-dealer example, Mill asserted that opinions lose their absolute immunity when the circumstances in which they are expressed are such as to constitute by their expression a positive instigation to some mischievous act. Thus, the opinion that corn dealers are starvers of the poor may be prevented from being delivered orally to 'an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard'.[7] But, that same opinion ought to go unmolested when simply circulated through the press. Accordingly we may deduce that Mill considered as instigation a speech that aims to lead to some mischievous action in circumstances which are conducive to the taking of that action. It seems that in instances such as that of the corn dealer, Mill would regard certain speeches as instigation irrespective of whether overt harmful action follows. Though he did not explicitly say this, Mill implied that the intention to lead people to take a harmful action constitutes an instigation.[8] However, advocacy that does not induce someone to take an action, but which is voiced as a matter of ethical conviction, is protected under Mill's theory. This is one of his major contributions to the free speech literature. Mill was the first to distinguish between speech (or discussion) as a matter of ethical conviction and instigation.

The essential distinction between 'instigation' and 'advocacy' or 'teaching' is that those to whom the instigation is addressed must be urged to do something now or in the immediate future, rather than merely to believe in something. In other words, instigation is speech closely linked to action. Mill in the corn dealer explicitly opined that when an audience has no time for careful and rational reflection before it pursues the course of action urged on it, this speech falls outside the protection of the Free Speech Principle since the people are too excited to be responsible for their acts.[9] Mill did not restrict the advocating of certain opinions *per se*. Rather, it is the combination of the content of the opinion, its manner, the intentions of the speaker, and the circumstances that necessitates the restriction. In the corn-dealer example the harmful results of a breach of the peace, disorder, and harm to others are imminent and likely, and therefore they outweigh the importance of free expression.

In parenthesis, two clarifications have to be made. One relates to the factor of 'intention', the other to 'manner'. As to 'intention', one may question the relevance of intention to Mill's argument about instigation. One may argue that the relevant consideration is whether circumstances are such that a speech will cause a riot; that would seem sufficient reason for intervention even when the speaker does not intended to cause a riot. I am not convinced. The very usage of the word 'instigation' implies that the intention exists to provoke a riot. I agree that there might be unintended riots. But it seems to me odd to use the term 'instigation' in that context.

As for 'manner'; this factor characterises the way expressions are made, be it an oral or a symbolic speech. We can think of situations in which the manner is not so important, yet the three other factors are sufficient to constitute instigation. Consider, for example, a leader of a fundamentalist religious sect who urges his followers to some mischievous act in a very cool and quiet tone. In this case it seems that Mill would have had no qualms about classifying such a speech under the heading of 'instigation'. I shall discuss this issue further *infra*.

The implications of the instigation reasoning are that it will be incorrect to say that all opinions bring the same results. It seems, then, that Justice Holmes's assertion '[E]very idea is an incitement' is too hasty.[10] Rather, we may concede that words, which express an opinion in one context, can become incendiary when addressed to an inflammable audience. The peculiarity of cases of instigation is that the likelihood of an immediate danger is high, and there is little or no opportunity to

conduct a discussion in the open, and to bring contrasting considerations into play that may reduce the effects of the speech. Justice Holmes himself agreed that in certain circumstances, when speech is closely related to action and might induce harmful consequences, it should be curtailed. In a similar way to the Millian corn dealer example, Justice Holmes asserted in a renowned opinion that we cannot allow falsely shouting 'Fire!' in a crowded theatre.[11] Here too a restriction on speech is justified on the grounds that the content of the speech (that is, its effects, not its intrinsic value), the manner of the speech, and the intentions of the agent are aimed to bring about harm, and the audience is under conditions which diminish its ability to deliberate in a rational manner, and therefore such a shout might lead it to act in a harmful manner (harmful to themselves as well as to others).[12] Hence, to the extent that speech entails an immediate effect, the arguments that assign special status to freedom of speech are less compelling. Boundaries have to be introduced in accordance with the context of the speech, otherwise the results could be too risky. As Chafee asserted: 'Smoking is all right, but not in a powder magazine.'[13]

Thus, incorporating the four conditions of content, manner, intention, and circumstances to the Millian and the Holmesian examples, the following argument may be deduced:

Argument number one: any speech, which instigates (in the sense of meeting the four criteria of content, manner, intention, and circumstances) to cause physical harm to certain individuals or groups, ought to be curtailed. Note that this argument is a much more decisive version of the Millian Harm Principle.[14]

Let us now move on to examine Mill's second exception which qualifies, in my opinion, the immunity Mill generally granted to advocacy. This exception considers the case of indecent conduct done in public. Although Mill spoke of 'conduct' and did not explicitly mention speech, it is plausible to argue that he included utterances, as well as acts, when he set out this qualification.[15] Mill implied that there are certain cases which fall within the scope of social regulation, and people not only have the right but the duty to put a stop to those activities by individuals. In a brief paragraph he discussed a category of actions which being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, 'if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightly be prohibited'.[16] This argument is in accordance

with Mill's position on the importance of autonomy. There are intimate matters, which do not concern anyone but the individual so long as they are done in private. But when they are done publicly, they might cause offence to others, and the state may legitimately control them.[17] Of this kind, Mill said, are offences against decency.

Hence, in certain situations, one is culpable not because of the act that one has done, though this act might be morally wrong, but because of its circumstances and its consequences. Mill assumed that one can evaluate the rightness and wrongness of an action by considering its consequences, believing that the morality of an action depends on the consequences which it is likely to produce.[18] Since one is to judge before acting, one must weigh the probable results of one's doing, given the specific conditions of the situation.

From these arguments we may infer that it is usually not the act itself that is crucial for taking a stand on this subject, but the forum in which it is done. In other words, a certain conduct in itself does not necessarily provide sufficient grounds for interference. But if that same conduct is performed in public it might be counted as morally wrong, and consequently constitutes an offence, so it is legitimate to curtail it. Enforcement of sanctions may be justified when a conduct causes offence to others.[19]

To sum up: the two exceptions brought forward by Mill touch upon the time factor, which distinguishes speech from action. Thus, action – if it endangers the public, or part of it – might have immediate consequences; whereas speech, if it has any endangering effect, will have it in most cases sometime in the future, whether near or more remote, and thus will allow us a much wider range of manoeuvres.[20] Even if a specific view might cause harm, or risk of harm to others, but the danger is not immediate, then free speech has to be allowed. However, in some circumstances the time factor might lose its distinctiveness, with the result that the effects of the expression in question are immediate. Indeed, both in the case of instigation as well as in cases of moral offence (say when one vulgarly praises in public the sexual qualities of one's next door neighbour or one's performances in bed, knowing the anguish that the neighbour might suffer as a result), the effects of the expression are instantaneous, and thus might bring about hurtful consequences now, rather than at some remote point in the future. That is, when we discuss the issue of obscene speech or defamation,[21] the line between conduct and speech, according to the criterion of time, becomes blurred and consequently these utterances are not protected under the principle of freedom of speech.

The preliminary argument (number one) included the term 'physical.' I formulated the argument, using this term, in order to avoid at that stage the question of whether the formula ought to include other sorts of harm. I have now argued that in the cases both of instigation and of indecent conduct done in public, the effects of the communication are immediate. Yet such conduct does not necessarily fall under the first argument, for offences against decency may not be physical. There seem to be other notions of injury that Mill articulated when he introduced this qualification. The expression in question may fall under the rubric of 'advocacy', in the sense that it does not induce anyone to take a harmful action. Nevertheless, the expression may still be excluded from the protection of the Free Speech Principle because of its offensive effects on those who are exposed to it. This is the only exception that is implied in Mill's theory with regard to advocacy. It is the combination of the content of the advocacy, its manner, the intentions of the speaker, and the fact that it is done publicly which gives grounds for restriction. Certain types of advocacy constitute a violation of good manners thus coming within the category of offences and, consequently, may rightly be prohibited. In order to understand what notions of injury may be included under this qualification, which may be put under the heading of the Offence Principle, it is necessary to explain the distinction between 'harm' and 'offence'. Here Joel Feinberg supplies some useful guidelines.

Feinberg: the offence principle

Feinberg explains that like the word 'harm', the word 'offence' has both a general and a specifically normative sense, the former including in its reference any or all of a miscellany of disliked mental states (disgust, shame, hurt, anxiety, and so on), while the latter refers to those states only when caused by the wrongful (right violating) conduct of others. He postulates that offence takes place when three criteria are present: one is offended when (a) one suffers a disliked state, and (b) one attributes that state to the wrongful conduct of another, and (c) one resents the other for his role in causing one to be in that state.[22] Feinberg maintains that the seriousness of the offensiveness will be determined by three standards: (1) 'the extent of offensive standard' – meaning the intensity and durability of the repugnance produced, and the extent to which repugnance could be anticipated to be the general reaction of strangers to the conduct displayed; (2) 'the reasonable avoidability standard' – which refers to the ease with which unwilling

witnesses can avoid the offensive displays; and (3) 'the Volenti standard' – which considers whether or not the witnesses have willingly assumed the risk of being offended either through curiosity or the anticipation of pleasure.[23] Standards (2) and (3) are of relevance when we examine the circumstances in which an offensive speech is expressed.

Feinberg categorically asserts that offence is a less serious thing than harm, and thus ignores the possibility that psychological offences might amount to physical harm, with the same serious implications. The next section specifically reflects on this subject through consideration of Feinberg's standards. Here, however, if we return to Mill's second qualification, we may say that morally wrong actions which concern others cause one to suffer a disliked state, which one attributes to the doer's conduct. Consequently one resents the doer for his acts. Nevertheless, offences against decency are problematic, since what is offensive to one may not be regarded as offensive at all by another. If we want to make the Offence Principle an intelligible principle, the offence has to be explicit, and it has to be more than emotional distress, inconvenience, embarrassment, or annoyance. We cannot outlaw everything that causes some sort of offence to others. If the Offence Principle is broadened to include annoyance, it becomes too weak to serve as a guideline in political theory, for almost every action can be said to cause some nuisance to others. Cultural norms and prejudices, for instance, might irritate some people. Liberal views may cause some discomfort to conservatives; and conservative opinions might distress liberals. Some, for instance, might be offended when hearing a woman shouting commands, or just by the sight of black and white people holding hands. This is not to say that these sorts of behaviour should be curbed because of some people who are 'over sensitive' to gender or interracial relations. Similarly, if someone is easily offended by pornographic material, one can easily avoid the pain by not buying magazines marked by the warning: 'The content may be offensive to some.' Under Feinberg's 'reasonable avoidability' and 'Volenti' standards the offence cannot be considered serious. Injuries, to be restricted under the Offence Principle, must involve serious offence to be infringed. By 'serious offence' it is meant that consideration has to be given to the 'reasonable avoidability', and the 'Volenti' as well as the 'extent of offensive' standards. The repugnance produced has to be severe so as to cause an irremediable offence, which might affect the ability of the listeners to function in their lives.

Let me consider in some more detail Feinberg's 'reasonable avoidability standard'. Under this standard and Mill's argument regarding public

immoral actions, the offence has to be committed in such circumstances that those offended by it cannot possibly escape for there to be grounds for restriction. For example, if a person takes a stool to Hyde Park Corner, advocating the abolition of Parliament, throwing out all Indians, expressing his desire to become the new Stalin of tomorrow, and claiming that yesterday he was Napoleon, the offence cannot be considered anything more than annoying, or anything more than an inconvenience to the listeners, for they can simply leave the place and free themselves of the speaker's presence, as well as of his speech. We cannot say that the audience's interest in 'having a good environment' is more important than the speaker's interest in conveying his thoughts.[24] Also, the argument that this communication does not carry substantive content cannot serve as sufficient reason for abridging it, for then we might supply grounds for curtailing many other speeches that just repeat familiar stands. In addition, 'the extent of offence standard', determined by the content and manner of the speech, and 'the Volenti standard', do not provide reasons for restriction.

The situation is different, however, when the avoidance of offensive conduct in itself constitutes severe pain. Then we may say that the matter is open to dispute. That is, if those who are offended by a certain speech feel an obligation to stay because they think that they will suffer more by leaving and avoiding it, then there are grounds for placing restrictions on speech, provided that the extent of the offence is considerable. In any event, it is the combination of the content and manner of the speech, the evil intention of the speaker, and unavoidable circumstances that warrants the introduction of sanctions.

In the next section I shall discuss the Nazis' decision to march in Skokie as an illustration of this argument. In this case the conflict over freedom of expression involves the freedom to march and demonstrate. I shall attempt to assess the preliminary court decisions to ban the march, as well as the Illinois Supreme Court ruling which allowed the demonstration of hatred, and explore whether the Offence Principle supplies us with grounds for supporting one over the other. Before embarking on this endeavour, however, one clarification is needed. In applying the Offence Principle to Skokie I do not claim that racist and hateful speech should be considered a distinct case, as some philosophers and commentators urge, thus excluding it from the protection usually accorded to expression.[25] It may be suggested that if we are to speak of matters of principle, racist speech is incompatible with liberal democracy, so it should be outlawed. I am in favour of regulation of racist speech rather than outright prohibition.[26] My reluctance

to accept the principled line of reasoning evolves from two basic considerations. First, I do not see why verbal attacks on race, colour, religion, and so on, should be regarded as a unique type of speech that does not deserve protection. I find it difficult to see why racist expressions should be thought different from verbal attacks on one's most fundamental ethical and moral convictions – as, for instance, in the abortion or the euthanasia cases. I do not see why dignity or equal respect and concern is so much at stake in the former than in the latter.

Second, there is lack of agreement on the meaning of the term 'racism'. Different countries and forums put different types of speech under the heading of 'racism'. By excluding racist expressions we might open the way to curtail expressions that we may want to defend. For instance, Zionism was condemned as a form of racism, so accordingly anyone who expresses his desire to live in Zion (Israel) might be considered a racist by some. This claim is less strong than the preceding, for we can define exactly what sorts of speech should be put under 'racism'. However, the argument is in place because in applying common terms from one place to another, definition might be lost on the way.

Consequently, my intention is to formulate general criteria to be applied consistently not only in cases of racial hatred, but also in other categories of offensive speech. Any speech, be it on religious, ethnic, cultural, national, social, or moral grounds, should be placed within the confines of the two principles that are suggested.[27] Speech that instigates causing immediate harm to the target group, and speech that is designed to offend the sensibilities of the target group – in circumstances that are bound to expose the target group to a serious offence (which is morally on a par with physical pain) – should be restricted.

Applying the offence principle: the Skokie controversy

Background

What came to be known as 'the Skokie case' began in April 1977, when Frank Collin, the leader of the National Socialist Party of America (NSPA) announced that a march would be held in Skokie, one of the suburbs of Chicago, inhabited mostly by Jews, some hundreds of them being survivors of Nazi concentration camps.[28] The Skokie residents obtained an injunction in court that banned the march. Referring to the *Brandenburg* case, they contended that the display of the Nazi uniform and the swastika were the symbolic equivalents of a public call to kill all Jews, and consequently that it constituted a 'direct incitement to immediate mass murder'.[29] After a long legal struggle, which lasted

until January 1978, the Illinois Supreme Court, in a seven to one decision, ruled in favour of Collin.[30] The main argument was the 'content neutrality rule' according to which political speech shall not be abridged because of its content, even if that content is verbally abusive. Speech can be restricted only when it interferes in a physical way with other legitimate activities; when it is thrust upon a 'captive' audience, or when it directly incites immediate harmful conduct. Otherwise, no matter what the content of the speech, the intention of the speaker, and the impact of the speech on noncaptive listeners, the speech is protected under the First Amendment to the Constitution.[31]

The Court dismissed the main arguments of the residents of Skokie, declaring that the display of the swastika was symbolic political speech, which was intended to convey the ideas of the NSPA, even if these ideas were offensive. Similarly it was argued that the plaintiffs' wearing uniforms need not meet standards of acceptability. The judges further concluded that anticipation of a hostile audience could not justify prior restraint or restrict speech, when that audience was not 'captive'. Freedom of speech cannot be abridged because the listeners are intolerant of its content.[32]

The 'avoidability standard'

Two basic things concerning this case are plain and generally agreed upon. First, Skokie was not a case of a captive audience, because there was advance notification of the Nazis' intentions. Second, the argument that the Nazi march or speech was designed to convince some members of the audience to embrace all, or part of the Nazi ideology, was not an issue. It was obvious that Collin's aim was not to convince his audience but to offend the Jewish population in Skokie. Nevertheless, the Illinois Supreme Court ruled that it was not a case of 'fighting words',[33] because the display of the swastika did not fall within the confines of that doctrine,[34] and because it was no longer the prevailing thought that it was up to the court to assess the value of utterances. The Court ruled that the wearing of Nazi uniforms and the display of the swastika constituted political speech that was protected under the Free Speech clause.[35]

In his examination of the Skokie decision, Feinberg lays emphasis on the contention that given the relative ease by which the Nazis' malicious and spiteful insults could be avoided, there was not an exceptionally weighty case for legal interference. Since the Nazis announced the demonstration well in advance, it could easily be avoided by all those

who wished to avoid it, in most cases with minimal inconvenience:[36] 'Despite the intense aversion felt by the offended parties, there was not an exceptionally weighty case for legal interference with the Nazis, given the relative ease by which their malicious and spiteful insults could be avoided.'

In other words, Feinberg reiterates the reasoning of the Illinois Supreme Court in favour of the NSPA, in accordance with his 'reasonable avoidability standard'. He maintains that 'the scales would tip the other way' if their behaviour were to become more frequent, for the constant need to avoid public places at certain times can soon become a major nuisance.[37] Since the issue concerned only one demonstration, the solution was easy enough: those likely to be offended simply had to be elsewhere when it was held. These assertions are in accordance with Feinberg's emphasis on the intensity and the durability of the repugnance produced.[38]

From this analysis we can deduce that the crux of the matter lies in the 'avoidability standard': the Jews can ignore the offence, as others ignore the giving of 'the finger'. For Feinberg, as for the court, the Jews did not have to attend the rally. However, not attending the march was no solution at all for these Jews, because it took them back to the days when they had to hide from the Nazis. The survivors of the Holocaust learned the lesson not to keep silent, not to wait until another 'wave of hatred' was over. The lesson of 1933 was enlightening enough. Hiding and running away had been their solution in Europe, when they could not do anything else. That solution, they thought, was over and done with when they came, after the war, to live in the United States. For them as Jews, when the Nazi phenomenon was at issue, there was no other way but to stand against it with all their power, especially when the Nazis decided to come to their own neighbourhood with the intention of hurting, and awakening fear. Therefore, the suggestion that the Nazis would march in their own front yard without their being present was inconceivable. It was not a matter of a 'nuisance' to avoid 'public places' as Feinberg suggests; it is neither a matter of a nuisance, nor of a public place.

If the Nazis were to march elsewhere in Chicago (say in the city centre), their right to be heard would be granted protection under the Free Speech Principle. Then one could say that this march was equally offensive to the Jews of Chicago, New York, or Tel Aviv.[39] But this is not the case when Nazis come to a populated Jewish neighbourhood, when the clear and deliberate intention is to offend and excite the inhabitants, especially when they know that many of them are survivors of the

Holocaust. Intentions and motives do matter because they may lead to a wrong interpretation being given to the real and true motives of the agent. True, the same conduct may be interpreted in different ways, according to the motives of the doer.[40] But here there is no fear of such possible confusion. Here it is not a case of interpretation at all for the Nazis voiced their reasons for coming to Skokie. It has to be emphasized that the intentions and motives were manifested by Collin himself, who said that he had decided to march in Skokie in order to spite and offend the Jews. Under such circumstances, refraining from attending the march was not a solution for the Jews, as Feinberg suggests, for it would not make them evade the injury. It might even increase it.

Clearly Collin did not mean to persuade the Jews that he was right, or that his ideas were justified.[41] He chose Skokie not only because there was a big community which he could offend but also because he wanted to gain public attention. As Dworkin suggested to me,[42] it was the grotesqueness of the venue that gained attention. This, of course, is true. The choosing of a venue is cardinal to the success of the demonstration. Protests are made where they can convey their message best. For example, we would not seriously consider a demonstration against sending troops to Saudi Arabia, say, in a zoo. We would expect such a demonstration to take place outside the draft offices, or opposite 10 Downing Street. By the same logic, we would expect a Nazi to propagate his ideas in a Jewish neighbourhood. The question is, however, whether or not our understanding of Collin's motives in choosing Skokie to attract public attention and media coverage should convince us to allow the march. My conclusive answer is 'No'. I repeat: when the offence is serious; the intentions of the offender are clear; and the target group is not in a position to avoid the offence, then democracy should draw the line and constrain freedom of expression.

Furthermore, these arguments do not intend to suggest that only demonstrations that are meant to persuade should be allowed, whereas those that mean to protest or to offend should be prohibited. As stated, the intentions of the demonstrators is only one of the considerations that we should bear in mind when deciding on boundaries of freedom of expression. No less important are the seriousness of the offence and the circumstances in which the protest is being made; that is, whether or not the target group can avoid the demonstration without being hurt by the very act of going away. In this context, historical experience is of relevance.

Thus, the Skokie Jews were put in such a position that in either case they would have been offended: if attending the demonstration, they

would have to see the swastika, the Nazi uniform, and so on; and if not attending, it would have been as if to allow Nazism to pass, and pass in their own vicinity. Skokie exemplifies the democratic 'catch' in a vivid manner: the same liberty that is granted to Nazis to exercise their belief that espouses hatred and malicious speech might endanger their target group that wishes to maintain their peaceful life and protect what they conceive as a fundamental right not to be harassed by hate mongers.

Acceptance of the 'avoidability standard' only criticizes the main argument of the Illinois Supreme Court. It does not in itself constitute sufficient grounds to imply that the Nazi right to freedom of expression had to be curtailed in that instance. What I have tried to establish until now is that the seriousness of the offence was severe according to 'the Volenti standard' and 'the reasonable avoidability standard'. Now there is still a need to clarify the scope of 'the extent of the offence standard', and explain how serious the offence has to be for it to be liable to restriction. The fact that Skokie was not a case of instigation might have been a sufficient reason to protect the expression and allow the march, unless we can say that the expression in itself constitutes pain that could be considered morally on a par with physical harm. In other words, while it is true that Skokie could not fall within the confines of the Harm Principle, nevertheless, if strong argument were provided that the very utterance of the Nazi speech constitutes psychological damage that could be equated with physical pain, then a strong case might be provided against tolerance under the Offence Principle, and in accordance with 'the extent of offence standard'. Then we may hold, contrary to Feinberg's presupposition, that an offence might be as serious as harm.[43]

Psychological offence, morally on a par with physical harm

The issue of psychological damage is problematic for two reasons. First there is the general claim that the law is an inappropriate instrument for dealing with expression which produces mental distress or whose targets are the beliefs and values of an audience.[44] Second, speaking of psychological damage necessarily involves drawing a distinction between annoyance or some emotional distress, and a significant offence to the mental framework of people.

As for the first claim, Haiman postulates that individuals in a free society 'are not objects which can be triggered into action by symbolic stimuli but human beings who decide how they will respond to the communication they see and hear'.[45] He conceives people as rational human beings, who carefully weigh arguments and decide according to

them. He does not acknowledge that people also have feelings, drives, and emotions, which are sometimes so powerful as to dominate their view regarding a certain object, or a phenomenon, or other people. He is not willing to concede that a personal trauma, for example, might prevent an autonomous person, who is usually capable of reason and making choices, from developing a rational line of thought about the causes of his or her trauma. As far as Haiman is concerned, the anguish experienced by those exposed to scenes that remind people of their trauma is a price that must be paid for freedom of speech. He admits that it is difficult not to seem callous in holding this position, but he 'must take that risk and so argue'.[46] Otherwise, those who display Nazi symbols would have to be prohibited from appearing not only in front of the Skokie Village Hall but in any other public place where it might be expected that they would be seen by survivors of the Holocaust. Furthermore, a television documentary examining and vividly portraying neo-Nazi activity might have to be censored because of its impact on Holocaust survivors.[47]

Both arguments, however, are not sufficient to explain why the law should not deal with expressions which produce mental distress, for the 'avoidability standard' takes the sting out of them. The Offence Principle, as postulated, does not supply grounds to restrict either of Haiman's examples. One can switch one's television off, or intentionally avoid an encounter with an offensive phenomenon in the city centre. Either of these acts may be deemed necessary to keep one's peace of mind. However, an intentional going away from facing an offensive phenomenon occurring in one's own neighbourhood entails more than mere avoidance. It may be seen by some as surrender. This Haiman, like Feinberg and others, fails to understand.

With regard to the second issue, the distinction between annoyance or some emotional distress and a severe offence to one's psyche is not clear-cut and it is bound to awaken controversy. For the task obviously requires professional judgements, which further complicates this issue. These reasons, among others, have influenced the literature to the effect that it lacks sufficient consideration regarding the potential psychological injury that certain speech acts might cause. But these difficulties should not make us overlook the issue. Rather, because we are aware of the complexities that are involved, we must make the qualifications as conclusive as possible and the requirements equally stringent, in order not to open avenues to further suppression of freedom of expression. As previously stated, we must insist that restrictions on freedom of expression be as clear as possible, for otherwise they might become

counter productive in the sense that instead of protecting our liberties, they will assist in their denial. Hence, there can be no doubt that when we speak of a psychological offence, we refer to one that is well beyond inconvenience, irritation, or some other marginal form of emotional distress. Only considerable pain, one which is not speculative, and which is preferably backed by material evidence, may provide us with a reason to restrict freedom of expression under the Offence Principle, in that the circumstances make the offence inescapable. With regard to Skokie, therefore, our task is to establish that the offence was such as to constitute an injury that outweighed the special status reserved for freedom of expression.

There was testimony by psychologists on the possible injuries many Jews would suffer as a result of the march. They argued that this speech act might be regarded as the equivalent of a physical assault.[48] This entails that the speech act was properly subject to regulation (if we recall Scanlon's theory of free speech), as was any physical attack.[49] Thus, in opposition to the *Brandenburg* and *Skokie* decisions, the argument here is that the content of speech is of significance. In emphasizing the importance of content, the focus is put not on the truth of the speech, but rather on its effects. When the content and the purpose of expression are overlooked, freedom of speech may be exploited in a way that rebuts fundamental principles that underlie a democratic society. Indeed, the United States Supreme Court recognized in a series of cases several classes of speech as having 'low' value, and thus deserving only limited constitutional protection.[50] The Court held that otherwise speech could be exercised wilfully to inflict injury upon the target persons and groups, thus transforming freedom of speech into a means for curtailing freedoms of others. Therefore, we should bear in mind the content of speeches, and when they are designed to inflict psychological damage upon their target group, then there is a basis to consider their constraint. Here it is worth mentioning the Illinois Appellate Court ruling, later to be overruled by the Illinois Supreme Court, which justified the restriction of the Nazi march because of the likelihood of such injury. The court said that: 'the tens of thousands of Skokie's Jewish residents must feel gross revulsion for the swastika and would immediately respond to the personally abusive epithets slung their way in the form of the defendants' chosen symbol, the swastika … '.[51]

It maintained that the swastika was a personal affront to every member of the Jewish faith, especially to Holocaust survivors. These beliefs were powerful enough for a ruling in favour of Skokie's residents and against Collin. However, this ruling supplies a weaker standard than the one that

was just declared to restrict free speech. 'Gross revulsion' and 'personally abusive epithets' make a more general standard for constraining freedom of speech. As said, one person might be offended simply at the sight of black and white people holding hands. Another may feel gross revulsion when watching a commercial featuring a woman in a bathing suit. We cannot extend the scope of the Offence Principle so as to include any potential reaction of disgust on the part of some people. Therefore, we ought to insist on the more stringent requirement, that which holds that restriction on freedom of speech under the Offence Principle is permissible only if we can show that the speech in question causes psychological offence, which may be equated with physical pain.

Now, however, we face the problem of making this distinction between an offence which causes 'emotional distress', or is a 'personal affront', and an offence which causes 'psychological injury' amounting to physical pain, an intelligible distinction. It has been argued that offensive acts in general cause unpleasant distressful psychological states to one degree or another. To be offended is, by definition, to suffer distress or anguish.[52] It is, therefore, reiterated that the Offence Principle allows infringement of freedom of speech only in specific cases, when the damage is deemed irreversible. Skokie is a relevant case because racist utterances, as stated before, have a damaging psychological impact on the target group, which is difficult to overcome or to reverse. Concentration camp survivors carry psychological scars with them for the rest of their lives. Often they have sustained residual organic and psychological damage, and find it difficult to cope with any kind of stress, especially when it is imposed on them by malicious, invidious Nazis who provoke them and wish to disturb their peace and undermine their lives.[53] Consequently it would appear that 'the extent of offence standard' is satisfied to an extent that Feinberg himself does not acknowledge when formulating his standards. In some instances the seriousness of the offence is such that it can be viewed as morally on a par with physical harm. A Nazi march in a Jewish neighbourhood populated by Holocaust survivors is a case in point.

A further clarification is called for in order to make the argument under the Offence Principle more precise. The Principle does not provide grounds to restrict racial hatred as such. It insists that we should take into consideration the circumstances in which the speech is made. In this respect my view is somewhat different from criminal codes of some European countries, such as Great Britain or Sweden.[54] With regard to the British stance, sections 5 and 18 of the Public Order Act 1986 are of specific relevance.[55] Section 5 prohibits threatening, abusive,

or insulting speech likely to cause harassment, alarm, or distress.[56] There need be no intention to insult: it is sufficient that an ordinary person might feel so insulted.[57] In turn, section 18 of the 1986 Act reads:

> 1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if (a) he intends thereby to stir up racial hatred, or (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.[58]

By the British reasoning, grounds might be provided to prohibit a Hyde Park Corner speaker from conveying racist opinions; while this essay postulates that a Hyde Park Corner speaker wishing to preach racial hatred should not be denied expression because the listeners are free to leave the place at will, thereby avoiding the offence. Relying on the Millian formulation of the Offence Principle, which speaks of a combination of consequences and circumstances, and also on Feinberg's standards, which determine the seriousness of the offensiveness, it is emphasized that the fact that some types of speech (such as racial and discriminatory advocacy) create great psychological distress is not in itself a sufficiently compelling reason to override free speech. The Home Affairs Committee of the House of Commons in its fifth report (1979–80) recommended not to create power to ban marches where there was a likelihood of racial incitement. Barendt, concurring, writes: '… however distasteful the views of these [racist] organisations may be, they are entitled to the same freedom of speech as those with more orthodox opinions, and the suppression of such views may be the first slide down the "slippery slope" towards total government control of political discourse.'[59]

There is no disagreement that the prescribing of boundaries to freedom of expression has to be a painstaking effort, involving careful consideration and lucid articulation, so as to avoid sliding down the slippery slope. I must express reservations in regard to the traditional British position, which solely emphasizes the fear of provoking a breach of the peace. This reasoning comes close to *argument number one*. Indeed, looking at the way the British authorities have dealt with fascist and racist demonstrations over the years, one can assume that this reasoning would have been invoked in order to ban a Skokie-like demonstration.[60] It seems that the British approach is at variance with that adopted in the United States.[61]

In Britain, unlike the United States, there is no guaranteed right to demonstrate. The view is that public processions are *prima facie* lawful; that is, *peaceful* demonstrations are lawful.[62] Accordingly, a procession may only be banned on the ground that it is likely to cause 'serious public disorder.'[63] Here lies my disagreement with the British stance. My view is that the apprehension of serious public disorder should not be the sole ground for the prohibition of processions and assemblies.[64] Thus I have offered the Offence Principle as another reason for abridging expressions. The British authorities considered this reason in the Green Paper of 1980 and the White Paper of 1985, and rejected it on both occasions.[65]

One additional comment has to be made before formulating the argument under the Offence Principle. Among the justifications voiced for the *Skokie* decision was the contention that if the Nazis were denied free expression, this would jeopardise the entire structure of free speech rights that has been erected. According to this argument, to permit Skokie to ban this speech because of its offensiveness would mean that southern American whites could ban civil rights marches, especially those that are held by blacks.[66] Let us assume that it is plausible to argue that the degree of the irritation resulting in this case amounted to psychological offence. Then these southern whites could claim that these demonstrators acted in a manner which they found seriously offensive; that they maliciously, recklessly, or negligently disregarded their interest in not being harmed by seriously offensive actions, such as marching in 'their' territory; that the corollary of these marches was severe injury, conducive to further impairment of those whites who were offended, and difficult to reverse.

The Offence Principle, however, is intended to defend against the abuse of freedom by those who deny respect for others. It is not to assist those, whose motivation is to cause harm to others, whose aim is either to intimidate or to discriminate and to deny rights to others.[67] There is a set of values that underlie a liberal society and we judge in accordance with it. The fact that some individuals are offended by a speech that advocates equal rights cannot supply sufficient reason for its restriction. The Principle bears on freedom of expression when the speech in question contradicts fundamental background rights to human dignity and to equality of concern and respect.[68] Otherwise, every speech which some might find psychologically offensive may be curtailed. Members of the civil rights movement who come to demonstrate in the southern United States do not deny the rights of any group of people. In contrast to the Nazis in Skokie, they are not deliberately setting out to upset

southern whites. The intentions of the civil rights marchers are not to offend but to *protect* the rights of those who are discriminated against by those who now claim that they are being offended. The right to freedom of speech is here exercised out of respect for others, aiming to preach values that are in accordance with the moral codes of a liberal society, not values which deny these accepted moral codes. Those who are offended by the values adopted by the entire society implicitly argue when wishing to prevent the demonstration that their problem is not with the march as such. Rather, their problem is a matter of principle, which concerns their own place within a liberal society.

Hence, four major elements should be taken into account when we come to restrict expression on the grounds of psychological offence: the content of the expression; the tenor and the manner of the expression; the intentions and the motive of the speaker; and the objective circumstances in which the advocacy is to take place. Accordingly we can now lay down our second qualification of free speech. This restriction is made under the Offence Principle. The argument is:

Argument number two: under the Offence Principle, when the content and/or manner of a certain speech is/are designed to cause a psychological offence to a certain target group, and the objective circumstances are such that make the target group inescapably exposed to that offence, then the speech in question has to be restricted.

Note that this argument differs from my reconstruction of the Millian Harm Principle in two crucial respects: it covers damages that are not physical, and it restricts certain types of speeches that fall within the category of 'advocacy', as distinct from 'instigation'.

One last point: it might be argued that the Offence Principle as construed might be applicable to Skokie but the Skokie circumstances are special, hence the applicability of the Principle is very limited. I agree that the applicability of the Offence Principle should be limited. I have made every effort to formulate it in the most decisive way. Any principle designed to restrain freedom of speech should be narrowly defined in order to prevent the possibility of opening a window for further restrictions.

However, the Skokie case is not unique. We could think of other cases in which the conditions of the Offence Principle are fulfilled, hence there is scope to set boundaries to liberty and tolerance. For instance, it is one thing to allow marches of the quasi-fascist and anti-Arab 'Kach' movement in Tel Aviv, and quite another to allow such

marches in Shfaram, an Arab town.[69] Similarly, we should not see in the same light the burning of a cross by the Ku Klux Klan in an isolated farm in the southern United States, and the same act in Harlem, New York.[70] In a similar vein, it would be legitimate to forbid promoting pornographic literature and the selling of pork in Bnei Brak, an ultra-orthodox religious town in Israel. And it is one thing to permit the publication of Salman Rushdie's *Satanic Verses* in Britain and other democracies, and quite another to allow Mr Rushdie to promote his book outside the central mosque in Bradford, a town with a large Muslim minority.[71] In all instances there are valid arguments to prohibit expressions that are highly offensive, designed to offend a designated group of people who could not avoid being exposed to the offensive speech.

Conclusion

To sum up, we ought not to tolerate every speech, whatever it might be, for then we elevate the value of freedom of expression, and indeed, of tolerance, over other values which we deem to be of no less importance, such as human dignity and equality of concern and respect. Tolerance, which conceives the right to freedom of expression as a *carte blanche* allowing any speech, in any circumstances, might prove counter productive, assisting the flourishing of anti-tolerant opinions and hate movements.[72] Therefore, we have to be aware of the dangers of words, and restrict certain forms of expression when designated as levers to harmful, discriminatory actions; for words, to a great extent, are prescriptions for actions.

2

The Right to Demonstrate versus the Right to Privacy: Picketing Private Homes of Public Officials[1]

Introduction

On November 4, 1995 Prime Minister Yitzhak Rabin was assassinated in the main square of Tel Aviv. After the tragic assassination the Prime Minister's widow, Mrs Leah Rabin, complained of the constant picketing which had been conducted outside their private home in Tel Aviv, in protest against the Oslo Accords signed between Israel and the Palestinian Liberation Organization (PLO). A suggestion was raised to ban all such picketing. The argument was that such picketing should not be allowed. Public figures have the right to enjoy the tranquillity of their homes. Their privacy must be honoured and therefore pickets and demonstrations should be restricted to public places, such as the Knesset Rose Garden, government offices and public squares.

This chapter objects to this proposal because of its sweeping language. The argument to be advanced is that democracy may regulate time, place and manner but it should not proscribe pickets and demonstrations from private places. Democracy has an interest in furthering and promoting free flow of opinions between the public and its representatives. Sometimes the direct communication between the public and its representatives near private homes of public figures is much more effective both for the public and its representatives. The government and its powers, that is, the police, may require satisfying some procedural measures but they should not set prohibitions on such direct communications.

Freedom of picketing and demonstration

The participation of the people in public affairs is so important and fundamental that liberals call the existing form of democracy

'participatory democracy'.[2] The rights to assemble, to picket, and to demonstrate are regarded as fundamental in the democratic tradition, guaranteed to each citizen in a free society. The public has the right to voice its dissent against governmental policies, or to back the government on policies deemed justifiable and correct. There should be a free flow of opinions, feedback between the government and the public. Democracy has a vested interest in securing this feedback, and in stimulating discussion and public debate. Decisionmakers should not remain separate and alienated from the public. They must be aware of the public's interests and goals. Through demonstrations, picketing and processions the public fans its cries, its feelings, and its beliefs with regard to governmental decisions that concern society or segments of society. From an economic point of view the streets afford the pickets the benefit of minimal costs – 'a consideration of some importance to those aggrieved, as in many instances they are the persons least able to finance the expression of their complaints'.[3] Picketing is available for poorly financed communicators to voice their grievances and vindicate their rights. To paraphrase Justice Black's dictum that door to door distribution of circulars is essential to the poorly financed causes of 'little people',[4] picketing enables the poor and the powerless to bring some influence to bear upon public officials whom others might influence through more conventional ways.

In Israel, the Police Ordinance (new version) distinguishes between 'assembly' and 'procession'. The term 'assembly' refers to 50 or more people who have gathered to hear a speech or a lecture of a political nature or to discuss politics. 'Procession' refers to 50 or more people who walk together, or have convened for the purpose of walking together, from one place to another. We may deduce from the language of the Ordinance that a small or large group of people who have convened but not for the purpose of discussion or hearing a lecture would be considered as 'picketing'.

Picketing is an activity whereby a group of people conveys information by means of their presence at a certain place. The picketers may engage in different activities. They may observe, communicate a cause and/or concern/s, or persuade through speech, banners, or inducements. Picketing is a powerful means of communication for the common citizens, effectively delivering the message directly to the targeted audience. It attracts media attention that might otherwise be indifferent regarding the picketers' cause and concerns. In turn, picketing attracts through the media public attention to their cause, and it inflicts psychological pressure on the designated audience. This

psychological effect of picketing has aroused the most concerns among courts and legislatures.[5]

Obviously, democracy acknowledges that there cannot be unlimited freedom of demonstration and picketing. There is a need to set regulations of time, place and manner. Section 84 of the Israel Police Ordinance (new version) holds that anyone wishing to assemble in a public place has to ask permission from the Chief District Police Officer. Section 85 of the same Ordinance adds that the police officer has discretion to grant permission, deny it or prescribe conditions deemed necessary for the maintenance of public security or public order. The accepted rationale in democracies is that we cannot allow demonstrations at major junctions without prior permits. Such demonstrations might obstruct the flow of transportation and jam the roads. Parks are there for demonstrations but they are also for picnics, for peaceful strolling and for familial enjoyment.

From the general to the particular. The regulation of time, place and manner is of more crucial importance when the intent is to hold a demonstration or to picket outside the private homes of public officials. Democracy has an interest in protecting the privacy and tranquillity of the home. That interest was recognized by the Israeli[6] and the American[7] Supreme Courts in several decisions. Justice Frankfurter wrote in one of his prominent rulings: 'Homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives in health and safety'.[8] Similar reasoning was enunciated by Justices Black and Brennan. Justice Black held that a person's home is 'the sacred retreat to which families repair for their privacy and their daily way of living', 'sometimes the last citadel of the tired, the weary, and the sick', wherein people 'can escape the hurly-burly of the outside business and political world'.[9] In turn, Justice Brennan said:

> Preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value. Our decisions reflect no lack of solicitude for the right of an individual 'to be let alone' in the privacy of the home.[10]

Residential picketing involves different elements of privacy: interest in protecting one's reputation, sanctity of the home and freedom from being held as a captive audience, as well as a high degree of focus on a particular individual for a period of time. Therefore the American courts did not adopt the absolutist view that First Amendment privilege would

always prevail.[11] Having said this, we still should not impose sweeping restrictions. We can surely understand why people prefer to voice their opinion in front of public officials' homes. Such conduct is undoubtedly relevant. We do not expect protesters against, say, raising taxes, to picket outside the local theatre or zoo. It is understandable that they will go to protest outside the house of the Prime Minister and the Minister of Finance. Sometimes protest in a residential area constitutes the most effective way of expressing an opinion because there protesters can establish direct contact with the object of their protest, something they will find difficult to achieve in government precincts, which are usually more protected. The picketing of the public official's home may make a more powerful impression upon him or her. Moreover, the picketers may feel that picketing the home is the most effective way to bring social conditions to the attention of the general public or to obtain wider news coverage for their views.[12] In deciding whether to grant permission to carry out such a protest the police should take into account the privacy of the public official, his or her family, as well as the privacy interest of the public official's neighbours. But we should not hold as a general rule that the right to privacy always overrides the right to voice an opinion next to his or her home.

So we are speaking here of two rights that come into conflict: the right to picket or to demonstrate, derived from the right to freedom of expression, as against the right to privacy. The degree to which interference in a public official's privacy may be tolerated should be a function of his or her political, social or economic position in society. The more prominent the position, the greater latitude we have for interference with the public official's privacy.[13] We need to strike a balance between the right to communicate and the right to be let alone. When speaking of the right to be let alone I mainly focus on the public official and his/her family. Some may feel that neighbours of officials should enjoy that same right but I do not think this constitutes a major consideration. Living next to a public figure entails obvious advantages. People love to rub shoulders with public figures. I imagine that one may be somewhat amused to meet one's prime minister in the garbage room and allow him or her to lift the lid for one's rubbish. Sometimes neighbours are in a better position to evaluate the news, seeing with their own eyes things that are kept secret from the public. It may also be assumed that not many neighbours, upon selling their homes, will fail to highlight the fact that their neighbourhood is of special repute owing to the famous public figure who resides there. But, as with all things in life, you cannot have all pros and no cons.

Living next door to public officials entails some drawbacks as well. Invasion of privacy and disturbing one's peace of mind are prices that need to be paid. Each neighbour may decide for himself or herself whether the pros outweigh the cons, and if they do not they have the liberty to move to a more peaceful place.

The ensuing discussion analyses the American, British and Israeli stances with regard to the subject matter.[14] It is argued that the Israeli stance is more akin to the American, and that the right to picket cannot be flatly prohibited. The Free Speech Principle that is one of the tenets of liberal democracy does not allow stifling picketers' expressive activity at all times and all places. Speech may be subject to reasonable limitations when important countervailing interests are involved.[15] Thus the police may impose regulations of time, manner and place for the purpose of maintaining public order and security, but they should not ban picketing *tout court*.

The American stance

The American courts have mixed views on residential picketing. In some cases the courts sustained the validity of states' antiresidential picketing statutes and recommended alternative demonstration sites.[16] In other cases antiresidential picketing statutes were declared invalid, contravening the First and Fourteenth Amendments to the Constitution.[17] Having said that, *Frisby v. Schultz* is now recognized as the leading precedent and the doctrinal approach to residential picketing. In order to understand its rationale we need to analyse the court judgments preceding *Frisby*.

In one of his renowned rulings concerning picketing in a workplace, *Thornhill v. State of Alabama*, Justice Murphy asserted:

> Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.[18]

Thornhill established that the Free Speech Principle guaranteed by the Constitution embraces the liberty to discuss publicly all matters of public concern without previous restraint or fear of subsequent punishment. Picketing was recognized as one of a limited number of effective means that can enlighten the public on the nature and causes of a given dispute. It is not within governmental constitutional power to ban picketing.[19]

The courts distinguished between peaceful and disorderly picketing. Peaceful picketing on issues of public importance is conceived to be a

protected expressive activity.[20] When this picketing occurs in the public forum it can only be narrowly restricted. *O'Brien* established in 1968 that reasonable content-neutral time, place or manner restrictions which allow ample alternative channels for expression are permissible and this is still the prevailing view.[21] In *Perry Education Ass'n v. Perry Local Educators' Ass'n* the court prescribed strict limits on the ability of the State to prohibit expressive activity in the public forum.[22] The same year, 1983, in *United States v. Grace* concerning picketing in a courthouse, the Supreme Court held that public places such as pavements and city streets are part of the public forum, open to public discussion and expression. *Grace* clearly states that an absolute prohibition is the least favoured restriction. Under the guidelines set out in *Grace,* an ordinance prohibiting residential picketing in a public place can only be upheld if it is a narrowly drawn restriction, designed to achieve a compelling government interest.[23]

Two years later, in 1985, the court established further layers of analysis. In the *Cornelius* case,[24] the Supreme Court stated that the review of an alleged free speech violation proceeds in three steps. First, the court must decide whether the speech in question is protected under the First Amendment.[25] Second, assuming that the conduct is protected speech, the court must identify the nature of the forum, 'because the extent to which the Government may limit access depends on whether the forum is public or non-public'.[26] Third, the court must determine whether the requisite constitutional standards, as delineated in *Grace*, are met when restricting expressive activity protected by the First Amendment. That is to say that the restrictions must be narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.[27]

In *Frisby v. Schultz,* abortion protestors brought a suit seeking to enjoin enforcement of a municipal ordinance prohibiting picketing before or about the residence or dwelling of any individual. They wanted to protest outside the residence of a doctor who performed abortions. The Supreme Court held that the ordinance does not ban all picketing in residential areas, but prohibits only focused picketing taking place solely in front of particular residence. The court, *per* Justice O'Connor, maintained that the ordinance serves significant government interest of protecting residential privacy, and is narrowly tailored thus does not violate the First Amendment.[28]

The thesis of this essay is concerned with picketing private homes of public officials. Abortionists are not people who are elected or nominated to serve in the public administration. They do not make policy

issues that concern the citizenry at large. They are not political figures who need to be responsive to their public and explain the reasoning behind a certain policy. Therefore the issue of picketing homes of doctors is different and somewhat more complicated. Having said that, I cannot agree with Justice O'Connor's statement that because the picketing prohibited by the ordinance is speech directed primarily at those who are presumptively unwilling to receive it, the state has a substantial and justifiable interest in banning it.[29] If this were the rationale, then no debate would ever be allowed in residential area. There would always be someone who was not willing to hear criticism. Like Justices Brennan and Marshall, I think that there might be room to regulate such picketing but it should not be entirely prohibited.[30] The picketers are entitled to communicate their strong feelings to the doctor who performs abortions and should have fair opportunity to convey their pro-life statements. But they should not harass the doctor and his family, and obviously they should not harm them.[31] Regulation is legitimate. Unqualified prohibition is not. In order for a regulation relating to time, manner and place of expression to be enforced, the state must show that its regulation is necessary to serve a compelling state interest, and that it is narrowly tailored to achieve that end.[32]

The balancing between protecting the privacy of the home and freedom of expression is exemplified in *Ramsey v. Edgepark* where the Ohio Court of Appeals said that regulation rather than prohibition is appropriate. The court held that the trial court did not abuse its discretion when it found appellants' activities to be offensive to a reasonable person and issued the injunction prohibiting appellants from intruding into appellees' privacy in that manner. However, the trial court did err when it restricted appellants from picketing within 200 yards of appellees' homes, as this restriction violates appellants' First Amendment right to disseminate information from a public forum, namely a public street. Appellants have a right to picket in the neighbourhood, block or street where appellees live. There is no invasion of privacy as long as the picketers remain on public property and do not focus their activities solely at a particular home.[33]

Obviously the government is entitled to use state powers to prevent picketers from blocking, impeding, or inhibiting access to residential premises. The government may also implement ordinances or injunctions prohibiting petitioners from physically abusing, grabbing, intimidating, harassing, touching, pushing, shoving, or assaulting persons entering or leaving the premises.[34] There is a judicially cognizable difference between a legitimate attempt to pronounce views and to

persuade decision makers of one's logic and personal convictions, and an attempt to physically and psychologically intimidate someone into acquiescence in one's own beliefs under the guise of exercising free speech rights. Freedom includes both the right to speak one's mind and the right to make up one's mind free from intimidation.[35] An injunction against use of signs and peaceful picketing activities designed to criticize a certain policy or activity constitutes an unconstitutional prior restraint on expressive conduct.[36] This is why I protest against outright prohibition but find myself in agreement with many of the recent abortion/free speech cases which aimed at securing the private domain of physicians performing abortions and creating buffer zones for women approaching abortion clinics.[37]

Recently the Supreme Court rejected a challenge to an injunction issued to protect the home of a New Jersey abortionist. The court let stand a restriction that prohibited protestors from demonstrating on the street along Murray's property line, about eighty feet from his house, and limited protesting beyond that point to fifteen persons for one hour every two weeks, provided that the protestors give police 24-hour advance notice. Although Justice Scalia concurred in the decision on separate grounds, he condemned the injunction as 'a mockery of First Amendment law'.[38] He wondered 'whether prior restraint of speech may be imposed in absence of actual or threatened illegality'.[39]

Let me focus attention on two cases that are most pertinent to our discussion. Like picketing the Rabins' home, both are concerned with protests on public matters that were made next to private homes of high officials. The two cases are *State of Maryland v. Schuller*[40] and *Brown v. Scott*.[41] I shall review the judgments in some detail since they encapsulate the different reasonings in the debate.

In *Schuller*, defendants were convicted under a statute prohibiting residential picketing except in connection with labour disputes. Members of a group called 'The Community Action for Non-Violence' picketed the home of Donald H. Rumsfeld, then the Secretary of Defense, in protest against 'the proliferation of nuclear armaments of the United States Government'.[42] The picketers were peaceful and at all times cooperative with the police. At no time during the picketing did they obstruct traffic, become disorderly or otherwise disturb the neighbours other than through their picketing activity. However, they were tried and found guilty of unlawful picketing. Upon appeal to the Circuit Court for Montgomery County the charges against the defendants were dismissed and the State of Maryland petitioned for *certiorari*. The State argued that a prohibition against all residential picketing is not

violative of the First and Fourteenth Amendments to the Constitution, that statutes prohibiting picketing of residential dwellings are a constitutionally valid exercise of the state's police power to protect individual privacy, and that the exemption of labour-related picketing does not create a classification which violates the Equal Protection Clause.

The Court of Appeals, Judge Eldridge, held that picketing is not 'pure speech' but rather an activity which intertwines elements of speech and conduct, and it is therefore subject to some regulation. However, attempts at regulation must be narrowly drawn to reach only certain specified conduct that impinges on valid state interests.[43] In the present case, rather than prohibiting certain specific conduct associated with picketing and within the purview of the State's power to control, the Maryland act provides for a blanket ban on residential picketing itself. Judge Eldridge concluded that the State act violated the right to freedom of speech protected by the First and Fourteenth Amendments as well as infringing upon the right to equal protection of the laws guaranteed by the Fourteenth Amendment. In this paper it is argued that this line of reasoning, with the necessary accommodations suitable for Israeli law, be adopted by the Israeli legal authorities.

The matter in *Brown v. Scott* was quite similar yet the District Court reached the opposite conclusion, and a further appeal to the Supreme Court was needed to allow the picketing. Members of the Committee Against Racism peacefully demonstrated on the pavement in front of the Mayor of Chicago's home in protest against his alleged failure to support the bussing of school children to achieve racial integration. They were arrested for disorderly conduct and for violating the Illinois Residential Picketing Statute. Thereafter, plaintiffs brought suit in the Federal District Court, seeking a declaratory judgment that the statute was *prima facie* unconstitutional. The District Court denied all relief, but the Court of Appeals reversed, holding that the statute violated the Equal Protection Clause of the Fourteenth Amendment.[44] The state's attorney appealed to the Supreme Court, which affirmed the decision.

The plaintiffs contended that although the state may reasonably regulate picketing as to time, place and manner by means of a narrowly drawn statute, the state may not flatly prohibit picketing in a particular place. The Illinois Residential Picketing Statute, they maintained, was not a statute narrowly tailored to the purposes of the legislature.[45]

District Judge Grady acknowledged that picketing is an activity which often expresses a political or social viewpoint and which is thus entitled to First Amendment protection.[46] He maintained that, nevertheless, a State or municipality may protect individual privacy by

enacting reasonable time, place and manner regulations applicable to all speech irrespective of content. In essence, a court must look to the nature of the forum in which the plaintiffs propose to picket, and then must strike a balance between the First Amendment rights of the speakers and the privacy interests of their audience.[47] Judge Grady quoted from *Hague v. CIO* which said that wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. The privilege of a citizen to use the streets and parks for communication of views on national questions may be regulated in the interests of all. It is not absolute but relative, and must be exercised in subordination to the general comfort and convenience; but it must not, in the guise of regulation, be abridged or denied.[48] I cannot agree more with this statement.

The District Court rejected the plaintiffs' appeal after balancing their right to picket against the Mayor's right to enjoy the tranquillity of his home, holding that the latter right is heavier. By patrolling the official at his home, the picketers annoy him and his family, and indeed, intend to annoy them. The prohibition of all picketing at this location is the only way for the legislature to achieve its purpose of reserving for the homeowner a sense of security and privacy. Judge Grady explained that the Illinois statute only prohibits picketing at one particular place, 'before or about' a residence, and does not bar picketing at any other appropriate place. To his mind, in terms of the plaintiffs' purpose City Hall was a more meaningful forum than the Mayor's home.[49] They could have pronounced their views there. Judge Grady concluded that the balance favoured the privacy interests of the homeowner as against the free speech interests of the picketers.[50]

As stated, the decision of the District Court was struck down by the Supreme Court. Speaking for the majority of the court, Justice Brennan held that the Illinois statute violated the Equal Protection Clause because it impermissibly distinguished between labour picketing and all other peaceful picketing without any evidence that the latter was 'clearly more disruptive' than the former.[51] Quoting from *Hudgens v. NLRB,* Justice Brennan maintained that 'streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely'.[52] Yet here, under the guise of preserving residential privacy, Illinois flatly prohibited all non-labour picketing even though it

permitted labour picketing that was equally likely to intrude on the tranquillity of the home. Justice Brennan explained that government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favoured or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an 'equality of status in the field of ideas', and government must afford all points of view an equal opportunity to be heard.[53] While quoting from *Stromberg v. California* Justice Brennan asserted that the 'maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system'.[54]

Having said that, Justice Brennan clarified that the right to communicate was not limitless. Even peaceful picketing may be prohibited when it interferes with the operation of vital government facilities. The Supreme Court acknowledged in previous decisions that picketing or parading is prohibited near courthouses,[55] on jailhouse grounds,[56] or when it is directed toward an illegal purpose.[57] Moreover, the court declared that a 'State or municipality may protect individual privacy by enacting reasonable time, place, and manner regulations applicable to all speech irrespective of content'.[58] Thus, preserving the sanctity of the home is surely an important value. Justice Brennan thought that the court decisions reflected no lack of solicitude for the individual's right to be left alone in the privacy of his home. The crux of the matter was that the defence of the individual's privacy should not be grounded in a statute that discriminated among pickets because of the subject matter of their expression.

I have elaborated on these court judgments because they encapsulate much of what I want to say. The judgments show sensitivity to the official's right 'to be left alone'. The Supreme Court judgment also reflects sensitivity to the importance of participation in public life and communication between public figures and common citizens. I do not think Mrs Leah Rabin would have complained about the picketing outside the Rabins' home if the picketers had expressed agreement with the government's policies and praised Yitzhak Rabin's leadership. I understand that Mr and Mrs Rabin found the picketing disruptive and offensive, probably more than a mere nuisance. As Justice Stevens acknowledged in his dissenting opinion in *Frisby v. Schultz*, picketing is a form of speech that, by virtue of its repetition of the message and often hostile presentation, may be disruptive of an environment

irrespective of the substantive message conveyed.[59] Nevertheless, public officials who take upon themselves state responsibilities must know that their policies might attract criticism. They need to concede that the citizens have every right to voice dissent and even anger if certain policies deem – in their view – dangerous, repulsive, or wrong. To my mind, the notion of the term 'citizen', as distinct from simply a 'person', relates to active participation in public life. Democratic governments should encourage citizens' participation, within the confines of the law, no matter what the content is, supportive of government's policies or protesting against them with disdain and venom. A saying that is attributed to President Harry Truman is most appropriate in this context: 'If you cannot stand the heat, stay out of the kitchen'. Unlike Justice Shlomo Levine I am reluctant to accept the argument that allowing picketing near officials' private homes might deter capable people from entering public life.[60] Politics is saturated with intrigue, personal rifts, tensions and stress of the highest degree. People who might be deterred by potential picketing near their homes are better off outside the realm of politics.

Now, this is not to say that picketing has to be allowed at all times and at all places. The right to free speech and its derivatives – the right to picket, to demonstrate, to march, to hold processions and so on – are not absolute.[61] As the analysis has shown, the American courts acknowledged that the right to picket and to demonstrate is not limitless, and that regulations of time, manner, and place could be imposed. For instance, the police have every right to interfere in protests which involve a large number of cars, some parked at the curb next to the public official's residence and others racing their motors with sliding wheels, coupled with honking horns and noisy car occupants.[62] The government could constitutionally regulate the number of picketers,[63] the hours during which a residential picket may take place,[64] or the noise level of such a picket.[65] But we should not prohibit outright all picketing outside public officials' private homes. Picketing that is peaceful and on the public street, which neither obstructs traffic nor becomes disorderly, and which aims at communicating ideas before public officials' residences is within the protective ambits of the Free Speech Principle.[66]

The British stance[67]

As far as I know there is no British authority about picketing of public officials' private houses. As David Feldman, Dean of the Faculty of Law at University of Birmingham told me, the main concern with regard to

'public people' has been press harassment, not protest. In August 1996, the Princess of Wales obtained an emergency injunction from the High Court against Martin Stenning, a photographer who frequently trailed the Princess on his motorcycle. The injunction barred Stenning from approaching within 300 metres of her, communicating with her, harassing her, interfering with her safety, security or wellbeing, or molesting or assaulting her.[68]

As a matter of law, it is probable that the judge regarded the case as involving a simple application of the principle set out in *Burris v. Azadani* where the court appeared to hold that it had jurisdiction to award an injunction in interlocutory proceedings to protect a litigant against harassment even if the harassment would not have entitled the litigant to damages by way of a final order.[69] It is now becoming clearer that there is a cause of action *in tort* in respect of harassment at common law.

There have been cases where injunctions have been obtained to restrain publication of photographs taken of the Princess and other members of the royal family in intimate settings, by means of telephoto lenses, and so on. But the general rule is that the taking of photographs cannot in itself be controlled (except where it is likely to cause a breach of the peace), unless the interference with the subject's life is so significant that it amounts to serious and probably intentional harassment.[70]

As for political protests outside the private homes of politicians and other public figures, these are simply not part of the overall British political culture. If we observe this issue in historical perspective, during the last century there were a few instances of such picketing. When there was a major demonstration in Hyde Park near Prime Minister Disraeli's London home in July 1866, in connection with electoral reform, there was great concern and the militia was summoned. A month earlier, a demonstration favourable to Gladstone had taken place outside his house (in Gladstone's absence) in Carlton House Terrace, following a meeting in Trafalgar Square.[71] So such events were not unheard of in the nineteenth century, but were regarded as exceptional and undesirable.

Peter Cook, a lecturer in legal history at the University of Birmingham who specializes in the history of eighteenth and nineteenth century criminal law, points out in a personal communication that there has been virtually no work done on newspapers' and peacekeepers' records of protests at the houses of politicians. It is well known that there were riots and other protests at the homes of major

landowners over such matters as the enforcement of the Corn Laws, which affected corn prices and could contribute to or mitigate the misery caused by bad harvests. So far, these demonstrations have been seen as anti-landowner protests.[72] However, many of the landowners would also have been MPs for the areas in which their houses stood, or members of the House of Lords. It may be, therefore, that there were politically motivated attempts to influence the way in which the MPs voted on Corn Law issues in Parliament.[73] The work on that issue needs to be further developed by social and political historians. It remains true that such demonstrations have been very rare in Britain this century.

That said, the prevailing view seems to be that residential neighbourhoods are public places, as are roads, whether next to the houses of government officials or anyone else. The question of whether protests are aimed at public figures or government officials is, as Geoffrey Marshall of Queen's College, Oxford thinks, of no relevance since their rights to invoke the law are no less and no more than anybody else's. The only question would be what offences, if any, are capable of being committed by anyone who is demonstrating, or picketing, or processing.

The problem until recently has been that the justification for restricting protests outside private premises had to be sought in either private property rights or public interests in the maintenance of order on public highways. The general position is that the protester can use the highway for any reasonable purpose, which may include protesting (but not harassment – a fine line to draw). There was no right of privacy that a politician (or, indeed, anyone else) could assert in such situations. If proprietary rights could not be invoked, the police might use their common law or statutory powers (for example, in relation to breach of the peace and maintaining public order) to control or prohibit protests, but they had no obligation to do so. On the whole, considerations of public order and security enjoy greater weight than individual rights, such as the right to demonstrate or to picket.

The most obvious statutory powers are in Part I, Section 5 of the Public Order Act (1986), 'Harassment, alarm or distress'. Under this Section a person is guilty of an offence if he

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour,
or
(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Accordingly it seems that the law in Britain would provide public officials with grounds to ask for prohibition on picketing outside their homes. They could argue that such pickets constitute harassment. The British stance is akin to Justice Rehnquist's dissent in *Carey v. Brown*.[74] However, I see a difference between picketing and harassment. Not all forms of picketing constitute harassment though some might. As Justices Brennan and Stevens asserted in their dissenting opinions in *Frisby*, the state could regulate the unduly coercive aspects of picketing. Once free of such elements, only the speech would remain. Justice Brennan grounded his defence of residential picketing on this reasoning.[75] Justice Stevens, in turn, argued that picketing for the sole purpose of imposing psychological harm on a family in the shelter of their home is not protected under the constitution, but nevertheless picketers should have a fair opportunity to communicate their strong opposition.[76] In contrast, Section 5 of the 1986 Public Order Act is too broad in its application, with the effect of narrowing the scope of free speech more than it should. As said, there is a difference between expressing opinions near another's private home and harassing an individual near his or her home. The British stance does not seem to make adequate distinction between the two.

It should be added that developments in the British law of nuisance and privacy have taken place in the contexts of (a) private citizens and (b) people trying to carry on their ordinary business activities. They have not been concerned with politicians or other public officials. The owner or occupier of the premises can obtain a remedy for infringement of private rights, for example, trespass or private nuisance.[77] Private nuisance has recently been given an extended reach, allowing remedies to be granted against people who interfere with the quiet enjoyment of the workplace or home by harassment. This may have developed to the point where one can speak of a tort of harassment, or of infringement of privacy, which until recently was undeveloped in British law.[78]

The Israeli stance

The right of privacy is protected in Israeli law under the Law of Protection of Privacy (1981) and under Basic Law: Human Dignity and Freedom (1992). Section 7a of this Basic Law holds that every person is entitled to privacy and to the confidentiality of his or her life. On the other hand, the right to demonstrate and to picket, like freedom of expression, is not protected under any specific Israeli law. However, the Israeli Supreme Court acknowledged the right to assemble, to hold

processions and to picket in several of its decisions.[79] In the language of the court, this right belongs to 'those liberties that shape the character of the Israeli regime as a democratic regime'.[80] The court maintained that 'the freedom to demonstrate and to assemble stands on a broad ideological base'.[81] At the centre of this ideological base lies recognition of the value of the individual, his or her dignity, and the freedom granted to him or her to develop his or her character.

In a recent case, H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, people wished to demonstrate before the private home of a prominent religious and political leader, the patron of 'Shas' party Rabbi Ovadia Yoseph. The police refused to grant them a permit as the demonstration would infringe the privacy of Rabbi Yoseph, his family and neighbours. The protesters appealed to the Supreme Court who denied their appeal. Three justices sat in the court and each justice provided a different line of reasoning. Justice Shlomo Levine held that the consideration of privacy overrides. Demonstrations might take place near the public workplace but not outside private homes. Justice Barak, on the other hand, thought that the balancing approach, rather than the principled approach adopted by Justice Levine, was more appropriate. In turn, Justice Goldberg explained that he would allow demonstration near a private home only if no other effective alternative existed.

Let me first note that there is a peculiar discrepancy in Justice Levine's judgment between the declarative remarks and the actual analysis that he employs. Although Justice Levine declared that he would not refrain from balancing the competing rights he nevertheless categorically holds that the right to privacy overrides when speaking of demonstration near private homes.[82] It is unclear in what circumstances, if any, the right to demonstrate near a private residence might override the right to privacy. Therefore, the language of balancing seems to serve only as a lip service. After all, balancing is the current fashion in the Israeli Supreme Court.

Furthermore, I also disagree with Justice Levine's assertion that the American stance is in line with his point of view, that is, that privacy overrides free speech when concerned with picketing near private homes.[83] Cases from *Gregory v. Chicago*[84] to *Carey*[85] recognized the preferred position of First Amendment freedoms. In *Carey*, the court pondered public forum considerations. It dealt with public streets in residential areas as public fora and thus subjected the regulation of speech to strict scrutiny. The regulation had to be narrowly tailored to effectuate a substantial state interest.[86] The government also must

show that ample alternative channels of expression are available to the speakers in spite of the restriction.[87] An alternative channel for expression could entail moving the speech to a nearby, less obtrusive location or allowing the speakers to stay in the area but to communicate in other ways. If the speaker can reach the selected target audience through the alternative channel, a court will usually find that ample channels exist.[88] Generally speaking, in the American courts, regulation rather than prohibition is considered the appropriate state response to problems caused by using public forums for free speech purposes.[89]

In his judgment for the court in the *Dayan* case Justice Barak contended that freedom of demonstration and the right to privacy are of equal status.[90] The balancing formula would determine what restrictions should be made. Justice Barak was looking for a solution that would not infringe the right to demonstrate while reducing as far as possible the invasion of privacy. His view bears a resemblance to Justice Brennan's. Justice Barak thinks that the right to picket, to hold a procession and to demonstrate is derived from the same Basic Law that secures the right to privacy. According to his judgment, this right is grounded in the individual's right to human dignity and freedom guaranteed by the Basic Law of 1992.[91] Justice Barak maintained that the constitutional starting point is that every individual has the right to assemble, to hold a procession and to picket, and this right is not confined only to the governmental or commercial parts of town.[92]

Justice Goldberg provided yet another approach that constitutes one of the layers of analysis adopted by the American courts. In his opinion, it is possible to demonstrate in front of a private residence only if there is no other effective alternative. If an alternative exists, such as the workplace of the public figure, one may not demonstrate near his (or her, R.C.A) home. If the residence of the public figure serves also as a place where he (or she) conducts all or most of his (or her) public activity then we may conceive that residence as the only effective place near which to hold an assembly.[93]

Conclusion

My approach is similar to that of Justices Brennan and Barak. Peaceful demonstration and picketing on the public streets and pavements in residential areas falls within the scope of the Free Speech Principle. Acknowledging that, the police are under no obligation to grant permission to each and every demonstration or picket. They can regulate

the exact place of the picketing, the number of residential picketers, the hours during which a residential picket may take place, or the noise level of such a picket. A large assembly in front of a public official's home is different from a small picket. One picket or demonstration has a different effect from frequent pickets and demonstrations. A picket or demonstration at 10 am is substantially different from a similar picket or demonstration at 10 pm. A picket that goes on for ten hours is much more intrusive than a picket that lasts one hour. The police will look less favourably on pickets or demonstrations that might also obstruct traffic. It is easier to grant a permit to pickets or demonstrations on the pavements of side streets. A picket outside the premises of a private isolated house disturbs only the public figure and his or her family, while a picket outside a block of flats disturbs the privacy of many people. Picketers who use loud speakers to voice their opinions have an intrusive effect that is quite different from picketers who only carry signs and placards. These are all pertinent considerations. We should take them into account and apply common sense in prescribing some form of regulation. As Justice Brennan said, 'substantial regulation is permitted to neutralize the intrusive or unduly coercive aspects of picketing around the home. But to say that picketing may be substantially regulated is not to say that it may be prohibited in its entirety'.[94]

3

The Right to Participate in Elections: Judicial and Practical Considerations

Preliminaries

This chapter deals with the right to compete in elections. The aim is to review some of the decisions of the Israeli Central Elections Committee and of the Supreme Court regarding disqualification of political parties[1] in Israel. The discussion is on two levels: philosophical and judicial. On the first level two major questions are addressed: (a) when should tolerance have its limits?; (b) what constraints on liberty should be introduced in order to safeguard democracy? As for the judicial level, here the focus lies on the issue of authority. Attention is given to the written law and to existing normative considerations, which allow justices exegetic latitude.

I commence discussion by reflecting on two milestone cases, *Yeredor* and *Neiman*. While in *Yeredor* the court resorted to a principled position, in *Neiman* the court preferred a consequentialist attitude of balancing between interests. Consequentialism has become a very fashionable approach, especially among American justices and philosophers. What is striking about it is that consequentialists are willing to endure the costs of offensive speech *now* because of speculative fears of the consequences of restriction. Hence, American liberals justify the Skokie decision of the Illinois Supreme Court,[2] saying that it helped the cause of fighting racism in the United States and increased the awareness of the general public regarding the Holocaust, yet at the same time they give little or no consideration to the actual harm that might have been inflicted on the Holocaust survivors of Skokie if the Nazis had taken the option granted them to exercise (or rather to abuse) their First Amendment right and march through this Jewish suburb of Chicago. As described in *Chapter 1*, liberals warn that if we restrict speech, this

might lead to an increasing tendency towards law and order legislation (Anthony Skillen);[3] to the creation of undergrounds (Norman Dorsen);[4] to abuse of power on part of the government (Thomas Scanlon,[5] Frederick Schauer)[6]; or to a less tolerant society (Lee Bollinger)[7].

I side with the principled position when the issue at hand concerns participation of parties in the elections. Also from a consequentialist perspective it can be argued that the court should not ignore the licensing effect of its decisions. But more importantly, democracy does not have to allow a list propounding the destruction of democracy to act in order to fulfil its aim.[8] It is neither morally obligatory, nor morally coherent, to expect democracy to place the means for its own destruction in the hands of those who either actively wish via violent means to bring about the physical annihilation of the state, or to undermine democracy. These two are the only cases in which democracy has to introduce self-defensive measures and to deny representation in parliament to lists which convey such ideas, and which act to realize them. Representation is a fundamental principle that underlies democracy but we need to set limits to it so as to overcome the democratic 'catch' and to protect democracy. Therefore, when a violent list such as the quasi-fascist 'Kach' bases its political platform on discrimination and disrespect towards others, resorting to violence with the aim of harming some people and undermining democracy, it should be disqualified, as 'Kach' indeed was in 1988 and in 1992, and as its splinter 'Kahane Is Alive' was in 1992. I also justify the amendment to the Basic Law: The Knesset (1958) that specifically aimed at banning 'Kach', and further vindicated outlawing quasi-fascist parties. I conclude by reflecting on the two decisions that were made in 1996 with regard to two political parties: one of the extreme right in Israel; the other a Palestinian party.

Guiding principles

Yeredor

The first important decision on the question whether a party should be banned from participating in the elections was *Yeredor*.[9] In *Yeredor* the majority of the court addressed the issue of what should be the moral limitations of tolerance. It explained that in order to avoid self-defeat of democracy, it was necessary to introduce boundaries to the very principles that underlie democracy, tolerance, and liberty. The Central Elections Committee (CEC) decided to disqualify the Socialist List 'for the reason that this candidates list is an illegal organization, because its initiators deny the integrity and the very existence of the State of

Israel.'[10] Justice Moshe Landau, who chaired the Committee, argued that the list could not be confirmed because the Knesset could not incorporate within it an element that propounded the destruction of the state. Democratic procedures were not to be used to undermine the democratic regime itself.

The statements of Justice Landau were straightforward. He did not make contingent assumptions regarding the actual power of the list in question to implement its political platform. The Chairman of the CEC did not say that a list might be banned when it might endanger the foundations of the state. He refrained from discussing the magnitude of the threat. Rather he conclusively held that certain ideas do not have any place in the parliament. A list that wishes to destroy the state should not be allowed to be represented in the Knesset, seeking to further its ideas. Tolerance should prevail, but it also has to have its limits; otherwise democracy might supply its destroyers with the means to carry out their task more quickly and efficiently. Note that Justice Landau did not say that members of the list should be denied freedom of expression altogether. He advocated what we may call 'qualified tolerance', implying that democracy may endure any opinion, but this is not to say that each and every view has to be represented. Anti-democratic opinions deserve no legitimization by democracy to help them prosper and attract more people.

Members of the Socialist List appealed to the High Court of Justice, who in a two-to-one decision confirmed the CECs decision. The majority justices, Shimon Agranat and Yoel Sussman, agreed with the opinion of their colleague Justice Landau, asserting that the character of the Socialist List was in polar opposition to the purpose of the elections, because its essence and objectives were to bring about the annihilation of the State of Israel. A group of people whose open political objective was to undermine the very existence of the state could not *a priori* have any right to take part in the process of consolidating the will of the people, and could not, therefore, stand as candidates in the Knesset elections. Justice Sussman introduced the notion of supra-constitutional considerations, emanating from natural law, which were superior to any form of legislation, whether ordinary laws or Basic Laws. Justice Sussman relied on a decision of the Supreme Court of West Germany from 1953, where the court spoke of the notion of 'militant democracy', which aimed to protect parliamentary functions from abusive attacks by subversive groups:

> [T]he German Constitutional Court, in discussing the question of the legality of a political party, spoke of a 'militant democracy',

> which does not open its doors to acts of subversion under the cover of legitimate parliamentary activity. As far as I am concerned, regarding Israel, I am satisfied with a 'self-defending democracy,' and we have the tools to protect the existence of the State even though we do not find them expressly specified in the Elections Law.[11]

Accordingly, the state (or rather, the CEC) possesses an implied power, which is similar to self-defence, to fight against subversive attempts designed to destroy Israel. The holding of this ruling was that even where the existing law did not contain a provision allowing for the disqualification of a list, it was necessary to avoid the moral incoherence involved in allowing a person, who aspired to the cessation of the existence of the state and its authorities, to compete in the Knesset elections. In certain circumstances judicial quasi-legislation beyond the written text might be permitted to fill a gap as required by existential necessity. Justice Sussman maintained:

> Just as a man does not have to agree to be killed, so a state too does not have to agree to be destroyed and erased from the map. Its judges are not allowed to sit back idly and to despair from the absence of a positive rule of law when a plaintiff asks them for assistance in order to bring an end to the State. Likewise no other state authority should serve as an instrument in the hands of those whose, perhaps sole, aim is the annihilation of the State.[12]

Indeed, democracy has to find answers to the dangers emanating from the practice of its very principles, that is, tolerance, liberty, participation, and representation (the democratic 'catch'). Arguments that convey similar notions have been employed in Britain by those seeking to restrict the activities of the 'National Front'.[13] The majority of the court, like Justice Landau, said nothing about circumstances, potential power, gravity of danger or similar considerations. They made no reference to any criterion. Because President Agranat and Justice Sussman thought that the matter in hand involved a combination of security factors, together with an ideological threat to the state and the basic principles that it embodies, neither of them saw it necessary to discuss the level of the danger. This view is explicit in Sussman's reasoning. For him the subject is a matter of principle, rather than one that is contingent on various facts and factors.[14]

Neiman

The next milestone decision on this question of representation in parliament was decided 19 years later. In 1984, some weeks before the elections to the 12th Knesset were to take place, and in the light of the then recent polls that showed that 'Kach', the quasi-fascist party of Rabbi Meir Kahane, would succeed in entering the Knesset, the CEC decided not to confirm 'Kach'.[15] It was argued that 'Kach' propounded racist and antidemocratic principles; openly supported acts of terror; tried to kindle hatred between different sections of the population; and that it intended to violate religious sentiments and values of part of the state's citizens.

In order to keep the 'balance' between the right and the left in parliament and to secure wide support for the disqualification decision, the CEC also decided to ban the leftist 'Progressive List for Peace' (PLP) on the grounds that the list contained subversive elements and tendencies, and that central figures in the list identified with the enemies of the state.[16] Both 'Kach' and 'PLP' parties appealed to the Supreme Court, which reversed the decisions of the CEC.[17]

All five justices in the appeal did not reject the idea of disqualifying lists in order to defend democracy as such. They said that this measure should be resorted to with caution, only in extraordinary cases. 'Kach' and the 'PLP' were not seen as such cases. Regarding the 'PLP', the unanimous judgment was straightforward: the procedure used by the CEC to disqualify the 'PLP' was seen as incorrect, in that it referred to either unconvincing or old documents. The court was right in its judgement. The 'PLP''s political platform did not differ significantly from those of other parties that were allowed to compete in the elections, and no evidence brought before the court established that the list constituted any danger to the state. But the decision concerning 'Kach' is less clear. The court should have used its authority to declare that explicit antidemocratic ideas and aims cannot claim a right to be represented in the Knesset.

The question of authority is strongly related to that concerning the scope of tolerance and the restrictions on liberty. Constitutional matters in democratic societies frequently turn on the decision of the courts; we must, therefore, examine the force of philosophical principles regarding societal norms and values, when the court formulates judicial decisions in the absence of specific statutes empowering it to act. This is the context in which we should consider the authority that may be accorded to the court when it contemplates which democratic methods of self-defence are to be resorted to on the basis of principles underlying the constitutional text.

The role of the judge is also to set more defined standards for action for both politicians and the courts when they are faced with constitutional matters, especially where attacks on the very foundations of democracy are concerned. Hence a scope exists for taking normative constitutional principles into account. These principles may in some 'hard cases' convince the court to take a creative approach. Dworkin explains that in hard cases, judges must choose between eligible interpretations of some statute or line of cases by asking which shows the community's structure of institutions and decisions in a better light from the standpoint of political morality. The judge's decision will reflect not only his or her opinions about justice and fairness but his or her higher-order convictions about how these ideals should be comprised when they compete.[18] Following Dworkin, I would say that two sets of considerations inevitably play their part when judges come to formulate a judgement. One set is related to the moral convictions held by the judges, influenced by their personal upbringing and educational background, as well as by the tradition and values of the society in which they live. The other is concerned with the specific legal history. Precedents and other legal facts are bound to limit the moral considerations of judges but they should not exclude moral considerations altogether. When faced with an unprecedented situation, in which they are required to use their discretion to find a judicial solution to a 'hard case' (such as this one), judges should decide the case by interpreting the political structure of their community so as to find the best possible justification, in principles of political morality, for the structure as a whole.[19] Accordingly, if the right of people to be treated as equals and not to be harmed by others can be defended only by creative adjudication, then creativity is not only in order but necessary. This is the case so long as the judge tries to make the creative decisions in line with previous ones rather than starting in a new direction as if writing on a clean slate. In my view, *Neiman* allowed room for unwritten values of the judicial system to be taken into account. And if the court could not find an answer in statute law and could not draw an analogy with *Yeredor*, it could have referred to 'the principles of freedom, justice, equity, and peace' as the law of Foundation of Law (1980) provides. The court should have done so not only because of the alarming nature of the Kahanist phenomenon, but also because questions concerning the eligibility of a list to participate in the elections inevitably are connected with granting legitimacy to the list in question.

None of the five justices raises this issue of licensing. In my view, the issue concerning the eligibility of a list to compete in the elections

necessarily involves the question of legitimacy. It is not merely a question of allowing opinions the right to be heard. Of course, a court could approve something with reluctance, and judges could hold that they do not have the authority to regard something as unconstitutional, without giving the impression that in some broader sense that something is right. Nevertheless, the final decision of the court is bound to influence the way in which those matters are viewed: whether they are given the status of any other matter, which may be held with or without reservation but is still free to be represented in parliament, or whether they are dismissed as matters that even the courts of justice think should have no place in society.

President of the Supreme Court, Meir Shamgar, expressed fears of the temptation to silence unpopular opinions. He held that a person's liberty was not to be restricted except by law, and was not to be denied merely on the grounds of objection, however forceful, to the content of an individual's statement. President Shamgar postulated that the criteria upon which answers to questions were examined should be based on expressed statutory provision, and even more importantly, should be activated only as a last resort when facing a probability of danger. If there was a probability that the exercising of a certain right would jeopardize public order and security in a concrete case, the authorised statutory body could limit the practical implementation of the right in the said circumstances.[20] President Shamgar did not speak of defensive means of democracy against certain threats in principle; instead his view was practical. He maintained that there must always be a logical connection between the degree of danger and the means taken. Not any advocacy, even if it elicits justified indignation, may cause the denial of the entire scope of liberty. A democracy that enforces restrictions without existential necessity loses its spirit and force.[21]

In turn, Justice Barak argued that a difference existed between freedom of expression and freedom to be elected. I concur with his view that democracy must allow itself wider security margins when considering the eligibility of questionable lists. It is one thing to express views and opinions, however repugnant they are, and quite another thing to use parliamentary methods to put them into effect by legislative means. These two issues should be dealt with separately. When we come to restricting the right of a list to be elected, the focus is on the opinions and the goals of the list, and on its actions to realize them. If the content of the political platform of a given list and its explicit intentions are to bring about the physical annihilation of the state or to undermine democracy, and members of the list are violently acting

along these lines, democracy has the right to defend itself and not to allow that list representation in parliament to further its aims by legal means. To ask democracy to place the means for its own destruction in the hands of its potential destroyers is neither morally obligatory nor morally coherent. Notice my emphasis on physical annihilation of the state. That is, in the Israeli context, no sufficient grounds warrant disqualification of a party that wishes to change the character of the state from a Jewish state into, say, a Canaanite secular state, as distinguished from aiming to destroy the Israeli State as such.

According to Justice Barak's line of thought, endangering democracy amounted to endangering the basic foundations of the state. Hence, parties that wished to participate in the democratic rules of the game, and to gain power to implement their ideas through legislation and other democratic means, had first to accept democratic principles. As Justice Bejski said: 'Whoever claims rights in the name of democracy must himself act in accordance with its rules.'[22] However, Justice Barak added a restrictive qualification to the *Yeredor* ruling: the 'reasonable possibility' standard for danger, and therein lies my disagreement with him. I do not share either Justice Shamgar's or Justice Barak's opinions that in the face of such dangers a standard of some sort should be applied in order to evaluate the danger, and it should then be decided what defensive means to apply.

Justices Shamgar and Barak believed that all parties should enjoy the right to be elected, including those who threatened the existence of the state (Shamgar and Barak), or its democratic foundations (Barak), unless the threat they posed was severe, and unless they had a reasonable chance of translating their ideas into deeds. Their reasoning was founded on balancing and evaluating probabilities, a process that in this context raised substantial questions. But not just the process raises doubts. The essential question is: why should we wait for the stage of probable or reasonable possibility of danger to be reached, while the list in question goes from strength to strength, and meanwhile its ideas and acts undermine democracy and deliberately discriminate against others? The courts acknowledged that 'Kach' 's values were not compatible with the fundamental values of democracy, and that it did not reject the use of violence to further its aims. Even if we follow Justices Shamgar's and Barak's reasoning which concentrates attention on circumstances, the increasing popularity of 'Kach' against a background of severe economic problems, combined with societal and national crises, posed a danger to Israeli democracy. It was not as if the political platform of 'Kach' was dubious, or the intentions of its members were

unclear, or they did not act in accordance with their declared aims. I do not therefore see why such a list should be allowed representation in parliament to help it achieve its purposes. More fundamentally, the issue of defending democracy is a matter of moral principle, rather than one that is contingent on the level or the proximity of the danger. Justice Barak preferred to consider circumstantial considerations, thereby avoiding a discussion of the ethical constraints of liberty and tolerance. I argue that moral restrictions deriving from the defence of democracy necessitate the outlawing of antidemocratic lists. A similar line of reasoning guided the framers of the *European Convention on Human Rights* when they enacted Article 17, recognizing the necessity of preventing specific groups from exploiting the principles enunciated by the Convention in their own interests. Article 17 provides:

> Nothing in this Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Legal measures

The Knesset recognized the incoherence that existed in enabling antidemocratic parties to exploit the machinery of democracy to bring about its destruction. In August 1986 the Knesset passed a law that specifies 'incitement to racism' as a criminal offence. Anyone who publishes anything with the purpose of inciting to racism is liable to five years imprisonment (144B); and anyone who has racist publications in his or her possession for distribution is liable to imprisonment for one-year (144D). The term 'racism' is defined as

> persecution, humiliation, degradation, manifestation of enmity, hostility or violence, or causing strife toward a group of people or segments of the population – because of colour or affiliation with a race or a national-ethnic origin (144A).[23]

One year after the writing of the *Neiman* decision, the Knesset decided to take legal measures to provide grounds for disqualification of racist and/or anti-democratic parties. The Knesset amended the Basic

Law: The Knesset (1958) so as to include Section 7a.[24] It is clear that this section was legislated under the influence of the court ruling in the *Neiman* decision of 1984 and that 'Kach' was the prime concern which brought about this piece of legislation. The section reads:

> A list of candidates shall not participate in Knesset elections if any of the following is expressed or implied in its purposes or deeds:
>
> 1. Denial of the existence of the State of Israel as the State of the Jewish people;
> 2. Denial of the democratic character of the State;
> 3. Incitement to racism.

Quite similarly, Section 5 of the Parties Law, 1992, provides that:

> A party will not be registered if any of its purposes or deeds, *explicitly or implicitly*, contains
>
> 1. Negation of the existence of Israel as a Jewish, democratic state;
> 2. Incitement to racism;
> 3. Reasonable ground to deduce that the party will serve as a cover for illegal actions.[25]

Both provisions are highly problematic. At first glance these laws supply only three specific grounds for disqualification. A closer reading, however, reveals that they open wide the door to the slippery-slope syndrome. To begin with, why the laws speak of 'purposes *or* deeds' is unclear. In my view, the language of the text needs to be narrower in scope, speaking of 'purposes *and* deeds'. Indeed, a political party is expected to act according to the platform upon which it was elected. But the framers of the laws opened the way to the exclusion of parties solely on the grounds of their expressed intentions. In my opinion, members of a party who merely voice their desires, doing nothing to further them and bring them about, should be subjected to the same restrictions of freedom of expression as any other citizen. If Kahane were not involved in illegal, violent activities; if he only talked about discriminating against others and 'emigration for peace' without actually doing something along these lines, then democracy should tolerate him, the way it tolerates people who take a soap box in Hyde Park praising Hitler and declare themselves Hitler's successor. To disqualify a political party, proof should be given that the list in question was not only promoting destructive ideas but also resorted to violence.

These provisions are also problematic because they state that a list may be disqualified if any of the three grounds is 'expressed or implied'. The focus is on the word 'implied'. Intentions can be implied, but activities speak for themselves. Unclear is how any one of the three categories can be implied from attempts to bring it about. And if a list can be disqualified just because one of the three issues may be implied from its activities, or even from its purposes, then again the scope for curtailing this fundamental right is too broad, and the slippery-slope syndrome becomes tangible. On the other hand, the language of the laws is restrictive in the sense that it does not exclude racist platforms *per se*.

Section 7a served as the basis for the disqualification of 'Kach' in the 1988 elections. That year saw a boom in the number of requests to ban parties. Altogether there were 21 (!) such requests. The 'Kach' representative initiated 12 of those requests. The CEC's discussions revolved, in the main, around two parties: the 'PLP' and 'Kach'. Both of the decisions reached the Supreme Court of Justice. In a divided 3 to 2 decision the court approved the participation of 'PLP' in the elections. The majority of the court was not convinced that there was conclusive evidence to show that the political programme of 'PLP' was aimed at bringing about the end of Israel as the state of the Jewish people.[26] A unanimous court, on the other hand, denied the 'Kach' appeal.[27] Having the legal grounds as provided by Section 7a the court saw no reason to accept the 'Kach' appeal.[28]

The same phenomenon reoccurred in 1992. Three parties were on the CEC's agenda: 'Moledet', and the two parties with almost identical anti-Arab and theocratic political platforms – 'Kach' and 'Kahane Is Alive'. The Communist party, 'Hadash', asked to disqualify them, arguing that they incited to racism and negated the democratic character of Israel. The Civil Rights Movement, 'Ratz', joined 'Hadash''s request in regard to 'Kach' and 'Kahane Is Alive'. In the end, these two parties were disqualified on the grounds of Section 7a.[29]

Outlawing political parties

The next elections were held four years later, in 1996. The years between 1992 and 1996 were of significant importance in the history of Israel. On 13 September 1993 Israel and the Palestinian Liberation Organisation (PLO) signed a peace agreement known as the Oslo Accords. From that date Israel witnessed high-profile activity on the part of the extreme right seeking to reverse the trend leading to peace. The most vicious attack against Palestinians took place on 25 February

1994 when Dr Baruch Goldstein, candidate no. 3 on the 'Kach' list for the 11th Knesset elections and designated to be the 'Kach''s representative on the Kiryat Arba council, entered the Cave of Machpellah (the burial place of the Hebrew Patriarchs and their wives) in Hebron and massacred in cold blood some 29 Palestinians praying in the mosque inside the Cave. Following this murderous attack, on 13 September 1994, the government decided to outlaw both the 'Kach' and 'Kahane Is Alive' movements.[30] Before I proceed to examine the 1996 Supreme Court's decisions regarding disqualification of parties, let me reflect for a moment on the outlawing measure, which is relevant to our discussion.

The decision to outlaw 'Kach' and 'Kahane Is Alive' was made in accordance with the Prevention of Terrorism Ordinance. Section 1 of the Prevention of Terrorism Ordinance (No. 33 of 1948) defines a 'terrorist organisation' as 'a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence'.[31] The Ordinance specifies the penalties for activity and membership in such an organization. Section 2 holds, *inter alia*, that a person performing a function in the management or instruction of a terrorist organization, or participating in the deliberations or the framing of the decisions of a terrorist organization, or delivering a propaganda speech on behalf of such an organization, commits a criminal offence and is liable to maximum punishment of 20 years imprisonment. Mere membership in a terrorist organization is liable to imprisonment for a term not exceeding five years (Section 3). In addition, a person publishing praise, sympathy, or encouragement for acts of violence calculated to cause death or injury, and a person assisting the organization in its activities, is subject to criminal proceedings and a maximum penalty of three years' imprisonment (Section 4).

The outlawing of the 'Kach' and 'Kahane Is Alive' movements after the atrocious attack at the Cave of Machpellah is yet another extreme step Israel took in its struggle against Kahanism. It exhibited the government's firm determination to foil further recurrence of murderous attacks against Palestinians. In his opinion paper of 10 March 1994 to Prime Minister Yitzhak Rabin, Attorney-General Michael Ben-Yair explicitly wrote that

> violence and the threat of violence are inherent in the activities of the 'Kach' and 'Kahane Chai' ('Kahane Is Alive') movements. This violence does not follow a uniform pattern. It is directed towards varied targets and appears in different forms, according to the situation, the time and the person performing the act.[32]

He maintained that the movements' violence was aimed against the entire Arab population, both within the area of Israel and outside it.

> It is also aimed against public figures who express opinions that are different from the opinions of the movements, and against the security forces that prevent members of these movements from violating the law and public order.

In many instances activists of these movements had threatened public figures, both orally and in writing, with physical injury and death. Ben-Yair asserted that 'until now threats of a physical nature have not been carried out. However activists of these movements have damaged property belonging to these public figures'.[33]

Evidently, the feeling was that these organizations constituted a real danger to the Palestinian community and also posed a threat to public figures opposing the movements' views and to the security forces. 'Kach' and 'Kahane Is Alive' never exhibited any intention of ceasing to promote and incite racial discrimination and hatred against Palestinians. The murderous and vicious attack at the Cave of Machpellah showed that any inhibition in their activities had been put aside. The legal authorities appear to have felt that the criterion of clear and present danger was satisfied and that Israeli democracy could no longer afford the degree of tolerance it had shown until then. Attorney-General Ben-Yair's recommendation was accepted.

My view of the outlawing decision is one of principle. As a matter of principle I feel that terrorist organizations should be outlawed *tout court*. It is contrary to logic to expect democracy *not* to react in the most decisive fashion to challenges which undermine the state's sovereignty and which aim to destroy law and order. This is so, provided that conclusive evidence indicates that the organization in question is indeed a terrorist organization. Democracy has to be on the defensive. It has the right to outlaw organizations that propagate and use violence against opposition. Tolerance should prevail but it also has to have its limits; otherwise democracy might supply its destroyers with the means to carry out their task more quickly and efficiently. We should therefore claim in the name of tolerance the right not to tolerate the intolerant.[34]

To reiterate: the argument I put forward is one of principle and it accentuates the rationale of mutuality. Acts of self-defence against those who undermine democracy by resorting to brutal means necessitate the imposition of restrictions. Clearly, violence and terrorism

negate the functioning of democracy. Similarly, democracy should deny the working of violent movements. The concepts of democracy on the one hand, and violence and terrorism on the other, are mutually exclusive. They contradict one another by definition. Democracy has a moral and practical right to suppress resorting to violence and terrorism by legal means (as distinct from terrorist means).[35]

I review below the 1996 Supreme Court's decisions on disqualification of political lists. The CEC did not deal with this matter for the simple reason that the court decided the preliminary issue of the very registration of the parties in question with the Parties' Registrar. Once those decisions were rendered there was no need for the CEC to delve into the question of denying the parties in contention participation in the election.

The two parties on the agenda were an extreme right-wing political party, and a Palestinian party. I first discuss the appeal against the Jewish 'Yemin (Right of) Israel' party and proceed to an examination of the request to prevent the registration of the 'Arab Movement for Change'.

The Court's decisions of 1996

'Yemin Israel'

'Yemin Israel' asked to be registered as a political party. The Parties' Registrar received objections to this request, grounded on the above-mentioned Section 5 of the Parties Law, 1992.[36]

In the case at hand, the Parties' Registrar dismissed all objections to the registration of 'Yemin Israel' and an appeal was made to the Supreme Court which decided against it.[37] The Parties' Registrar reviewed the objections and contested the view that the aims of 'Yemin Israel' constituted racism or incitement to racism. In his view, nothing in 'Yemin Israel''s aims would necessarily lead to the negation of minorities' rights. The Parties' Registrar did not think that accepting Jewish law principles would necessarily transform Israel into a *halacha* state, nor would it result in negation of human and civic rights. The party was entitled to pursue its ends as long as it acted within the legal framework. Furthermore, its programme did not offend the right of non-Jewish citizens to elect and be elected, nor did it constitute incitement to racism.[38]

Let me note the following. 'Yemin Israel''s statement 'the law and constitution of the State of Israel is to be based on Jewish law' is open to interpretation. If the members of 'Yemin Israel' meant by this that

the entire legal framework would be based *only* on Jewish law principles then Israel could no longer be considered a democracy. It would then be transformed into a theocracy. But those who framed 'Yemin Israel' 's political platform never said that explicitly. Nowadays the legal framework of Israel is based, *inter alia*, on principles of Jewish law, and Israel can still be called a democracy.

However, I disagree with the Parties' Registrar's conclusion that the party's demand for an 'oath of allegiance' to the State of Israel as a *Jewish* state does not offend the right of non-Jewish citizens to elect and be elected. The Palestinian citizens of Israel can identify with the democratic principles of Israel, with the spirit of liberty that is enshrined in its institutions. They may appreciate, love, and identify with certain aspects of Israeli culture (food, songs, dance, theatre, folklore). They may love Israel's beautiful location, enjoy strolling the streets, visiting the natural spots Israel is blessed with, and finding time for relaxation on its relatively long beaches. Some Palestinians may admire Israel's strength and advanced technology and others may treasure the Holy places. But most of them would find it difficult to identify with the *Jewish* character of Israel. In the same way that Jewish Americans would find it difficult to vow their allegiance to the United States as a Christian nation and would protest such a demand, so the Palestinian citizens have every right to protest against vowing allegiance to a religion they do not adhere to. Nevertheless, this does not entail that 'Yemin Israel' should have been disqualified from registration. I contend that evidence should be produced that the party in question is acting violently to promote its aims for it to be banned, either from registration or for contesting elections.

'Yemin Israel's' additional call for the 'exchange of population' between Jews and Palestinians can be seen as a guise for a transfer operation of Palestinians to Israel's neighbouring countries. 'Yemin Israel' spoke of 'consent' of the people to be transferred but this consent was not of the people concerned but between governments, the Israeli and the Arab, over and above the heads of the people who would be asked to leave. To my mind, the transfer programme is aimed at depriving the Palestinians of their right to live in their place of origin, and it is for the Supreme Court to address the question of whether this idea is racist under the Penal Law. Unlike the Parties' Registrar[39] I think that both the 'oath of allegiance' proposal and the 'exchange of population' programme are racist ideas. However, as noted before, Section 5 (2) of the Parties Law, 1992, speaks of 'incitement to racism' rather than of racism *per se*; therefore no sufficient ground existed to refuse the party's

registration. We later on observe that President Barak thought that the 'oath of allegiance' proposal was not racist, and that he avoided addressing the question of whether the 'exchange of population' programme was racist under the Penal Law. Probably he did not wish to tread on too sensitive a political issue.

In his judgement, President Barak explained that on the basis of Section 5 to the Parties Law lies the rationale of balancing. We need to strike a balance between two conflicting trends. On the one hand, we need to enable every individual to form with other individuals an association through which they may further political and social ends. On the other hand, we should safeguard the character of Israel as a Jewish democratic state that shrinks from racism.[40] President Barak accentuated that the right to elect and to be elected was fundamental, and went on to stress that democracy is entitled to defend itself against those who aim at undermining its existence. This is the essence of the right to democratic self-defence.[41]

While agreeing with Justice Barak that democracy has every right to defend itself I contest his reasoning. President Barak is the chief champion of the very fashionable balancing approach. He believes that on constitutional matters the balancing method is most appropriate and that on each and every case we should weigh up the competing interests. As stated, my approach is different. I think that, as a matter of principle, a party that advocates the destruction of democracy, or of the state, and which employs violent means to bring about one or both of these aims, should be banned. It is contrary to logic, as well as to morality, to grant such a party the democratic means to help it accomplish its anti-democratic ends. The balancing approach is suitable only when considering two or more competing interests that accept the basic rules of democracy, first and foremost among them respect for others and not harming others.[42]

To elucidate my point, let me consider the case of terrorism that, like violent anti-democratic parties, negates the very basis of democracy. I do not see any need to balance the interests of the terrorist against the interests of the state protecting its citizens. I strongly urge people to fight with all their strength against the terrorist phenomenon, acknowledging that a zero-sum game exists between democracy and terrorism. The same line of argument guides my reasoning when discussing violent, anti-democratic parties. As with terrorism, every gain on the part of the violent anti-democratic party comes at the expense of democracy. Therefore, there is no need to weigh the competing interests, simply because the interests of the said party are illegitimate.

By implication, parties that do not employ violent means to further their causes in the marketplace of ideas and political platforms should be able to compete in a free, democratic spirit. Democracy may allow peaceful transformation but it cannot allow bloodshed in the name of religion, racism, nationalism, or any ideology.

President Barak does not share this conviction. He is an ardent believer in balancing and, in his view, the issue of interests and means has a place only within this general framework. Justice Barak's concern lies with the question of how the court should strike a balance between the two conflicting trends. President Barak explained that human rights are relative. They need to be balanced in a way that will benefit the public. The balancing process is conducted within a social framework that needs to be safeguarded. We do not live on an isolated island and we need to bear in mind the social implications of the juridic decision.[43] Therefore, because of the major importance that the freedom to associate enjoys in democratic life, we must insist that only in the most extreme cases we should prevent the formation of parties. More specifically, only if the central and dominant aims of the party in question will bring about the negation of the State of Israel as a Jewish democratic state, will there be room to prevent the registration of that party.[44]

I concur with almost all the above statements. I also believe that human rights are relative. I agree that the judges adjudicate within a social framework that needs to be safeguarded, and that they need to bear in mind the social implications of their juridic decision. Likewise I think that only in the most extreme cases should we prevent the formation of parties. However, while President Barak stresses that there is room to prevent the registration of a party only if its central and dominant aims will bring about the negation of the State of Israel as a Jewish democratic state, I focus on the aims *and* the means employed by the party in question to bring about the denial of Israel as a Jewish state *or* as a democracy. Justice Barak ignored the question of how we should treat a party whose aim is to annul *only* the democratic character of Israel. This is a tense issue embodied in political considerations, and Justice Barak obviously did not want to address complexities he would find difficult to resolve. In the Israeli Knesset there are a few orthodox parties that enjoy the rights and liberties of democracy and at the same time do not believe in the spirit and the essence of democracy and strive to enhance the Jewishness of the state at the expense of democratic life.

From the general to the particular. President Barak considered whether the 'oath of allegiance' proposal and the 'exchange of population'

programme constituted racism. Interestingly Justice Barak spoke of racism rather than *incitement* to racism as Section 5 (2) of the Parties Law, 1992, provides. In his opinion, an oath of allegiance to the State of Israel as a Jewish state did not entail lack of commitment to its democratic character, could not be said to be illegal, and was not racist.[45] I assume that if Justice Barak did not find this programme racist, *ipso facto* it could not be considered incitement to racism.

As for the 'exchange of population' programme, Section 6 of 'Yemin Israel's' political platform speaks of 'the enemies of Israel' and not of all the non-Jewish population. President Barak admitted that this phrase was problematic, meaning (I assume) that it could be interpreted in different ways. Nevertheless, owing to the need to give a narrow interpretation to Section 5 of the Parties Law and the effort to employ this Section only in the most extreme cases, the affirmation of 'Yemin Israel' should be upheld and the party should have the right to be registered.[46]

Canvassing President Barak's judgement leads me yet again to agree with his conclusion while disagreeing with the method and some of the statements. Justice Barak argues that the statement 'Eretz Israel in its entirety belongs to the people of Israel, to them alone, and it cannot be divided' did not offend the rights of the non-Jewish minorities. The statement might offend the Palestinians' sensibilities but in itself it obviously does not deny their rights. *Actions* to materialize this statement might deny their rights. Thus I reiterate my emphasis on paying attention to ends *and* means (rather than ends *or* means) when considering confirming a party for either registration or participation in the elections.

Moreover, I have my doubts whether the Parties' Registrar and the court should have accepted so easily the argument made by the 'Yemin Israel' representative that its aim was not to transform Israel into a *halacha* state. Having said that, I concur with Justice Barak that the desire to change the laws of the state does not in itself constitute a ground to prevent the party's registration. Yet again I emphasize that two considerations must be present in our minds: purposes and deeds of the party in question. Each of these considerations is necessary and none in itself is sufficient.

Furthermore, Justice Barak opined that the 'oath of allegiance' proposal did not entail lack of commitment to Israel's democratic character, cannot be said to be illegal, and was not racist. I disagree. As explained *supra,* I think that such a demand is anti-democratic and discriminatory, and therefore racist. As for the 'exchange of population'

programme, Justice Barak refrained from considering whether or not it was racist.

The 'Arab Movement for Change'

The same day that the '*Yemin Israel*' decision was made the court also dealt with another appeal for disqualification of an Arab party.[47] Following the registration of the 'Arab Movement for Change' by the Parties' Registrar, six objections were made to reverse his decision. The Registrar examined all objections and decided to turn them down. Appeal was then made to the Supreme Court to overturn the decision. On 2 April 1996, the court heard both sides of the appeal and decided that the Parties' Registrar should carefully re-examine all related facts and grant a new decision. The Registrar did so and reissued an affirmation of the party in question. The Supreme Court was asked to review the decision.

The court (per Mishael Cheshin, Yitzhak Zamir, and Zvi Tal) rejected the appeal. Speaking for the unanimous court, Justice Cheshin examined the same issue that troubled him in the '*Yemin Israel*' decision, arguing that the interpretation of Section 5 of the Parties Law is similar to the interpretation of Section 7a of Basic Law: The Knesset. The language of the laws is almost similar; the social and national values they uphold are the same.[48] In essence, both laws are concerned with the same thing: grounds for disqualification of political parties. Quoting from his own judgement in the '*Yemin Israel*' decision, Justice Cheshin reiterated that the difference between the two laws was so fine that only angels could observe it.[49]

Justice Cheshin proceeded by an examination of the appellant's arguments that were four in number. First, the appellant argued that the 'Arab Movement for Change' negated the very existence of Israel.[50] Second, the appellant contended that the party negated the existence of Israel as a Jewish state.[51] Third, it was claimed that the party might serve as a cover for illegal actions.[52] Therefore it should be disqualified in accordance with Section 5 of the Parties Law. Last, the appellant held that the Parties' Registrar should have refused the party's registration because there was a clear conflict of interests between the party leader's activities as a consultant to the Chairman of the Palestinian Authority, Yassir Arafat, and his role as a head of party that wished to compete in the elections.[53]

The appellant based his reasoning on reading the party's political platform, which spoke of 'continuation of support of the Israeli–Palestinian peace process in order to establish an independent Palestinian state

next to the State of Israel in its 1967 borders. The capital of the Palestinian state would be east Jerusalem.' The party also declared that it would strive for a just solution to the refugee problem.[54]

The appellant argued that one should not read this statement as it is but rather looks for the implied agenda. The 'real' aims of the party were to settle for a two-state solution in the first instance and then work to accomplish the further stage, which was the destruction of Israel. Justice Cheshin was willing to accept that in evaluating the character and essence of a given party we should not examine only the formal publications and the explicit agenda. Instead, we should strive to unveil the real aims of the party, which might be camouflaged in a calculated manner.[55] However, a question arose as to whether the appellant was in a position to prove that the destruction of Israel was, indeed, the 'real' aim of the said party. The appellant based his reasoning on three interdependent arguments. The first argument was that the Palestinian Liberation Organization (PLO) aimed at the destruction of Israel, as declared, *inter alia,* in the Palestinian Covenant. Second, the leader of the party in question, Ahmed Tibi, was identified with the PLO. Consequently, Dr Tibi's aim was similar to the PLO's.[56]

In considering the arguments, Justice Cheshin held that the ends of the PLO were revised. He mentioned the Oslo and Cairo accords signed between Israel and the PLO; the explicit recognition of Israel by the Chairman of the Palestinian Authority, Yassir Arafat; the explicit condemnation of violence and terrorism made by Chairman Arafat, and Israel's recognition of the PLO as the representative of the Palestinian people. Justice Cheshin also questioned the argument that identified Dr Tibi with the PLO. He agreed that Dr Tibi was the leader of the party but noted that 120 people had founded the party and it was not at all clear whether it was possible to identify the entire party with only one person.[57] Moreover, Justice Cheshin did not think that the appellant succeeded in demonstrating that Dr Tibi could be identified with the PLO. True, Dr Tibi served as a consultant to Yassir Arafat and the Palestinian Authority. When asked about his activities Dr Tibi explained that he was not a member of any of the PLO's bodies, that his role as consultant was limited to the peace process alone, and that he acted voluntarily without asking for any reward. All he wanted was to help bring about peace between the two nations. Justice Cheshin reviewed in some detail Dr Tibi's statements and saw no reason to question them.[58]

Consequently, the appellant's line of reasoning was quashed. No valid evidence was presented to prove that the party in question, either

in its aims or deeds, disputed the right of existence of Israel.[59] The court rightly rejected the appellant's claim in this regard.

Justice Cheshin went on to probe the claim that the party denied the right of existence of Israel as a Jewish state and therefore should not be registered. The appellant based his reasoning on three different claims: first, the party defined the state of Israel as 'a state of all its citizens'; second, the party supported the Palestinian refugees' right of return; third, the party supported the establishment of a Palestinian state with Jerusalem as its capital. The appellant opined that each of those claims contradicted the existence of Israel as a Jewish state.[60]

As for the first claim, Justice Cheshin argued that the assertion that the State of Israel was the state of all its citizens did not undermine the existence of Israel as a Jewish state. Of course Israel is a state of all its citizens. One of the most fundamental principles of democracy is equality among citisens. Justice Cheshin quoted from the Declaration of Independence, which assures 'full equality of social and political rights to all its citizens, without distinction as to religion, race or sex'. This is the credo of the Israeli nation. Striving to ensure equal rights of all citizens does not make Israel less Jewish.[61]

As for the second claim concerning the Palestinians' right of return, Dr Tibi stated in his affidavit that this concern was to be dealt with in the negotiations between Israel and the PLO, and whatever was agreed between the two parties would be acceptable to the 'Arab Movement for Change'. Observing this statement, Justice Cheshin asserted that he could not see how the negation of the State of Israel as a Jewish state was imperative to the party's ends.[62]

Last, regarding the party's desire to make east Jerusalem the capital of the established Palestinian state, Justice Cheshin did not think that the motivation to divide Jerusalem undermined the existence of Israel as a Jewish state. The State of Israel was a Jewish state prior to the Six Day War, when only west Jerusalem was part of Israel. Therefore this aim did not entail the negation of Israel as a Jewish state.[63]

Justice Cheshin went on to analyse the third ground for the appeal, that the party might serve as a cover for illegal activities. The appellant argued that Dr Tibi served as a consultant to Chairman Arafat and that this in itself constituted an illegal action. Dr Tibi and his party would continue their illegal actions, this time in a more organized form. The appellant accused Dr Tibi of affiliation with a terrorist organization, basing his argument on a decision of the Israeli government that declared the PLO a terrorist organization. That declaration was at that time valid.[64]

Justice Cheshin did not accept this argument. He held that no criminal proceedings were opened against Dr Tibi; that the Attorney-General reviewed this and similar arguments against Dr Tibi and decided not to bring criminal charges against him; and that the Supreme Court was asked to examine the Attorney-General's decision and concluded that the decision was reasonable.[65] After all this, the court was not in a position to hold that the party might serve as a cover for illegal activities.[66] Justice Cheshin maintained that not a shred of evidence had been adduced to show that party members might utilize the party for illegal actions.[67]

Finally, Justice Cheshin probed the argument that the Parties' Registrar should have disqualified the party owing to a clear conflict of interests between Dr Tibi's activities as a consultant to Chairman Arafat, and his role as a head of a party that aimed to compete in the elections for the Israeli Knesset. The argument was that Dr Tibi sought to become a member of the Knesset who must uphold his allegiance to the State of Israel, and at the same time wished to serve as a consultant to the PLO whose interests conflicted with those of Israel. Dr Tibi responded that once he presented his candidacy for the Knesset, and the party was presented for the approval of the Central Election Committee, he would then announce his resignation from his role as a consultant.[68]

Justice Cheshin again reminded the appellant that Dr Tibi was, indeed, the leader of the party and might be the most prominent figure in the party. Nevertheless, the appellant sought to disqualify the entire list, comprising 120 people, and not Dr Tibi alone. It was difficult to deduce that the entire list should be disqualified because of only one person. Having said that, Justice Cheshin felt compelled to address the issue that was put to the court, whether the 'conflict-of-interest' rationale (Justice Cheshin spoke of doctrine) constituted a ground for disqualification. That issue consisted of two different questions: first, whether the 'conflict-of-interest' rationale was included within Section 5 of the Parties Law; and second, assuming that it was not included within Section 5, did the law permit the Registrar or the court to introduce more grounds for disqualification, additional to those mentioned in the law?[69]

As for the first question, Justice Cheshin opined that Section 5 did not include limits to party's registration solely on the ground of conflict of interest. The court was obliged to interpret the law narrowly, but even a broad interpretation would not permit disqualification of parties due to conflicts of interests.[70] Justice Cheshin went on to

address the second question and asserted conclusively that neither the Registrar nor the court, was empowered to add or to subtract grounds for disqualification.[71]

I find Justice Cheshin's reasoning most compelling. I think he eloquently and masterfully analysed all the issues presented for the court's consideration. No wonder that Justice Cheshin's colleagues did not have anything to add to his skillful analysis. Justices Zvi Tal and Yitzhak Zamir reflected in their brief judgments only on the side question of the differences between Section 7a of Basic Law: The Knesset, and Section 5 of the Parties Law. Justice Zamir acknowledged that this in no way was the essential question before the court for deciding whether or not the party in question should have been confirmed or disqualified. Justice Tal added a minor reflection on whether the contention that the 'State of Israel is the state of all its citisens' was as innocent as the framers of the party in question pretended it to be. He thought one might suspect that the hidden agenda was to reject the Jewish character of the state. Nevertheless, Justice Tal maintained that to disqualify a party we need clear, conclusive, and convincing evidence, and this was not provided.[72]

Conclusion

It is right and necessary to restrict the competition of parties in elections only if they endanger the very existence of the state or its democratic foundations. Violent parties which are unequivocally anti-democratic, or which aim to bring about the physical annihilation of the state, should not – as a matter of principle – be eligible to take part in the elections so as to enable them to further their ends. To avoid the possibility of the slippery-slope syndrome, I argue that only in these two instances may a list be disqualified. A list that wishes to participate in the democratic procedures and to gain power to implement its ideas through legislation and other democratic means must first recognize the right of the state to exist and to comply with the basic principles that underlie its democratic foundations. If the political platform of a list negates the basic requirements of democracy, those of respecting others and not harming others; if the list's ideology advocates not accepting these principles when they are applied to a designated group, and it resorts to violence to further its discriminatory ideas, that list disqualifies itself from the right to participate in the democratic process. When democratic institutions accept such a list, they assist the promotion of anti-democratic notions.[73] Therefore, no evidence of a danger,

near or remote, is needed when a list aims to undermine democracy or the state. The evidence that is required concerns the *content* of the political platform of the list in question, the list's *intentions,* and the fact that *violent acts* were undertaken to accomplish the declared aims. The evidence must be explicit and clear, and it must be substantiated, to use Barak's contention, by 'qualified administrative evidence', that is, 'such testimony as any reasonable person would consider to be of probative value and would have relied upon to a greater or lesser degree'.[74] The burden of providing the evidence is on whoever argues for refusing to confirm the list.

This page intentionally left blank

Part II

Media Ethics, Freedom and Responsibilities

We define freedom of the press as that degree of freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing the facts and opinions without which a democratic electorate cannot make responsible judgments.

The British Royal Commission on the Press,
Cmnd. 6810 (1977), para 2.3

Freedom of the press is guaranteed only to those who own one.

A. J. Liebling, *The Press* (1964)

This page intentionally left blank

4

Objective Reporting in the Media: Phantom Rather than Panacea[1]

Preliminaries

Journalism historians researching the developments in North America have tied the emergence of objectivity to the decline in party journalism, beginning in the 1830s, when the commercial penny papers combined advanced print technology with a street-sale distribution system as a way of expanding and cultivating a new public. Massive economic and political changes in the 1830s were expressively integrated into the form and content of the penny press, which both drew upon and strengthened the culture of a democratic market society. The cheap commercial papers asserted their independence from party politics and emphasized their reliance on news from any and all social spheres. The penny press could offer, so it claimed, a more dependable and authentic journalism: news untainted by the political, social, and economic values that for so long had defined the content of the daily papers. The belief that knowledge, like property, should not be monopolized for exclusive use by private interests was expressed in the penny papers as a positive commitment to cheap, value-free information – to objective fact.[2]

By the early 1900s objectivity had become the acceptable and respectable way of doing reporting. Conventions of objective reporting were adopted as a routine journalists use to objectify their news stories. The media and newsworkers saw themselves as arbiters of social reality. Just as scientists discovered the facts about nature by using normatively established objective methods, so too the news media and the news professionals would use their methods to reveal social reality to the news consumer. Gaye Tuchman[3] describes these conventions as a strategy journalists use to deflect criticism, the same kind of strategy social scientists use to defend the quality of their work.[4] As early as

1924 objectivity appeared as an ethic, an ideal subordinate only to truth. Objectivity was portrayed as the ultimate discipline of journalism, 'at the bottom of all sound reporting – indispensable as the core of the writer's capacity'.[5] It was called 'the emblem' of American journalism.[6] In 1973, the Society of Professional Journalists, Sigma Delta Chi, adopted as part of its Code of Ethics a paragraph characterizing objective reporting as an attainable goal and a standard of performance toward which journalists should strive.[7] And, in 1982, a survey of 153 US journalists found that most of them equated ethics with 'objective' news coverage.[8]

The idea of media objectivity was sustained by the contemporary acceptance of positivist science and photographic realism, both of which conceived as mechanisms to overcome the tendency towards subjectivity. As newspapers have grown in size, and at least in North America have come to monopolize particular geographic areas, they had to claim objectivity. Otherwise, so newspaper owners thought, there might be greater pressure to impose public responsibilities and access legislation. Objectivity, thus, became a key word of praise, something that the public wants to attribute to journalism; an elusive idea that media organizations adopt and propagate so as to acquire influence and prestige, a façade of professional journalism to which they vow their allegiance.

Furthermore, objective reporting is believed to be a necessary component of media ethics and of an unbiased reporting. Objectivity in the media is popularly conceived as a virtue. Often it is claimed that media ethics require complete objectivity and that objective reporting is professional reporting, is ethical reporting. When editors were asked what they considered to be the most pressing ethical issues facing reporters or editors, the concern for fairness and objectivity was cited nearly twice as often as any other concern.[9]

I suggest that the idea of objectivity should be rejected in cases presenting ideas sharply opposed to democracy, which sanctify various forms of discrimination or violence against others.[10] In consequence, ethics in the media means taking social norms into consideration. The preservation of those very norms, which allow the functioning of democracy, ought also to require self-containment and self-control on the part of media reporters.

Let me clarify that the aim of this chapter is not to reject objectivity *tout court* but to warn against human deficiencies. As Thomas Nagel observes, it is natural for us to want to bring our capacity for detached, objective understanding as closely into alignment with reality as we

can, but it should not surprise us if objectivity is essentially incomplete.[11] Like Nagel, I am not a solipsist. I do not believe that the point of view from which I (or any other human being for that matter) see the world is the only perspective of reality. The world is seen from many perspectives, including my own; there are many subjects of consciousness in it, as well as many biases, conceptions, and misconceptions that we hold consciously or subconsciously.

Furthermore, the aim of this chapter is also to warn against false ideas of objectivity and to call attention to the dubious notions associated with this term. The problem is that objectivity can be contrasted with too many different things, such as falsity, bias, partisanship, subjectivity, exaggeration, understatement, moralizing, emotiveness, and so on. Now I need to explain what notions are encompassed within the broad concept of objectivity.

The concept of objectivity is concerned with the way news is created and reported in the selection of facts, their arrangement, their framing and formation on the public agenda with or without relationship to values. Objectivity is generally defined as the view that one can and should separate facts from values. Facts are assertions about the world open to independent validation; they are statements that stand beyond the distorting influences of any individual's personal preferences. Values are an individual's conscious or unconscious set of preferences for what the world should be; they are ultimately subjective and have no legitimate claims on other people.[12] However, this definition, which emphasizes the relationship between facts and values, is deficient. In the ensuing discussion I want to show that objectivity involves several dimensions, among them accuracy; balance and fairness; truthfulness; and moral neutrality.

While I accept and encourage accuracy and fairness in reporting, I also reject moral neutrality on important social issues that concern the safeguarding of democracy within which the media operate and flourish. In this context I focus attention on moral neutrality which is another dimension usually associated with the notion of objectivity. As Gans[13] holds, journalists seek to exclude conscious values and they do so in three ways: employment of the notion of objectivity, disregard of implications, and rejection of ideology as they define it. Value exclusion is a practical consideration, for it defends journalists against actual or possible criticism, and protects them against demands by powerful critics for censorship and self-censorship.

My contentions against this viewpoint are twofold: disregarding implications is unethical conduct and it also negates professional journalism.

Second, on some occasions journalists should be subjected to criticism because they *refrain* from taking sides in a controversy and because they exclude values. Here I briefly discuss the issues of rape, and Prime Minister Rabin's assassination, and then move on to discuss in some more detail how the media should cover practices which stand in stark contradiction to the basic values of democracy and which aim to destroy the democratic foundations. The concern of this section lies with abhorrent phenomena such as terrorism and racism. I argue that ethical media reporting calls for normative, or what might be conceived as subjective, treatment of such phenomena. When the media report on terrorists or hate mongers, they do not have to view themselves as detached observers; they should not only transmit a truthful account of 'what's out there'.[14] When such matters are in the foci of concern, the media need not stop short of making moral judgments. These moral judgments should be expressed in the editorials and opinion columns interpreting the events. I further claim that it is an objective matter – a matter of how things really are – that terrorism is wrong.

Thus, the claims that this essay evinces are that objectivity in the media does not necessarily mean stating every possible fact or examining every possible side of a question without taking sides, avoiding moral praise or condemnation. The media have certain obligations to fulfil.[15] They should be fair and not exaggerate, view people as ends rather than means to something, take into account the consequences of reporting, reveal what is reported, and not refrain from making proper distinctions. Some may feel that not all of these obligations fall into line with objectivity. My assertion, then, is that in cases of conflict these obligations should enjoy precedence over objectivity. To my mind, this view is the essence of ethical and professional journalism.

Exaggeration, selection, and manipulation

Facts are of obvious importance in media coverage of events. Reporters and editors should not magnify facts so as to put a story on the public agenda when it does not deserve it. In any event, exaggeration designed to promote stories, newsworthy or not, is an unethical procedure. Some of the readers would think that this is a simple and obvious assertion. Others, like David Heyd (in his comments on a draft of this essay), think that it still needs to be made, and I concur. If, for example, 200 000 people are present at a given demonstration, reporters should not exaggerate its importance by saying that 400 000 are

present. During the Lebanon War and after the massacre of hundreds of Palestinians by Christian Phalangists in the Sabra and Shatilla refugee camps in two harsh days (16–18 September 1982), a large demonstration was held in Tel Aviv on 24 September. The shock and horror of the tragic event led people to raise their voice in protest. The following day the media reported that 400 000 people were present at Kings of Israel Square. This became a magic figure, and the demonstration led the government to decide on the formation of an inquiry commission (the Kahan Commission) to investigate the events in the refugee camps and the extent of Israel's involvement in the atrocious massacre. This magic figure was later disputed, with the argument that Kings of Israel Square is incapable of holding such a large number of people. I do not argue that reporters were misled by officials about the figure. If this was the case then the situation might be an interesting study of the 'politics of numbers'.[16] Nor do I claim that the reporters knew the figure was incorrect and told an outright lie. It seems that the reporters were simply carried away in telling the story. They were so impressed with the demonstration that an unsubstantiated exaggeration made by some reporters turned out to be 'a correct estimation' with more emphasis on the term 'estimation' and less on the correctness of the number.[17] Accuracy and good faith on the part of the reporter is desirable.[18]

In many instances journalists are not objective in their reporting because they cannot avoid selecting and because they prefer to interpret.[19] In his comments on a draft of this paper, David Lepofsky argues that in North American electronic media the line between reporting and editorializing is rapidly collapsing. Television news reports on issues often mix the two shamelessly without admitting it. Moreover, against the general assumption I would like to suggest that objective reporting in the sense of separating facts from values does not *necessarily* entail ethical reporting. Another argument I wish to evince is that sometimes journalists are not objective because there is a certain angle that they want to highlight for various reasons, pertinent among them the increase of ratings and sales. We can assume that each newspaper will try to satisfy the taste and wants of its particular readership. Consideration is given, *inter alia*, to major news items that cast a shadow over other events; to preferences of politicians, celebrities, and others who influence agenda-setting; to cultural affinities of each paper's readership,[20] and to the particular taste and preferences of the publisher or the editor who is usually nominated by the publisher.[21] John McManus[22] analysed 34 case studies, each of a separate news account's construction, at three

television stations in the western United States. His findings show objectivity violations in 20 case studies, all classified as serving the self-interest of the news organization or its parent corporation. In almost all of these cases (18), the structure of the news organization either encouraged distortion or failed to correct obvious omissions and errors.

On many occasions the media consciously prefer not to be objective in the sense of either providing a balanced portrayal of a given issue or striving for accuracy in their reporting because they want to draw attention to a specific problem, person, political platform, ideology, dilemma, human story, mischief, and so on.[23] Moreover, sometimes their reporting is unconsciously subjective. They are not aware of taking sides in a debate by using certain terminology or by refraining from using other terms. I will illustrate this argument below when discussing the issue of cultural norms that justify murder. The interesting thing is that most media people believe that they are being objective.

A poll was conducted among 50 journalists and 50 academics who teach journalism in the United States. Forty-one journalists thought that a connection existed between media ethics and objective reporting. Only nine journalists objected to the assumption. Forty-seven journalists believed that objective reporting was something one could achieve. Compare these figures with the responses of the educators. Among those who taught journalism, 27 objected to the objectivity-as-ethics assumption and 23 supported it. Forty-two educators out of 50 rejected the possibility of objective reporting. The level of scepticism among the educators is noticeable.[24]

The journalists who supported the assumption saw their role as providers of precise and unbiased reporting of a given event. This essay holds that ethics sometimes requires biased or normative reporting. The press, in their editorials and opinion columns, and the broadcasting media in their analyses, should condemn practices that undermine the basic values of democracy (see the discussion on terrorism and racism *infra*). I would also suggest that journalists should be aware of the limitations of their knowledge, which make them unaware of manipulations performed without their notice. Sometimes journalists unknowingly serve the interests of others.

Consider the following hypothetical yet realistic example. A brother kills his sister because she 'misbehaved'. A rumour that spread in the Bedouin village that the girl was 'too permissive' in her attitude to one boy in the village constituted sufficient reason to kill her so as to defend family honour. The trial attracts wide public attention and a reporter is sent to interview a leading specialist on the subject. The

specialist says that for reasons of *sub judice* and due process of law he does not want to express an opinion with regard to this 'cultural norm' and the appropriate verdict for the killer. All he wants to do is to explain the cultural grounds of such behaviour. He nevertheless speaks of '*homicide* for family honour'. The journalist reports the interview in detail, thinking that she has provided an objective account without noticing that she has served the purposes of the specialist. We can assume that those who condemn and criticise such conduct would speak of '*murder*' rather than of 'homicide'.[25] Our journalist has provided a service to a distinct approach without being aware of it. Similarly one should be aware of the differences that exist between the terms '*euthanasia*', 'assisted *suicide*', 'mercy *killing*', and 'mercy *murder*' in the field of medical ethics.[26] The very method of posing ethical questions, such as 'Is euthanasia wrong?' assumes a certain moral assumption which – one is right to presume – is totally different from the underlying reasoning of someone whose question is, say, 'Why should we legalise euthanasia?'. A sports reporter who equates the football skills of an individual to those of the legendary Brazilian player Pelé is making an evaluative judgment by choosing to make this comparison with Pelé. In political and social issues the very framing and phrasing of questions in themselves might involve moral claims that are evaluative and subjective.

Achievement of objective reporting free of biases is often rather wishful thinking because journalists often cannot help being subjective. They have their own opinions, feelings, and attitudes with regard to given subjects. They operate under compulsions, be it editorial pressures, time constraints, priorities of the publisher, accessibility to limited channels of information, and the like. Journalists are sometimes required by their editors to forego a story because it runs counter to the interests of the publisher or of the editors. Journalists do not always report misconduct of a politician they appreciate. They leave this to their colleagues.[27] Some journalists find it difficult to remain objective when covering the deeds of a political group or of a sports team with whom they identify. Others find it difficult to provide an objective account, sometimes any account at all, of an ideological group which they detest. They prefer not to provide it with any platform at all. One such case reached the Israeli Supreme Court.

Kahane versus the Broadcasting Authority

In the 1984 elections Rabbi Meir Kahane – a quasi-fascist ideologist – was elected to the Israeli parliament, The Knesset, for the first time.

Immediately after the elections, the News Forum of the Broadcasting Authority decided that in matters that concerned Kahane and his political party 'Kach', only items of 'clear newslike character' were to be broadcast. This was in order to ensure that the national media would not serve as a platform for incitement against citizens and for statements which contradicted the Declaration of Independence.[28] In fact, that decision meant that Kahane was not provided with any media platform.

The frustrated Kahane sought the assistance of the Supreme Court, arguing that the decision to ban him infringed his fundamental democratic rights, and that it was an act of 'private censorship', contrary to the principles of equal opportunity and fairness. The court, per Justice Aharon Barak (Justices Gabriel Bach and Shoshana Netanyahu concurring) accepted the appeal.

Justice Barak (who became President of the Supreme Court in 1995) postulated that the right to disseminate views through the electronic media was part and parcel of the principle of free speech. It was the duty of a broadcasting authority in a democratic society to express the views of different sections of the population. The Israel Broadcasting Authority could decide its priorities regarding what should be broadcast, but it could not discriminate against specific views and pinions.[29]

In my opinion, the court reached the right decision. I can understand the aversion felt by the Broadcasting Authority towards Kahane and his movement. Hence, the Broadcasting Authority does not have to be neutral in its attitude towards Kahane (I discuss the question of neutrality later on). It can apply value judgments in its reporting and emphasize the racist and discriminatory nature of the Kahanist ideology. Nevertheless, the media should not act *ultra vires* in banning opinions. The public has an interest in knowing and has the right to know about Kahane's deeds and agenda. Large segments of the Israeli public were not aware of Kahane's intent to transform Israel into a theocracy because Kahane spoke of his intention only upon coming to speak before religious audiences, and the media did not elaborate on Kahane's political platform. Furthermore, the media need to acknowledge the right of speakers to communicate messages to the public. The media are not obliged to report each and every communication but media organizations should not be allowed to disregard certain political agents on the mere ground that their opinions are not to their liking. In sum, the banning decision was unfair and too harsh: it denied Kahane a public forum and at the same time denied the public its right to know. The media were far from being objective in the sense of providing a fair and balanced account of the Kahanist phenomenon.

'Good journalism' versus 'good stories'

The effort to achieve objective reporting is often impeded by pressures exerted on journalists by editors. They demand stories, and the sooner the better. In their briefings, emphasis is put on deadlines, the need to fill space, competition with other media organizations, scoops, and increasing ratings. I am hesitant to think that ethical standards appear as prominently as those considerations. In support I wish to refer to David Boeyink's findings. Boeyink[30] wrote to 29 daily newspapers to identify editors who would be willing to call when a case involving an ethical issue arose. Four editors were willing to open their newsrooms for on-site observations and interviews, of which three were visited. One of Boeyink's principal findings was that written ethical standards were rarely invoked in the resolution of cases, even when the code was relevant to the case. A managing editor of one of the newspapers explicitly admitted that he 'never liked the idea of a code of ethics telling me what was right'.[31]

The pressure to report might influence journalists to twist the facts, to glorify relatively simple events, to magnify data, to produce no matter what. These are very human inclinations. We all tend to tell personal stories in a way that will benefit us, serve our interests, make us feel good, and at the same time make others look at us favourably. Journalists are not immune to these human inclinations and in addition they are under pressure to tell their stories when they are still 'hot', when they can attract public attention, within the deadlines set by editors. And if the story which at first seemed unique proves on examination to be quite ordinary, then it can be 'coloured' a bit to justify its inclusion. One would be very uncomfortable approaching one's editor after spending considerable time investigating a purported story just to say that there is no story.

Sometimes I come across journalistic investigations whose contents do not match their headlines. The headline, written by an eager editor, is spread across the page in bold letters, promising a tale of juicy corruption in a big organization. The content, by contrast, speaks of minor things such as the distribution of football tickets to associates and preferring the bid of a supposed acquaintance. Set in derogatory language, such a piece of newspaper inquiry can hardly be said to be fair. Accurate reporting is a basic requirement of journalistic ethics and professionalism.

A recent Israeli district court case is pertinent to the discussion.[32] It concerns several reports broadcast on Israel television at prime time

about one of the biggest commercial corporations in Israel, 'CLAL'. Allegations were made that senior managers of the concern were involved in a cover up of major transgressions that had lasted for nine years. Judge Ben-Zimra claimed that the report was one-sided and tendentious, aiming to besmear 'CLAL' and its workers. Ben-Zimra maintained that the defendants were seeking 'sensational revelation'. Thus they did not give the senior managers of 'CLAL' sufficient time to respond to the allegations and as a result the broadcasts were unfair and inaccurate.

The urge for sensationalism is the prime obstacle to maintaining some standard of ethics in the media. Under pressure to sensationalize, journalists might even invent events. There are dozens of examples but here I mention the staging of events during the *Intifada*. The following analysis highlights the dimension of truthfulness in media coverage of events.

During the days of the Palestinian *Intifada* (1987–93) there were times when media people asked young Palestinians to fake events. I should clarify that I am not referring to cases where the presence of the camera sparked an event and made it happen.[33] That happened many times. I am referring to incidents in which media crews urged Palestinians 'to do something' that they could report back home: throw stones and Molotov cocktails, burn tyres, provoke soldiers, and so on.[34]

Objectivity in the sense of covering all aspects of a given story in a fair, true, and decent way might become a relatively minor thing to forego when there is urgency to produce. The two 'goods' – 'good journalism' and 'good stories' – are not necessarily commensurate. Often one 'good' might come at the expense of the other, and when this happens the need to produce a 'good story' often prevails. 'Good journalism', which involves the requirement of objective reporting, might become no more than a token, something to which journalists pay lip service. After all, good stories (which are often concerned with bad and negative phenomena: terror; war; drug addicts; rape; accidents; violence; racism and so on) are more likely to sell newspapers and increase ratings. I should emphasize that good stories and good journalism do not *necessarily* conflict but in many cases of such conflict ample justification might be produced to offset considerations that impede publication.

In this context Mills's findings are of relevance. Mills provides data of a poll conducted among media people who were asked the following: when there is a conflict between the pursuit of news and consideration

for the feelings of sources or subjects, which should the journalist choose?. Most of the respondents listing that conflict among their ethical decisions gave no clear-cut answer. Those few who did came down in favour of the news, often with the argument that they would publish the story in the name of the reader's right to know.[35] This abstract right of the abstract reader is conceived to be more important than the privacy and dignity of a specific individual. A sizeable minority of respondents exhibited concern that aggressive pursuit of 'objective' news might exploit individuals. But in all cases where the respondent suggested which choice should be made, protection of the individual or publication of an important story, the choice was for the story. The liberal values that underlie any democratic society, those of not harming others and respecting others, are kept outside the realm of journalism. As long as this is the case, the term 'media ethics' will remain a cynical combination.

My critique of the media does not suggest that journalists should refrain from critical reporting. Surely on some matters, such as corruption in political institutions, the media have every right to reveal information to the public at the expense of some corrupted individuals. Those individuals do not deserve respect and should be denied opportunity to carry on their mischief. My concern is with occasions where the search for 'juicy stuff' leads the media to disregard what Ronald Dworkin terms 'fundamental background rights', that is, basic rights to human dignity and to equality of concern and respect that underlie a free democratic society.[36]

The values of not harming others and respecting others need to occupy a prominent place in the considerations of journalists. These are basic ethical standards that sometimes require a *normative* attitude on the part of the media. Here I come to deal with moral neutrality, which is a further dimension usually associated with objectivity. I contest William Marimow's assertion that moral values are not problematic for the investigative reporting and that 'right and wrong may be a threshold question but not a fundamental question.'[37] Morality, I submit, should be a factor in deciding whether to cover an event or not, and if it is decided to cover the event, how it should be covered. When clearly immoral practices, such as terrorism and racism, are at issue, morality is a pertinent and significant factor that prescribes partiality rather than neutrality. Media organizations do not necessarily have to give a platform to both sides of a given conflict. They do not need to play the role of a neutral observer when one side in a given dispute or conflict is clearly immoral.

That is to say that the media may have an opinion, even a strong opinion, regarding a certain issue. For instance, when doing a follow-up to a rape story where clear evidence was produced during the trial to prove the man's guilt, the media do not and should not give equal footing to the girl who was raped and to the convicted rapist. They should not be impartial between the criminal and the victim. It is the duty of the media to be partial, to condemn the rape, and to say that the deed was repugnant. This is the only correct way of presenting the moral case in hand. Likewise, it would be unthinkable to provide an equal platform to Yigal Amir, the assassin of Prime Minister Yitzhak Rabin, and to Leah Rabin, the Prime Minister's widow. These two examples are so repugnant that I hope they do not evoke any moral dilemma. But when a moral dilemma arises, impartiality is required. For instance, when reflecting on debatable moral questions such as the abortion debate, the media see themselves committed to furnishing an equal platform to both prolife and prochoice activists, and rightly so.

In arguing against moral neutrality when covering explicit immoral conduct I advance several arguments. The first argument is one of democracy. It holds that journalists are also citizens. They live within the democratic realm and owe democracy their allegiance. Free speech and free journalism exist because democracy makes them possible. They flourish in a liberal environment and they would become extinct in a coerced, anti-democratic society. Hence journalists are obliged to sustain the environment that enables their liberties. They should uphold and promote the basic values of democracy: not to harm others, and to respect others.

The second argument is one of paternalism. It is wrong to assume that all readers and spectators are able to differentiate between good and evil, and that all beings are rational. The media need to be responsible to those who are not fully rational, who are not able to discern between values and mischiefs. Here I refer first and foremost to children and youth. Violence and black-and-white slogans work better on the youth than on mature people. The media should not simply transmit attractions without a warning. They need to be aware of the range of people who receive their communications. The rejection of evil does not necessarily have to be made by the media personnel. The media could offer a platform for decisionmakers and influential personalities to condemn detestable phenomena such as racism. But where criminal murderers, terrorists, and hate mongers are concerned the media are not obliged, in the name of objective reporting, to provide quotations from both sides of a case to the

audience. We are not talking of equal sides who should enjoy equal access to the media.

The third argument is one of social responsibility.[38] It is, of course, connected to the previous two arguments but it has to do more with the shape and character of society that we wish to have. Jonathan Kaufman and his colleagues at the *Boston Globe* prepared a series attacking racial discrimination not merely because it was illegal but because they had decided that discrimination made a bad city and they wanted Boston to be 'the best city it could be'.[39]

In a similar vein, the BBC regards impartiality as involving not absolute neutrality or detachment from those basic moral or constitutional beliefs upon which the nation's life rests. For instance, 'the BBC does not feel obliged to be neutral as between truth and untruth, justice and injustice, freedom and slavery, compassion and cruelty, tolerance and intolerance.'[40] Being a constitutional creation of Parliament, the BBC could not be impartial towards the maintenance or dissolution of the nation or towards illegal behaviour.

John Merrill is among those who equate objective reporting with ethical reporting.[41] He thinks that reporters who make no judgments are more ethical than those who do. Merrill asks rhetorically: 'Why not just report and let the chips fall where they may?'[42] My conclusive answer is: Because not worrying about the consequences of the report **is** grossly unethical. Journalists should not merely seek stories, facts, truth. Journalists as human beings, as citizens in a democracy, as people who wish to ensure a good future for their children, have a responsibility to bear. 'Let the chips fall where they may' reminds me of the Leninist view (Lenin said: 'When trees are felled, the chips will fly', thereby legitimising all acts of terror and violence against the Tsar),[43] stripped of responsibility, stripped of all ethical values and commitments.[44]

Following the same logic, and in contrast to the demand for objectivity on the part of the media that is often echoed, the media do not have to be objective towards phenomena which contradict their basic values. They do not have to be objective towards violence, terrorism, racism, chauvinism, fascism, sexism, genocide and slavery.

The fourth and last argument is one of jurisprudence and law. In the Canadian *Keegstra* case, Judge Quigley of the Alberta Court of Appeal noted that persons maligned by hate propaganda might be stripped of their sense of personal dignity and self-worth, while those whom the hate monger seeks to influence are harmed because 'it is beyond doubt that breeding hate is detrimental to society for psychological and social

reasons and that it can easily create hostility and aggression which leads to violence'.[45] Later on, Keegstra appealed to the Canadian Supreme Court without success. Chief Justice Dickson, who delivered the opinion of the court, said that hate propaganda seriously threatened both the enthusiasm with which the value of equality is accepted and acted upon by society and the connection of target group members to their community. The court depicted Keegstra as inflicting injury on his target group, the Jews, and as striving to undermine worthy communal aspirations. The language used by the court to describe Keegstra was far from neutral or objective. On the contrary, it was strong, negative, and extreme. Chief Justice Dickson explicitly stated that there could be no real disagreement about the subject matter of the messages and teachings communicated by the respondent, Mr Keegstra: it was deeply offensive, hurtful, and damaging to target group members, misleading to his listeners, and antithetical to the furtherance of tolerance and understanding in society. Those who promoted hate speech were described as 'hate mongers' who advocated their views with 'inordinate vitriol'. Their aim was to 'subvert' and 'repudiate' and 'undermine' democracy, which they did with 'unparalleled vigour'. Since their ideas were 'anathemic' and 'inimical' to democracy, the court viewed them with 'severe reprobation'. Chief Justice Dickson asserted that expressions can work to undermine Canadians' commitment to democracy where employed to propagate ideas anathemic to democratic values. Hate propaganda worked in just such a way, arguing as it did for a society in which the democratic process was subverted and individuals were denied respect and dignity simply because of racial or religious characteristics. This brand of expressive activity was thus wholly inimical to the democratic aspirations of the free expression guarantee. In this manner, the court characterized Keegstra as the enemy of democracy who did not deserve the right to free speech to undermine the fundamental rights of others.[46] The media should treat racists in a similar fashion.

I would also refer media professionals to two international covenants. Article 20 (2) of the *International Covenant on Civil and Political Rights* states the following: 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'[47] In turn, Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination* holds that

> States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of

> persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination … [48]

The rationale of these conventions should be observed by the media.

Let me now elaborate on the connection between ethical reporting and moral neutrality by first discussing the issue of terrorism.

Ethical reporting versus moral neutrality

One of the issues on which the media should take a moral stand and abandon objectivity in the sense of adherence to moral neutrality is terrorism. Terrorism is defined here as the threat or employment of indiscriminate violence for political, religious, or ideological purposes by individuals or groups who are willing to justify all means to achieve their goals. In the past, however, there have been incidents where terrorists and heads of states were treated as equals. In 1985, during the kidnapping of the TWA aeroplane to Lebanon, David Hartman of ABC asked Nabih Berri, the leader of the Amal militia that was responsible for the kidnapping, whether he had anything to say to President Reagan. It was as if we were talking of two people negotiating, each having his own interests that are *prima facie* legitimate. Nothing was said about the murderous deeds of Amal or about Berri's responsibility for them. Hartman failed to realize that his direct approach had done a service to terrorism, that he was helping the terrorist convey his message to the public and spread fear, and that in the final analysis this kind of approach was not conducive to resolving such crises.[49] This violent and brutal spectacle ended with the terrorists having the upper hand partly because of the negative involvement of the media. The media are not outside the democratic realm. They are a necessary part of it. Media organizations have to realize that democracy and terrorism are mutually exclusive. A zero-sum game exists between democracy and terror. The victory of one comes at the expense of the other. Therefore, if the spirit and ideas of democracy are dear to media editors and commentators and if they want democracy to prevail, they cannot be objective or neutral *vis-à-vis* the terrorist phenomenon. Media personnel should take sides, distinguishing good from evil.

Moreover, yet again I emphasize that journalists should be conscious of the terminology they employ in their reports. An ephemeral terrorist organization is not 'an army'. People who kidnap and murder randomly

whomever happens to be on the stage of the theatre of terror, be it an old person, a child, a woman or a man, are not 'students' or 'saints' or 'freedom fighters'. The killing of innocent civilians travelling on a bus or a train should not to be described in terms of a 'military operation'. Media organizations must condemn terrorism in explicit language and suffocate it by denying terrorists the airwaves. A difference exists between covering news and providing terrorists an equal platform on which to declare their agenda. Terrorism is inhuman, insensitive to human life, cruel, and arbitrary. To remain objective in the sense of moral neutrality with regard to terrorism is to betray ethics and morality. Terrorists deserve no prize for their brutality. The media should treat them in the same way as common criminals are treated.[50]

However, some reporters believe that all they need to do is to report the story, and let the public, who are able to differentiate between right and wrong, use their judgment. What is required from them is to report the facts in a so-called objective manner. Let me say something about this belief. I think all humane people conceive bombing civilian targets – be they buses, trains, aeroplanes, shopping malls, buildings – as immoral, wrong, wicked, and odious. We also think that these views are true, that is, in this case we might be sufficiently confident to say that we know they are true, and that people who disagree are making a bad mistake. We think, moreover, that our opinions are not just subjective reactions to the idea of indiscriminate massacre of innocent lives, but opinions about its actual moral character. We think that it is an objective matter – a matter of how things really are – that terrorism is wrong and wicked. This claim that I am advancing now – that terrorism is objectively wrong – is equivalent to the claim that terrorism would still be wrong even if no one thought it was. That is another way of emphasizing that terrorism is plainly wicked, not wicked only because people think it is.[51]

Another crucial aspect in regard to the coverage of such a wicked phenomenon has to do with the notion of responsibility. It is the duty of media reporters to think about the consequences of their decisions. Viewing democratic government, on the one hand, and terrorists, on the other, as morally equal, and the tendency of some journalists to glorify terrorist events, hinder the forces of democracy, and serve the forces of destruction. Responsible journalists understand that terrorism without media attention would have a very limited effect and would cease to appeal to others who might contemplate imitating it. To avoid misinterpretation I am not suggesting that the media refrain from publishing but that they advocate proportionality, as well as co-operation

and consultation, with government officials and experts on terrorism. I also press for not remaining morally neutral in editorials and analyses with regard to such an abhorrent phenomenon. Explicit condemnation is not to be avoided.[52]

In a similar vein, when the media cover a confrontation between ACLU activists and KKK men, they are not obliged to broadcast diatribes of Klanners explaining why the white race is superior to other races. Yet again, I am not suggesting a ban on all reports of KKK actions in the sweeping way that the Israel Broadcasting Authority treated Meir Kahane. The public has the right to know about the place of racism in society and should be informed of the whereabouts, movements, pronunciations, and deeds of hate mongers. Racism and hate groups constitute an increasing problem for democracies and we should be aware of their power in society, and strive to limit the effectiveness of their voice and sources of attraction. But views about racial superiority are not just views, and they should not be reported in the same way as views about equality and social justice. Agents of democracy, the media among them, should observe and promote fundamental human rights, first and foremost the right to equal respect and dignity which lies at the heart of liberal democracy. It should not be neutral towards such detesting phenomena.[53] Media organizations should see themselves committed to the values of liberal democracy, of respecting others, and of not harming others, values that allow free expression and free journalism. They are under no obligation to air racist condemnations and discriminatory speeches.[54] And if the media decide to air racist diatribes because the public needs to know and be aware of the dangers of racism, they should also raise a voice of disgust and shame in their editorials and analyses with regard to anti-democratic and illiberal movements and trends.[55] Objective coverage of hate speech is a bad idea. It is a false and wrong conception.[56]

Media organizations can use their news stories to promote a particular agenda and to advance moral viewpoints. This call for advocacy journalism and normative reporting has some implications for news coverage. In particular, it calls also for more in-depth reporting to deal with major issues in communities. Dave Boeyink argues that by most accounts this kind of investigative reporting is on the decline in newspapers, partly over the issue of cost, partly for fear of lawsuits. This call would also mean more analysis and more interpretative journalism – putting issues in context, making the value dimensions of issues explicit.[57] With Boeyink, I think that the public, and journalism, would be better off by espousing this moral outlook.

Conclusion

This chapter has discussed the main dimensions often associated with the concept of objectivity: accuracy, balance and fairness, truthfulness, and moral neutrality. I have accepted and encouraged accuracy, fairness, and truthfulness in reporting but at the same time warned against common tendencies that involve partisan inclinations in media coverage, generating biases and imbalance.[58] A distinction was made between cases where journalists are not objective in their reporting because they consciously prefer to be subjective and cases where journalists play into the hands of others and are manipulated by their sources. It was further argued that in cases of conflict between 'good journalism' and the effort of getting 'good stories' (which are often bad stories), regrettably the latter will often enjoy precedence. I closed by urging media professionals to adhere to the values of not harming others and of respecting others.

These are basic ethical standards that sometimes require normative and biased reporting. Furthermore, and for similar reasons, reporters and editors are urged not to turn a deaf ear to moral considerations. It is plausible to think that one can sell newspapers while maintaining some moral standards. Morality is part and parcel of liberal society. It is significant for the shaping of democracy. It is important for safeguarding journalism. Moral journalism will necessitate acknowledgement that objectivity is not an end in itself, that on certain matters objectivity in the sense of prescribing moral neutrality is a false idea. The media should not observe moral neutrality in the face of wrong conceptions and deeds, those that aim to harm others and that discriminate against certain segments of democracy. It is required that journalists be accountable for what they report as well as for how they report. Media organizations have to play the role of an umpire both in the sense of applying just considerations when reviewing different conceptions and also in trying to reconcile conflicting interests, claims, and demands. This is a delicate task, one that demands integrity: bearing in mind when making decisions the relevant considerations and demands that concern society as a whole.

5
Ethical Boundaries of Media Coverage[1]

> Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.
>
> Thomas Jefferson (to Edward Carring in 1787)

> Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle.
>
> Thomas Jefferson (to John Nowell in 1807)

Introduction

Some think that democracy should tolerate all forms and types of speech, for liberals must not play the anti-liberal game. Those who make this sweeping claim argue that liberal democracies are different from other forms of government precisely because they do not use non-liberal tools.[2] I find this claim naive and dangerous. Democracy should set rules for speech as well as for action. Those who choose to break and to undermine the basic democratic rules should not be surprised if, in the name of democratic self-defence, the legislature might decide to disqualify them from participation in the democratic process. I reiterate the importance of acknowledging the democratic 'catch' and the need for setting limits to the democratic principles.

The two main ground rules of liberal democracy are to avoid harming others and respect others as human beings; treating fellow citizens as an end rather than a means to another end.[3] The emphasis is on the notion of basic equality, that all citizens are entitled to enjoy the same civil and political rights. Every person should be able to pursue his/her

conception of the good as long as he/she does not harm others.[4] Hence, anyone who chooses violence, terror, and/or racism as his/her conception of the good should be condemned by the democratic institutions.[5] There can be no compromises with regard to the application and employment of violence and terror in society, while the racist phenomenon should be closely monitored and supervised.

The argument advanced here is that thoughtful democracy will want to place careful limitations upon freedom of action and freedom of speech. Freedom of speech is a guiding rule, one of the foundations of democracy, but at the same time, freedom does not imply anarchy, and the right to exercise free expression does not include the right to do unjustified harm to others. We need to distinguish between freedom of information, of speech, and of the press, and excessive behaviour that infringes on people's privacy and undermines journalism. This chapter deals with excessive forms of media coverage and offers ethical boundaries to reporting. While having due appreciation for the liberal inclination to provide wide latitude to freedom of expression, we need to acknowledge the need for making careful and well-defined exceptions.

We should also recognize that democracy is the best arena for those who wish to reach their ends by violent means. Violent movements and individuals exploit the hesitations of democratic agencies (the legislature, the courts, and the police) to find 'golden paths' (from their point of view) to further their ends without holding themselves to the rules of law and order. Those movements and individuals would be crushed without remorse were they to employ similar tactics in autocratic systems.

The discussion should be put in a historical context. Modern representative democracy as we know it today (in its 'inclusive' form) was formed after World War I. Lord Bryce wrote that in the 1850s the rising power of the masses was seen by European intellects as a threat to order and progress, and the term 'democracy' aroused disgust and fear, but in the 1920s it was praised.[6]

Because of its youth, democracy suffers from 'childhood diseases' which, quite naturally, trouble us. We are still (some would say that we will always be) at the stage of learning, and we tend to be fearful of taking hazardous steps which might later prove to be unwise. Toddlers learn to walk carefully. Democracy must find its way carefully, too. Having learned the dangers of violence, terror, and racist hatred; having paid our 'dues', we now know that there are things that must be prohibited. Imposing these limitations need not harm democracy; on the contrary, these careful restrictions are required to preserve the very spirit of democracy.

In the discussion that follows, emphasis is placed on the triangle constituted by the media, freedom of speech, and democracy. The following discussion consists of five parts. The first section focuses on ethics in the media and then the responsibility of journalists to their audience and profession is discussed. Next consideration is given to categorizing events, outlining the boundaries of media coverage. I close with suggestions for media self-regulatory mechanisms and controls that could improve its working. It is preferable that the media control themselves.

I do not wish to enter into a debate about whether media studies, or journalism, is a 'profession' or merely a 'craft' or a 'trade'. For all practical matters, the distinction does not make much of a difference. Too much time and trouble were invested in the past to upholding one concept, and dismissing the other, and *vice versa*; this came at the expense of addressing substantive issues relating to journalistic accountability first and foremost to the public.[7] Journalists, whether they are called professionals or merely craftworkers, should be held accountable for their conduct. To take an example from a different realm, when we are about to cross a bridge we assume that the professional engineer who designed the bridge, and the people who actually built it, have done a competent, reliable job. Every job that deals with human life should be performed with a sense of responsibility. In addition, we should acknowledge the pertinent cultural and traditional aspects involved in the characterization of journalism as a profession or a hack. In Britain, journalism is not perceived as a profession in the same way it is in Italy or France. In Italy, Mussolini made journalism a profession by law and those laws are still in force. In France, there is an extensive set of rules that protects people's privacy, and journalism enjoys some sort of professional status.

Throughout the discussion references will be made to the last part of this chapter, which consists of suggestions to improve the working of the media. Some of these suggestions are concerned with the content of media coverage, and to them I will refer. The other suggestions gathered at the end of this piece are concerned with the general framework within which the media should operate.

Ethics in the media

Discussions of the normative roles of the media must be held within the context of the social system in which we live. Against the assumptions that all societies share the same universal values and that it is possible

to create a unified explanation for moral attitudes and behaviour across cultures,[8] it is argued that different sets of values are upheld in different systems of ruling; consequently, as argued in the Introduction, media in a democracy differ greatly from media in an autocracy or in any other authoritarian system. The expectations are different, the abilities cannot be similar because the government largely dictates the lexicon that the media use in authoritarian systems. Terms like 'positive', 'negative', 'justice', 'truth', 'ethics', and 'morality' assume different meanings against the backdrop of the society in which they are expressed. The values in Iraq are different from those in the United States, the values in Russia are dissimilar from those in both Iraq and the United States, and the values in Iran are significantly different from those of the other three societies.

Moreover, discussions on the normative boundaries of media coverage *within* democracies should take into account the particular social context of each society that might influence our views on some of the narratives and ways of reporting. It would be unwise to assume that the First Amendment tradition prevalent in the United States could be suitable, without qualification, for Canada, the United Kingdom, or Israel. The cultures are different, the *raison d'être* of the four states is different, the history and respective experiences are different. General principles could serve as a starting point for discussion and analysis, but only as a starting point. Careful analysis must take the significant historical, cultural, and normative differences that exist between societies into account.

The freedom granted to the media is meant to allow the expression of society's various subcultures and classes, to voice public opinion, and to serve as a means of transmitting messages between the public and their elected representatives. The media seem to serve the public by enabling its members to vent their frustration, by bringing their requests to the attention of the government, by informing them of the various developments concerning their future, by entertaining, by criticizing the actions of the government, and by exposing corruption or irresponsible acts of public delegates. These are the media's most important roles, which can be carried out to their fullest extent in democracies alone.

Democracy and free media live, breathe, and act under certain basic tenets of liberty and tolerance, from which they draw their strength and vitality, and by which they preserve their independence. The media are not under an obligation to remain impartial with regard to all concepts: some concepts may coexist with the principles of democracy while others contradict them completely. It is for the media to take a firm stand to defend democracy whenever it is threatened.[9] It is reiterated that ethics in the media require the preservation of the very norms that enable

democracy to function. On this issue my view differs significantly from the view of some commentators and from media codes of conduct.[10]

Sometimes ethics might call for self-restraint and self-control by the media. An example for this claim is the treatment of the Holocaust and Nazism in Israeli society. In October 1995 a large demonstration was held in Zion Square in Jerusalem to express opposition to the Oslo Accord and the Rabin government. Some demonstrators carried posters in which Prime Minister Yitzhak Rabin appeared wearing the infamous uniform of the Nazi leader Heinrich Himmler. Mr Moshe Vardi, the editor of the popular daily newspaper, *Yedioth Ahronoth*, decided to report the fact that such photomontages were brandished during the demonstration, but not to print them in his newspaper. The rationale for employing self-restraint was that such pictures were too objectionable and did not deserve publication. Printing them would only serve the purposes of those who portrayed Mr Rabin as a Nazi. On the other hand, the daily *Ma'ariv* newspaper chose to print the photomontages. To my mind, the approach exhibited by *Yedioth Ahronoth* is the right and ethical approach. The newspaper did not fail to report the issue and at the same time did not serve as a promoter of hatred and incitement. In the Israeli culture, portraying a political figure as a Nazi amounts to calling for his or her death. The media should not play into the hands of instigators who wish to undermine democracy.[11]

Some might argue that the printing of such depictions makes a difference, increasing public awareness regarding the phenomenon of hatred, and arguably creating a much more intense public reaction to the level of hatred against a designated individual or government. I agree: it is one thing to report such images and quite another to actually show them. The effect is much stronger when they are printed or broadcast. However, this rationale fails to adequately take into account the social context in which these photomontages were presented and the likelihood that printing them might mobilize hatred and increase the intense feelings of resentment and alienation among those opposed to the peace process and the Rabin government. Printing such a photomontage fuels an atmosphere of incitement against the designated target. This atmosphere was conducive to the event that took place on 4 November 1995: Prime Minister Rabin's assassination.

Media responsibility

A discussion of journalism must take into account the political and economic establishments, the morals of the nation and the state, the

citizens' basic rights, and the conceptions of good that guide society. The media pass on information to the people, some of this information is vital for the people to fulfil their obligations as citizens.[12] The dissemination of information should take place only after some thought has been invested in trying to evaluate its possible results.[13] This is both a consequentialist and moral claim. The Israeli media, for instance, often make such an evaluation regarding security issues but they are far more careless when the privacy of individuals is concerned. The media are expected to act with responsibility and accountability with regard to all pieces of information. Journalists who are not troubled with the likely harmful consequences of their reports are *amoral* individuals.

Journalists who live in a democracy are not abstract humans living in some sort of natural state. They are *citizens* who are expected to support the democratic process by which they operate, and to exhibit responsibility in their reporting. Entry into the world of journalism does not exempt citizens from this basic responsibility. On the contrary, because of the extra burden of affecting the lives of others, journalists are expected to show sensitivity and to adhere to what Ronald Dworkin terms 'liberal background rights', first and foremost respect for others and not harming others.[14] Here it is relevant to mention that Section Five, 'Fair Play' of the Sigma Delta Chi (the Society of Professional Journalists) Code says: 'Journalists at all times will show respect for the dignity, privacy, rights and well-being of people encountered in the course of gathering and presenting the news'[15] (see Summary, Suggestion A below).

Obviously the background rights mentioned above, respect for others and not harming others, should not be held secondary to considerations of profit and personal prestige. Journalism does not mean only increasing the sales of a newspaper or promoting the ratings of certain broadcasts.[16]

Journalism also means seeing people as ends and not as means – a Kantian deontological approach.[17] It implies that the ability to control the power lying in the hands of journalists when they are reporting in the name of the people's right to know might cause unjustified harm to others (see Summary, Suggestion I below). I now need to clarify the meaning of 'justified' and 'unjustified' harm.

When a person acts corruptly, and there is evidence to prove it, the media are allowed, and even obliged, to look into the issue and bring it to public scrutiny. This is what is meant when people refer to the media as having a watchdog role in democracy.[18] To fulfil this role, the media are sometimes justified in using means of deception that constitute a serious invasion of privacy. They are justified, provided that they have carefully deliberated the reasons for and against deception, the short- and

long-term implications for their work and for society at large. The story needs to be socially significant, with its exposure resulting in reducing evil and promoting public good; it has to be clear that the benefits resulting from the unveiling of the story outweigh the harm involved in resorting to deception (for instance, when the story involves a crime or administrative corruption); other alternatives to telling the story have been exhausted and have proved insufficient, making deception a necessary means for exposing the crime, and the reporters inform the public about the reasons that prompted their resort to deception.

Accordingly, resorting to deception is justified only in exceptional circumstances. In recent years, however, we have witnessed an increase in the use of hidden cameras in investigative reporting to reveal corruption and misconduct. One of the most illustrative stories is ABC *PrimeTime*'s report on the Food Lion supermarket chain. Small cameras that were carefully camouflaged showed vivid pictures of unsanitary practices such as repackaging out-of-date food to be sold as fresh. After investigating the story from various sources, ABC went behind the scenes with hidden cameras to support and document their findings. Upon first viewing the ABC programme I thought that this was a sound investigation of utmost importance, of vital public interest (securing customers' health), designed to prevent harm to individuals and, therefore, justified.[19] Undoubtedly this was the best way to tell the gruesome story. Oral evidence cannot enjoy the same credibility and cannot convince as pictures can. After careful reflection I think that the story could have been told without using deception. It could be argued that Section b of the 1992 guidelines of the Society of Professional Journalism and the Poynter Institute for media studies, namely exhausting all other alternatives for obtaining the same information, was not satisfied.[20] The food could have been sent to labs to examine whether it was edible and workers could have been interviewed in detail and their lengthy reports submitted. The footage would have been less vivid and powerful but it would nevertheless have told the story.

Categorizing events

The next task is to determine what can be included within the boundaries of ethical and responsible media coverage. In this context we may differentiate several types of events:

1. Events that have social-public meaning. For example: an assassination of a prime minister; the tragic death of Diana, Princess of

Wales; earthquakes; a train overturning; missile attacks on the Galilee; bombs in the London underground; a scientific discovery; a technological breakthrough; the opening of a newspaper; parliamentary elections; corruption in a local city council; a massacre on a bus; the death of famous movie stars or public figures (celebrities).

2. Gossip – events that are of little social value but are of interest to the public. Frequently reporting such events might intrude on people's privacy. Let me elaborate.

   Reporting of these events feeds the voyeuristic needs of many of us, to various extents. Many of us enjoy learning the details of what is thought to be unattainable by the common people. If I cannot be like the 'significant others', at least I would like to know about their lifestyle: what living in a castle with servants is like; the pros and cons of living with three wives; what it is like to be an idolized rock star; what a famous basketball player eats for breakfast; why a politician chose to divorce her husband. Many of these gossip events can be quite banal. For instance, millions of women are pregnant around the globe at any given time. The media usually do not regard this as newsworthy. But it might attract public interest if the woman concerned is a soap opera star or a leading actress in one of the commercial television series. Many viewers of 'Melrose Place' would be very interested in knowing that the actress playing their favourite character is pregnant. They would begin to ponder and speculate: will her character become pregnant as well? Will the producers of the series try to conceal her pregnancy? Will the star finally get married? Will a replacement be found in case the pregnancy does not fit the producers' plans? Will they decide, God forbid, to terminate the filming of the series during the advanced months of pregnancy? These are top priority questions for the captive followers of the series.

   People often suffer from various ailments, minor and severe, and in most cases these ailments are not reported to the public. On the other hand, mere laryngitis could become of public interest if it is the throat of Luciano Pavarotti. This bad news might have dire consequences, which could affect the tenor's career in the long run, or the viewer's plans to attend his next week's performance.

   The prime minister's partner falls in the tub (or tube) and twists an ankle. Some may find this interesting. However, the public's interest in such an incident is enhanced if we are speaking of *the* president of the United States. The story would show that even the unchallenged ruler of our times is human: he or she, too, is subject

to such misfortunes, and the fact that many bodyguards surround him/her cannot protect him/her from everyday nuisances.

In this context we should make two relevant distinctions. The first is between people who have chosen a life of self-publicity, like politicians, diplomats, and people in showbusiness, and people who choose a life that will predictably attract media attention, like artists or footballers. The media usually are not interested in this distinction and will cover their personal stories if they think this might increase sales and ratings. People who choose professions that attract public attention should realize that media intrusion is an inevitable side effect. People who wish to reduce this side effect should not co-operate with the media on all matters, positive and negative.

The second distinction is much more important, morally speaking. It differentiates between celebrities and public figures who choose their position, and ordinary people. For some people, honour is the primary asset they have. A careless report might destroy their lives irreversibly. Ordinary people do not usually enjoy access to the media and could not adequately respond to media allegations. Public figures, on the other hand, have the assets and the ability to respond. People who have knowingly chosen to live in the spotlight are aware of the price they must pay. As success increases, the ability of a politician or a celebrity to maintain a private life decreases drastically. A well-known remark by President Harry Truman says: 'If you cannot stand the heat, stay out of the kitchen.' A married politician who takes a lover should not be surprised to find herself featured in the gossip columns. If that politician is known to preach family values and morals, discovery of the lover might hit the front page. I would even say that in that case it *should* reach the news, because the politician's electorate will find such information valuable.

Gossip is not supposed to be stripped of ethics either. People's honour must be dealt with carefully and the boundaries of decorum must be maintained. Pure voyeurism might cause unjustified harm to celebrities and their families, and often this attitude does not add to a paper's reputation.

In Great Britain, members of the royalty rarely complain against the press. One of the rare occasions[21] in which a complaint was issued took place in 1995, when Earl Spencer filed complaints to the Press Complaints Commission (PCC) against the *News of the World*, the *People*, and the *Daily Mirror* for publishing stories about his wife, who was receiving treatment in a private addiction clinic, arguing

that they unjustifiably intruded into her privacy in breach of Sections 4 (Privacy),[22] 6 (Hospitals and similar institutions),[23] and 8 (Harassment)[24] of the Code of Practice.[25] The complaints were all upheld. The Commission held that to justify such an intrusion, the newspaper is required to demonstrate that publication would be in the public interest. The newspapers had failed to offer any sufficient argument to sustain their position on this point[26] (see Summary, Suggestion D below concerning the work and powers of press councils, and Suggestions F, G, H concerning an effective Code of Practice).

On 31 August 1997, the Princess of Wales was killed in a road accident in Paris. Princess Diana and her lover Dodi Al Fayed were trying to escape some paparazzi photographers who raced after their car. Princess Diana was exceptional among celebrities because she insisted on continuing to live as normal a life as possible despite the constant surveillance to which she was subjected (in her words, 'to sing openly', a way of living that the royal family did not appreciate so much but the paparazzi adored). Princess Diana understood the power of the media and frequently used them and manipulated them for her own advantage. One can say that Diana confused public interest with public prurience. Although the paparazzi had made her life very difficult in the preceding years, Princess Diana never filed a complaint against newspapers (under Section 8, Harassment, of the Code of Practice). Even after her pictures were taken in a gym and subsequently published in the *Daily Mirror* (November 1993), she chose not to complain and to resolve the matter through conciliation. To a large extent her image was built by the media, which, in turn, used her to sell newspapers. It takes two to tango, and the two – Princess Diana and the media – were eager to dance. Princess Diana knew what is a good picture, and she provided opportunities for the photos that were printed all over the world and helped newspapers to increase their sales. She attracted wide public attention and generated innumerable stories for the reporters and photographers who followed her. What she did not understand until her last day was that she could not choose which pictures should be taken, and which not; which photographers could accompany her during her trips, and which should not follow her. Princess Diana was disgusted and appalled by the behaviour of the unscrupulous paparazzi who made their living by recording her private moments (see Summary, Suggestion E below regarding freelance journalists). Apparently, she

failed to recognize that when you open the door to the media, they will enter in force, making the most of the opportunity.[27]

A further note should be made distinguishing between people who choose to become social figures and people who provoke public attention as a result of a deed or a speech but wish to retain their anonymity. On occasion, people stumble unintentionally into the spotlight, under circumstances that are not within their control. When this phase passes, they wish to regain their privacy and return to normal life. With regard to these people, the media should refrain from intruding into their private lives and should respect their privacy, especially when exposure of certain details could harm one or more of the people involved. Look, for instance, at the painful story of Oliver Sipple, the ex-marine who knocked a gun out of the hands of a would-be assassin of then American President Gerald Ford. Shortly after the incident, the media revealed that Sipple was active in the San Francisco gay community, a fact that had not been known to Sipple's family, who then broke off relations with him. His entire life was shattered as a result of this publication. Sipple's good deed caused him extremely harmful consequences.[28]

3. Heightened events. These are events that actually take place but are not dramatic enough for reporters, so they choose to embellish them a little. In 1985, Armenian terrorists attacked the Turkish embassy in Ottawa, Canada. They held hostages in the embassy and during the siege of the building one of the reporters asked if the kidnappers had more specific demands besides the general ones they had stated previously. In a different incident a reporter asked the kidnappers if they intended to set an ultimatum, when none had been stated earlier.[29] Supposedly, that reporter was not satisfied with the existing tension and he wished to raise its level (see Summary, Suggestion F below).[30]
4. Exaggerated events and twisted stories. These are reports of events that have taken place but the media try to tamper with their true proportions or to twist the details.[31] When a famous British diplomat arrived in New York, he was warned by a friend about the American reporters. One reporter asked him: 'Do you plan to visit any night clubs while you are in New York, Lord Selwyn?' Selwyn responded: 'Are there any night clubs in New York?' The following morning, the reporter's newspaper carried a story beginning '"Are there any night clubs in New York?" That was the first question British diplomat Lord Selwyn asked yesterday as he arrived…'[32]

The *New York Post* told the story of a man who allegedly raped a three-year-old girl on a grassy knoll near a crowded Manhattan highway while passing motorists stopped to watch. The incident was described as 'a chilling mix of apathy and voyeurism'. But the story was untrue. Three motorists did stop to pursue the alleged rapist, and traffic had simply stalled behind their abandoned cars.[33]

In the financial and administrative arenas, the media often use large bold headlines to report the corrupt acts of any public figure suspected of embezzling large sums of money from public funds. Long after the scandal dissipates the charges are often dropped for lack of evidence or the dimensions of the fraudulent act turn out to be much smaller in scope than was initially reported. This is not to say that there is no room for reporting such stories. They must be reported, but in a responsible manner, proportionate to the suspicions, without exaggeration. Obviously, all embezzlement must be condemned, but proportion must be kept. There is a substantial difference between headlines that hint of corruption and bribery, and reports of mismanagement of public funds or auctions.[34] If after a thorough investigation the accused is found innocent, the acquittal must be reported with the same degree of emphasis used to report the original allegations (see Summary, Suggestion F below).

5. Staged events are events that probably would not have occurred had the media not been present. Here we must differentiate cases in which the media were invited to cover an event from cases where the media initiated events.

   During Giscard d'Estaing's presidency, he invited his courtyard's workers to breakfast at his house. We can assume that the president would not have invited his workers to his table without first summoning media coverage. It was a public relations act by the president. Another incident is taken from the Israeli scene, when a female member of The Knesset chose to take a dip in the Mediterranean specifically on the Day of Atonement, the most sacred day on the Jewish calendar. A photographer 'just happened to be there' and snapped the shot showing the MK in her bikini.

   Staged events can be harmful. In March 1983, Cecil Andrews ignited himself in protest at local unemployment rates. A local television crew that was invited in advance by Mr Andrews captured the event. After the event, some searching questions were raised as to the role of the television crew: would Mr Andrews have set himself on fire had the cameras not been there? Probably not. It is reasonable to expect a television crew to try to stop Mr Andrews from

igniting himself, instead of rolling the film for 37 terrible seconds. I think that this is a case of immoral and irresponsible behaviour.[35]

In some cases the media initiate events. During the *Intifada*, the Palestinian uprising in the occupied territories, foreign television crews directed Palestinian youth to create events for the cameras. Former Deputy Head of the General Security Services (SHABAC), now Member of Knesset, Gideon Ezra, said that during the uprising foreign reporters used to convene in the American Colony hotel in East Jerusalem and instigate events before sending their photographers to the territories. He testified that they paid Palestinian youths $50 for stone throwing and $100 for Molotov cocktails (see Summary, Suggestion F below).[36]

6. Fictitious events. These events have no connection to reality, or at least no tangible proof that they occurred.

A notorious false news item was *Jimmy's World*, published on the front page of the *Washington Post*. The author, Janet Cooke, won the Pulitzer Prize for that heartbreaking story about an eight-year-old and a third-generation heroin addict, 'a precocious little boy with sandy hair, velvety brown eyes and needle marks freckling the baby smooth skin of his thin brown arms'. The story ended with a detailed account of how Ron, Jimmy's mother's lover, grabs the child's left arm, 'his massive hand tightly encircling the child's small limb. The needle slides into the boy's soft skin like a straw pushed into the center of a freshly baked cake. Liquid ebbs out of the syringe, replaced by bright red blood. The blood is then reinjected into the child.' Ron says, 'Pretty soon you got to learn how to do this for yourself.'[37] Later, it turned out that the story was fictitious and that Jimmy was a figment of her imagination. Janet Cooke was dismissed and was forced to return the prize she had received. After *Jimmy's World* was exposed as a fabrication, Cooke explained that one reason she had faked the story was that she had spent so much time unsuccessfully looking for a young drug addict that she felt she could not return empty-handed to her desk. 'If I did not produce a story, then how was I to justify my time?'[38] (see Summary, Suggestion F below).[39]

The boundaries of media coverage

I argue that only real events and gossip belong in the realm of acceptable coverage. In cases covering celebrities-for-a-day, rules of propriety

must be upheld. The media should not aid in staging, promoting, or exaggerating events or rumours. Moreover, the media act irresponsibly and immorally in all of the following instances:

- Reporting events on the basis of rumours, without supporting evidence and without cross-checking sources and testimonies.[40]
- Reporting imprecisely in the interest of creating a sensational response.[41]
- Media coverage that shows no consideration other than 'the public has the right to see all that I am seeing', without regard for the consequences, is immoral. For instance, reporting is immoral when the media broadcast accidents and terrorist events live, unedited, and in consequence some of the victims' relatives are informed of the deaths of their loved ones by means of the shocking pictures.[42]
- The media act in ways that might endanger lives. On one of the first days of the hostage kidnapping in Iran in 1979, an NBC reporter disclosed that two American emissaries had been sent to Teheran. The report was broadcast against the better judgment of the government and seemed to contradict understandings reached with the Iranian government. A short time after the report, Ayatollah Khomeini stated that the two emissaries would not be welcome in Teheran.[43] Considering that lives of people who were held hostage in a hostile country were at stake, it was an irresponsible act. It was certainly possible to delay the report and to give the diplomatic channel a chance to succeed away from the spotlight.

  In 1986, Lord Chalfont wrote the following:

> Unless newspaper editors, and those who control our radio and television programs, recognise their responsibility and act accordingly, they might well find themselves facing pressure for some kind of legislative regulation over the reporting of terrorism and the interviewing of terrorists.[44]

Summary

Limitations should be placed on media coverage. Freedom of speech is a fundamental right, an important anchor of democracy, but it should not be used in an uncontrolled manner. Unlimited liberty and unqualified tolerance might deteriorate into anarchy and lawlessness, and in such

an atmosphere, democracy would find it quite difficult to function, and the media would be one of the first institutions to be undermined.

Today's public is more aware of the power of the media and is more willing to voice its dissent when it finds the media's conduct offensive or unacceptable. It seems that ten years ago the publication of a correction was a rare occurrence, whereas nowadays people complain more and media agencies are more willing to admit their mistakes. The media understand that it is better for them to control their own agencies than for the state to intervene through the legislature and the courts.

Undoubtedly free media are a pillar of democracy. One of their roles is to watch what the government does; the media could not perform this duty if they were under government control. But it is essential for the media to take some concrete measures to improve their conduct.

Let me make the following suggestions:

A. We should strive to establish a working environment in which journalists understand their responsibilities as people who work in the industry and as citizens in democracy, applying judgment and ethical standards in their reporting, and self-scrutinize and self-control their activities. The role of education in creating this environment is crucial.[45] Indeed, during the past 20 years or so we have witnessed the establishment of schools of journalism and departments of communication and media studies in North America, Europe, and Israel. Many people who wish to become reporters enrol in these programmes. It is essential to make ethics studies in these schools obligatory, as many do voluntarily.
B. We should strive to diffuse the power of the media through laws prohibiting cross-ownership.[46] If possible, democracies should strive to have each fragment of the media controlled by a different proprietor, provided that there are enough people who are interested in becoming media proprietors. In Britain, Rupert Murdoch controls some 35 per cent of the press circulation: the *Sun*; *The Times*; the *Sunday Times*, the *News of the World*. He also owned *Today*, which was closed down. In addition, Murdoch has control over BSkyB – the only satellite provider. In Israel three families – Schocken, Nimrodi, and Moses – control all the media. In Canada, two major media groups – Thomson and Southam – account for 60 per cent of daily circulation. These are unhealthy situations for democracies.
C. Each large media organization should have its own ombudsperson, in the format adopted by the *Washington Post*, to deal promptly with

complaints and to publish resolutions when the story that brought about the initiation of the complaint is still remembered.[47] Complaints may be referred to the ombudsperson by any reader or anyone who has been the subject of an article by the paper. The ombudsperson (or Managing Editor) should be an independent entity within the organization, enjoying autonomy and the power to publish his or her own views without scrutiny. The paper would regularly publish the ombudsperson's name and the means of contact.[48]

D. In every democracy, there should be a strong, independent, and effective Press Council, with significant powers of sanction. The Press Council should publicize itself, its powers, its work and its adjudication so as to make itself known to the public and to gain its trust (for further deliberation see Chapter 7).
E. Freelance journalists should make themselves familiar with the respective code of practice of the newspaper for which they are writing. Alternatively they could form their own code of practice.[49]
F. The Code should contain at least the following norms:
    - Admit error.
    - Do not distort, mislead, misrepresent, fabricate or plagiarize.
    - Grant fair opportunity to reply to inaccuracies.
    - Do not obtain or seek to obtain information or pictures through harassment, intimidation, or persistent pursuit.
    - Do not aid in staging, promoting, or exaggerating events or rumours.
    - Protect confidential resources.[50]
    - Do not harm anyone unless you have strong moral justification; do not harm people caught up on the fringes of events that are not of their own making.
    - Invade privacy only when you are certain it is in the public interest, to be distinguished from prurient motives. Following the lessons of the Princess Diana affair, we should regard as unacceptable the use of long-lens photography to take pictures of people in private places without their consent.[51]
    - Avoid smearing people by innuendo or implying guilt by association.
    - The application and employment of violence, terror, and racism should be condemned in explicit language.
    - Avoid prejudicial or pejorative reference to a person's race, colour, religion, sex, or sexual orientation, and to any physical or mental illness or disability.[52] Moreover, editors must make

concerted, sustained efforts to recruit, retain, and develop staffs that reflect the variety of the communities they serve.[53]

- Do not receive gifts, favours, and other benefits from news sources or organizations that the newspaper may cover.
- Do not use or pass to others financial information revealed during research.
- Keep the business side of the paper (influence of companies owned by the publisher) from dictating content to the editorial side (news and views).
- Do not exploit the innocence of children to get information.

G. The Code of Practice should be incorporated into the contracts of editors and reporters.[54]

H. Create a two-tier press system of those who accept the above recommendations and those who do not. It is not enough to join the Press Council and to subscribe to its Code of Practice. In Britain, although almost all newspapers subscribe to the Code, this is more of a lip service. Clearly the tabloids still often disobey it in their publications. We need to create a more stringent scheme for the working of press councils, and then the tabloids will decide whether they prefer to join in and accept the responsible frame of reference, or to opt out. The public should be notified of those who prefer to stay out. People would probably continue reading the tabloids, enjoying their light, entertaining, sensational stories. But no newspaper should have the respectability of association with the Council and acceptance of its Code when it does not deserve it. Those who prefer to be associated with the Press Council will *ipso facto* declare that they see themselves as credible journalists. It is in their best interest to safeguard and protect certain rules. Those who abstain could either say that no guidelines should be adopted or could adopt their own set of guidelines. Advertisement of association with the Press Council should be encouraged. Association with the Council should be looked on with pride, as adding to the prestige of journalism. Public officials working for the government, hence for democracy, should be encouraged to co-operate with the responsible press.

I. In addition, a norm should be established by which all editors be registered by the Press Council, and members of the Council should have the power to expel from this body a colleague who misbehaves. Editors should abide by the Code incorporated in their contracts. If found in gross violation of ethical standards, an editor could be removed from his or her office in the Council. The proprietors should decide whether they choose to leave the concerned person in

the editorial office or to regard the editor's removal from the Council as a recommendation for outright dismissal. In any event, the Press Council should not co-operate with the newspaper as long as the editor concerned is in office.[55]

J. Former Israeli prime minister Shimon Peres suggested that journalists should adopt their own Journalist Oath, similar to the Hippocratic Oath in medicine.[56] Yet again, it would become public knowledge if any media agency decided not to accept the oath. The oath should outline in stringent terms values that would not change over the years (see above).

I repeat, it is preferable that the media supervise themselves and criticize their own actions.[57] If the media break the frame of decency within which all competitors must work, and act irresponsibly, they leave an opening for the government, the legislature, and the courts to intervene and fill the gap left by the media.[58]

Self-regulation can succeed if all newspapers accept the gravity of the issues concerned. We have seen that self-regulation can work. One of the rare incidents in which self-regulation works in Britain concerns Princes William and Harry. All newspapers pledged not to take any photos of the two boys in their respective schools. Eton is a relatively big open place, yet no pictures of Prince Harry were taken. The same is true for Prince William. Their privacy is respected. The only photos that were released were those issued by the Palace. The editors promised that this rule would be kept as long as Harry and William are at school. They reiterated their pledge following the death of Princess Diana, when facing repeated public calls to introduce some ethical standards into the work of the press. Lord Wakeham, Chairperson of the Press Complaints Committee, declared immediately after Princess Diana's funeral (6 September 1997) that the PCC would have to ponder ways to protect the privacy of Princes William and Harry so that they would not have to go through the experience that their mother suffered almost daily after she became Princess of Wales. Lord Wakeham said he was 'extremely concerned' about what will happen when the princes reached the age of 16.[59] Unfortunately, it seems that only tragic incidents such as the death of the Princess of Wales sway the public to show involvement and concern which, in turn, positively influence the work of the media.

6
Media Coverage of Suicide: Comparative Analysis

Introduction

Media coverage of suicide is problematic because it is an emotional issue, involving loss of human life. Reports of suicides can intrude on individuals' privacy and contribute to the sense of trauma, shock, and horror shared by the individual's loved ones. It might also be contagious, negatively affecting the shaky state of mind of people in emotional crisis. A study conducted in Great Britain and the United States showed that suicide rates increased after a suicide story was published: the more publicity the story received, the greater the increase.[1] Another study found that suicide rate increased after a television suicide story and that the increase in suicides lasted for about ten days after the report.[2] In contrast, Phillips argued that the most effective channel of cultural contagion is newspapers. This is so because an individual can spend a great deal of time reading and rereading a newspaper story; consequently he or she can remain longer in contact with the contagious influence of the story and might be more readily affected by it.[3] The most susceptible is the teenage population. Sociologists who conducted independent studies of suicide patterns found significant copycat correlations. Reports of teenage suicide appear to lead to outbreaks of other teenage suicides.[4]

This chapter examines how the media in Canada cover suicide stories, and reflects on this issue in the British and Israeli media. It argues for media caution in reporting suicide, both for reasons of sensitivity towards the individuals involved, the suicides and their families, and for ethical reasons: consideration for the consequences of reporting. The method of the suicide should not, generally speaking, be reported. Suicide should not be romanticized. Instead, the media should speak of

the alarm signals that people in distress emit, and how to help them, through reassurance and referral to the appropriate agencies where mentally unbalanced people can get help and support. In addition, responsibility requires that teenage and celebrity suicides be viewed as special cases that demand extra caution. This is because teenagers are attracted to sensational headlines about suicide, and are susceptible to imitation, and because celebrity suicides are the most often imitated.[5] In any event, live suicide should not be reported.

The research question and method of analysis

In 1995 I was conducting research on freedom of expression in Canada.[6] During our discussion of this issue, M. David Lepofsky of the Ministry of the Attorney-General in Ontario, shifted the discussion to media coverage of suicide. Mr Lepofsky said that the media refrain in principle from covering suicide. The case was different, of course, where public figures were concerned, because of the clear public interest in reporting the story, but even in such instances the media use the term 'self-inflicted wounds'.[7]

Mr Lepofsky said that the unwritten Canadian policy was the result of responsible reporting, the journalists' fearing that suicide coverage might sway unbalanced people who may be prone to such harmful conduct in imitating the reported action. Because the Israeli media do not have such a policy – they would cover suicide stories as any other story that they think is of some 'public interest' – I was surprised and impressed.

In 1997 I embarked on research, examining whether the Canadian media had, indeed, adopted such a praiseworthy unwritten policy, and for what reasons. The research question examined was:

> The Canadian media employ an unwritten policy of refraining from covering suicide stories when these are of no clear public interest. This for fear of copycat cases.

One editor of a large newspaper in Toronto wrote the following in response to my query about this unwritten policy:

> Yes, there is an unwritten policy not to report suicides unless they are so well known (e.g. jumping off a bridge that closes one of the local highways for several hours) that it becomes news. I think the main impetus for this over the years has been our highly developed

> subway system, where quite often (I don't know the exact figures but certainly more than a handful of times every year) people commit suicide by jumping under the train wheels. Most editors feel that reporting on suicides encourages 'copycats', as people contemplating suicide are emotionally unstable anyway, a position I tend to agree with. I do not believe individual cases of suicide are, in unremarkable circumstances, news. Features about suicide and why people do it are, of course, in a different category.[8]

Following this communication, I examined the relevant literature and established contact with prominent people who study or work in the media. This chapter reports the findings. It also draws some similarities, and dissimilarities, to media coverage of suicide in Great Britain and Israel. Although the research is not comprehensively empirical in the sense that it does not offer a content analysis of Canadian, British, and Israeli news media coverage of suicide, it nevertheless does indicate the existing trends in the media of these three countries and it provides sufficient data to draw some suggestions for a responsible framework of media coverage of suicide.

Media coverage of suicide in Canada

In 1998 I returned to Canada to conduct research on media ethics.[9] One of my prime concerns was whether there is any truth in the research question formulated *supra*. I first looked at the CBC's *Journalistic Standards and Practices* (1993) manual that outlines the policy framework within which Canadian Broadcasting Corporation journalism seeks to meet the expectations and obligations it faces. Unlike the BBC's *Guidelines*, the CBC's *Standards* manual does not discuss coverage of suicide.[10] So at least as far as national broadcasting is concerned, the policy on suicide is, indeed, unofficial and unwritten.

Next I looked at the *Globe and Mail Style Book*. This book is a guide to language and its usage with some reflections on ethics, for instance concerning the appropriate usage of the term 'terrorist'. Suicide is not mentioned.[11] I addressed this question to the directors of the press councils in Quebec and Ontario. Mr Michel Roy and Mr Robert Maltais, President and Secretary General of Conseil de Press du Quebec respectively, said that no guidelines on suicide exist.[12] This was also the answer of Mr Mel Sufrin, Executive Secretary of the Ontario Press Council.[13] The Canadian Press *Style Book* does mention suicide briefly in relation to obituaries. It says: 'When suicide is suspected but not

officially confirmed, it may be possible to report that a note or a gun or an empty barbiturate bottle was found near the body.'[14] This is in order to explain the possible cause of death.

The fact that suicide is hardly mentioned in formal documents might suggest that the issue as such is not of importance. Discussions with senior media people refute this suggestion. People in the Canadian media feel it is a significant concern, and some of them are well aware of the ethical dimensions involved in the coverage of suicide. Others felt that the issue should be left to the discretion of editors. If an editor thinks that such coverage is of public interest, then surely suicide should be covered. But if it is not, then there is no story and there is nothing to report.

The question is, then, how to decide, and in accordance with what criteria, whether to report a suicide story. Everyone I met – more than 30 prominent people from the media industry and academia – said that sporadic suicide instances of unknown individuals are not reported in the Canadian media. Many told me that most, if not all, subway system suicides do not get reported. These stories are conceived as private matters, with no significant public interest. Mr Michel Roy added that suicide in general is not covered because in Canada there is more respect for private life.[15] This notion of respect for privacy was reiterated by Professors Enn Raudsepp[16] and Stuart Adam.[17] Professor Christopher Dornan, Director of the School of Journalism and Communication at Carleton University, also thought that the media show sensitivity as well as concern and respect for the family of the person who committed suicide.[18]

This, however is only part of the story. The research question speaks also of the reasoning for refraining from coverage, and it also qualifies the assertion of non-coverage by saying that the policy is applied only when no clear public interest is present. To what extent does the responsible reasoning of fear of copycat endure in the minds of decisionmakers?

Fear of copycat cases

The interviews showed a mixed picture with regard to this question. Some accepted this as a cautionary ground for not reporting suicide; others dismissed it outright. Mr Henry Aubin, senior columnist and member of the Editorial Board of the *Gazette*, the major English-language paper in Quebec and member of the Quebec Press Council Board of Directors, spoke of the need for careful coverage so as to avoid copycat cases.[19] Similarly, Mr Michel Roy, President of the Conseil de Press

du Quebec, said that the media may write about the phenomenon but would, in principle, refrain from publishing individual stories. The media were aware that coverage of suicide might influence young and unstable people, and for fear of copycat cases they exercise caution.[20]

On the other hand, Mr Gord Sinclair, Director of News and Public Affairs of CJD, the leading English radio station in Quebec, explained that murder and crimes were covered, but suicide was not a crime, and it was of no public interest. Hence, CJD did not cover suicide in principle. But if the suicide caused a traffic accident or involved a public figure, then the event would be covered because it had aspects that were of public interest. Mr Sinclair did not mention any ethical reasoning in his response. I then asked him directly whether he was concerned with the contagious effects of such a report. His answer was blunt and clear: he was not troubled with copycat considerations.[21]

This was also the answer given by Mr Al MacKay, Interim General Manager of the Cable Public Affairs Channel. Mr MacKay explained that suicide was a personal thing, not of public interest. In response to my direct question on ethics he said they did not cover suicide because of lack of public interest, not because of fear of copycat cases.[22]

The fear of copycat as grounds for refraining from coverage of suicide was also forthrightly dismissed by Mr Michael C. Auger, political columnist of *Le Journal de Montreal*, who served also as President of La Federation Professionale des Journalistes. He explained that sporadic suicides, like underground suicides, did not get reported simply because they are of no public interest. On the other hand, if the media were worried about an emerging phenomenon, then it was within their duties to report it.[23] I will elaborate on this issue later on.

Mr Auger's answer brings us to consider the tricky issue of 'public interest'. When do the media find it justifiable to report suicide? Which circumstances evoke such interest?

Public interest

The category of 'public interest' encompasses several dimensions. These are grouped under the headings of fame, drama, and phenomenon. Let me discuss and explain each of them.

Fame

If the person who committed suicide was a celebrity, a public figure in Canada or the world at large, then the media would report the story. This was the only qualification that Mr Lepofsky made to the assertion

that prompted this research, that the Canadian media do not, in principle, cover suicide,[24] an assertion he repeated in a more recent interview.[25] As we shall see *infra*, this assertion is incorrect. This is not the only ground that justifies media coverage.

One example has to do with Roger Quilliot, a former French government minister, who committed suicide at the age of 73 in Clermont-Ferrand, where he was mayor for more than 20 years. The brief report said that he was concerned about his ill health.[26] I did not find any discussion that expressed anxieties in regard to reporting suicides of public figures – politicians and celebrities – because these might be imitated. It could be argued that relatively old people in a similar condition might be triggered to consider suicide as an option following such reports.

Drama

If the story is dramatic, captures the public eye for some reason, then public interest prescribes reporting. Professor Fred Fletcher said that suicides were not reported unless they were dramatic (jumping off CN Tower). Names of suicides were not reported unless the suicide evoked public controversy or the suicides were public figures.[27]

The President of the Quebec Press Council, Michel Roy, gave an example of an exceptional story, when one of the Quebec newspapers covered in crude details the suicide of a person who ended his life by jumping off a bridge. *La Presse*, the major newspaper of the region, published a series of photos of the man and the stages of his fall. Subsequently the father of that person wrote a very touching letter to the paper, which *La Presse* published, and the public reaction to these was very strong and negative. The public voiced its dissent and condemned the decision to publish the photos. In fact, the entire press condemned the coverage.[28] Here it should be noted that *Le Journal de Montreal*, the most popular tabloid in Quebec, notorious for its menu of sex, sport, and blood, had the photos and chose not to publish them.[29]

I asked Mr Roy whether the Press Council was urged to interfere, condemning the publication because it violated the Quebec Press Council's Rights and Responsibilities of the Press, which holds:

> While insuring the right to information, the media and journalists must respect the rights of the person, including the right to privacy, intimacy, dignity and reputation. They must be careful to inform the public without resorting to sensationalism … .Media and

> journalists should distinguish between matters of public interest and public curiosity.[30]

However, no complaint was made to the Quebec Press Council and the Council did not intervene. Mr Roy said that the public reaction was so fierce that there was no real need to interfere. He assumed that *La Presse* understood the public message loud and clear.

The most sensational suicide reports are those involving murder and suicide. In such reports we find 'juicy stuff', characteristics of murder stories: more details in reddish colours. The stories usually involve a person who kills another, most often someone he or she knows well, and then commits suicide. Murder is of public interest and the suicide is part of the package. One such story concerned a 34-year-old man whom the police wanted for questioning in relation to the slaying of his wife and two boys. The report said that the man, who had been in a state of emotional turmoil, was found hanged.[31] A similar story concerned a woman who shot her two-year-old triplet sons and then committed suicide. This story was full of details usually spared in suicide stories: it said, *inter alia*, that she shot the boys in the head with a semi-automatic pistol and then turned the gun on herself; that one of the boys survived the shooting but was declared brain dead; that the woman became despondent after finding another woman's underwear in her boyfriend's suitcase; that she went to the store asking for rat poison, and that she told the shopkeeper she wanted to throw herself in front of the cars, taking her children with her.[32] The story was full of details that were entirely unnecessary for reporting the incident in the name of 'newsworthiness' and 'public interest'. This is an example where the press resorts to sensationalism and confuses interest with curiosity. Such mixed stories that involve self-inflicted violence as well as violence against other people, should have, for ethical reasons, more the characteristics of a suicide story and less of a murder story. The media should preserve the privacy of the people involved, and be aware of the possible consequences of the report.

Phenomenon

I

If the suicide occurs among a certain group of people, suggesting that it is not a sporadic instance of suicide but rather part of a more general problem, then there is justification for reporting. For instance, farmer

suicides are seen as a serious consequence of the recession on the Canadian prairies and, therefore, are reported when other deaths are not.[33]

Mr Auger gave another example. In the summer of 1997 there were five consecutive suicides in a small town, all children from the same school. This attracted a lot of publicity. Five suicides of children from the same school may indicate a serious problem in that school or town. This story must be covered. Mr Auger maintained that if the media had refrained from reporting, rumours would have started and these could have been more intrusive, insensitive, and inaccurate. Of course, the media reports should be presented with caution and good taste. Apparently, however, this was not the case. Mr Auger elaborated that after the story broke the Quebec Psychiatric Association organized seminars for reporters, instructing how suicide stories should be covered in a way that would not offend the parties concerned.[34]

Mr Edward Greenspon, Ottawa Bureau Chief of the *Globe and Mail*, said that his newspaper covers suicides. According to him, five years ago suicide stories were taboo. Now they were covered when deemed newsworthy and bearing social ramifications. Mr Greenspon gave an example of a person who was abused as a child and during his adult life became famous for his crusade against child abuse. That person later committed suicide, and the *Globe* felt it was an important story, with an added value to society.[35] In a sense, the story was not merely about suicide but about the wrongs of child abuse and the longterm trauma that such abuse inflicts on its subjects.

Mr Mel Sufrin of the Ontario Press Council mentioned reporting general stories about suicides in aboriginal communities. The stories are concerned with the phenomenon, reflecting on it in general terms, or using a particular suicide as a springboard to discuss the problem.[36] Mr Arch Mackenzie, a veteran journalist who had been active for many years in the Michener Award Committee on Investigative Reporting, also said that aboriginal suicides are covered. He explained that alcohol and the high rate of unemployment were major problems in these communities, and that the media covered suicides of aboriginal individuals in order to turn public attention to the problem. Mr Mackenzie stated that every week there were one or two stories on aboriginal suicides.[37] One account, reported by the *Globe and Mail*, aimed to arouse public concern, told the story of a troubled Manitoba Indian band, Birdtail Sioux, that had suffered seven suicides in the previous year and 20 attempts since January 1998, some by children as young as nine. Chief Nelson Bunn, himself a recovering alcoholic, called on the medical services and the Indian agencies to help his tribe get through the crisis.[38]

Similar considerations led the media to cover suicide stories of other particular segments of the population. They covered suicide of Aids patients to attract public attention to their delicate position in society.[39] The media also covered suicide stories in Quebec especially, and teenage suicide in this region as well as in other parts of Canada. Again, the media reflected alarming phenomena that were conceived to be of major public concern. The media were not interested in individual stories *per se* but wanted to attract public attention to a social problem.

The *Globe and Mail* reported that the Quebec Health Minister, Jean Rochon, said that the region had the third-highest suicide rate in the industrialized world, and that his government was determined to cut the toll. The most recent figures available show Quebec's suicide rate at 19 for every 100 000 people, compared with the Canadian average of 13.3 for every 100 000 people in 1995. Mr Rochon said the Parti Quebecois government would spend $700 000 over three years on prevention programmes and public education, and that the government had already spent close to $2.5 million on addressing the growing problem. Suicides had risen progressively since the early 1970s, with especially high numbers in 1982, 1983, and the early 1990s. Mr Rochon stipulated that painful economic recessions during those periods might have contributed to the higher rates.[40]

Mr Henry Aubin of the Montreal *Gazette* said that the French press gave more coverage to suicide because Quebec had the highest ratio of suicide in the country, especially among young people. His explanation for this phenomenon took account not only of the economic recession and widespread unemployment but also of the high divorce rate in the region, which was the highest in the country; the lack of religious values, and in his words, the fact that 'children do not go to church'; the sensitive political climate, and the hatred of English-Canadians. All these created a negative climate that led people to commit suicide.[41]

As for teenage suicide: this was a principal concern. Except for motor-vehicle accidents, suicide was the most common cause of death among young Canadians. The World Health Organization (WHO) ranked Canada eleventh in the world for frequency of suicide among those aged 15 to 24. For Canadian teenagers, the rate of suicide had soared 400 per cent in the past 30 years, from 5.3 to 23 per 100 000 and the rate among desperate aboriginal youth was five times that of all Canada.[42]

The media could not, and should not, ignore this phenomenon which was especially worrisome in Quebec. Health Minister Jean Rochon said that people between the ages of 15 and 29 were the most vulnerable, and suicide was the foremost cause of death for men in

that age group. Dr Christine Colin, a health ministry official, said there was no single reason why young people in Quebec decided to end their lives, and that environment and social situation could be factors.[43] Mr Henry Aubin said that teenage suicide in Quebec was apparently about the highest in the world. He argued that *La Presse* in particular provided extensive coverage of this phenomenon, and that the French press on the whole was quite immature in its reporting. It did not think about the ramifications of their coverage, not realizing that such extensive coverage might elicit copycat suicides.[44]

Reporting of teenage suicide is tricky. On the one hand, it is of importance to inform the public about the phenomenon. The high rate of suicide among teenagers in Quebec should be a major concern to be discussed in order to find some solutions for the problem. On the other hand, the media should be aware of the likely consequences of such reporting. It could be the trigger for another suicide of a teenager reading the report. The media should not exaggerate in their reporting of the phenomenon. They should not provide details about the means of suicide in particular stories, and they should provide details on how to handle depression, the importance of counselling, and ways to find assistance in coping with emotional distress. Of course, they should refrain from covering live suicide.

Several people whom I met in Toronto mentioned one particular story that received wide coverage in the Toronto newspapers.[45] The story had several public dimensions. It concerned a 17-year-old choirboy named Kenneth AuYeung who was involved in a schoolboy prank which went wrong. Someone had altered a line in the yearbook farewell message of the outgoing principal of his choir school, alluding to his involvement in a recent sex abuse scandal. The new principal of the school summoned Kenneth and five other members of the yearbook committee, saying that the administration was not amused by jokes about sexual abuse, demanding that they confess or face criminal charges. Next day, the principal also called an off-duty police officer to exert more pressure on the boys. The officer offered them a choice: to confess immediately or face criminal charges of public mischief. Kenneth AuYeung confessed.

Kenneth was a smart, successful boy who made the honour roll every year and had never been in trouble before. For him the event was fatal. His entire world collapsed. Two hours after his investigation he jumped to his death from the Bloor Street Viaduct in Toronto. The media reported the story in detail, raising the following questions: was it appropriate to call an off-duty police officer to put pressure on the

boys, threatening them with the opening of criminal proceedings for a senseless prank? Was it justified to do this without involving the parents? The media also analysed the event in terms of teenage suicide, and then focused on the bridge from which Kenneth jumped. Apparently that bridge became a favoured spot for potential suicide. The media raised the issue, suggesting the need to look for solutions that would prevent people from jumping off that bridge.[46]

The Bloor Viaduct had been a common site for suicide jumpers. Should the media report the phenomenon, which was certainly alarming, and of public interest, taking the risk of making the bridge even better known for potential suicides? Apparently the media refrained from reporting Bloor Viaduct suicides for quite some time and started their coverage after the numbers of suicides became relatively high, and the Toronto authorities had begun investigating ways to solve the problem. Proposed solutions included putting netting under the bridge or erecting a high fence.

Kenneth AuYeung jumped from the bridge on 11 December 1997. During that year the statistics showed that one person had committed suicide there every three weeks. The *Globe and Mail* published a story about the bridge in February 1998 after two more people died in this way.[47] The report said that the viaduct is to Toronto what the Empire State Building was to New York: a magnet for desperate people wishing to end their lives, and that since its construction in 1919 more than 300 people had jumped from the bridge. The report suggested installation of a chain-link fence and emergency telephone stations on the bridge, citing research showing that preventive measures taken at the Empire State Building and the Eiffel Tower in Paris reduced the overall rates of suicides in those cities.[48]

The report spoke of the phenomenon so as to evoke public debate and to put pressure on the authorities to address the problem. Balancing the interest in spurring the authorities to action against the likelihood that the report might induce another potential suicide to leap from the bridge, the paper felt the balance should lean toward reporting. With such gloomy statistics, it seems that the bridge was well known among people seeking ways to commit suicide, and there was a pressing need to push the local government into action.

Following the suicide of AuYeung, an inquest jury was set up to examine the affair. It recommended that 'every effort should be made to keep the location and method of suicide out of the media. If that is not possible, a low profile should be given to these matters.'[49] This is because it had been shown that reporting suicides and locations of

suicides acted as a magnet to perpetuate the act, and the location became known as a death magnet. In response, the Ontario Press Council issued a press release, saying that it opposed any effort by authorities to suppress news of this sort. It further noted that the press did not report suicides unless they were clearly newsworthy.[50]

II Assisted suicide

Stories that involve two or more dimensions of renown figures, human drama, and phenomenon are of greater interest for the media. One such story that captured the public eye and evoked public controversy was the story of Sue Rodriguez, a 42-year-old woman who suffered from progressive Amyotrophic Lateral Sclerosis (ALS) and had been informed by her physicians that her prognosis was poor. While remaining fully aware and legally competent, she would lose her capacity to move her limbs, to feed and clothe herself, to swallow, and eventually to breathe without assistance. As her condition deteriorated, Ms Rodriguez publicly expressed, through the media, a wish to have a physician assist her in ending her life at a time of her choosing, when she would be unable to do so herself, rather than waiting helplessly to die by suffocation or choking. Ms Rodriguez sought to challenge the *Criminal Code* of Canada prohibition on assisted suicide, on the grounds that it violated the *Canadian Charter of Rights and Freedoms*. The specific section of the *Criminal Code* is 241(b): 'Everyone who aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.'[51]

The Canadian Supreme Court rejected Ms Rodriguez's appeal in a 5 (Sopinka, La Forest, Gonthier, Iacobucci, and Major) to 4 (McLachlin, L'Heureaux-Dube, Lamer, and Cory) decision.[52] Without entering into the legal aspects involved, this was the first time that such an appeal reached the Supreme Court, hence it excited prolonged public debates engaging all circles of society.[53] The media took much interest in Ms Rodriguez's situation and discussed at length the ethical dilemma involved in her motion to be assisted to die. Of course, here the issue is of *assisted* suicide, and not of suicide *per se*, but it demonstrates the kind of a story that the media seek: it involved the human drama of a person who became public figure, whose story had ethical and societal implications. On the whole, the media were quite sympathetic to the appeal though they presented both sides of the controversy: those who were in favour of it and those who opposed it, mainly for fear of slippery slopes.[54] Ms Rodriguez was well aware of the media interest in her

story and co-operated with them fully until her very last days. On 5 February 1994, one week prior to her death through assisted suicide, she advised a member of the media that a physician had agreed to assist her in her death but would not divulge his/her name or details of the suicide.[55]

Assisted suicide is interesting because it is a most complicated issue, with which society is struggling: it involves a person who is taking his or her life, with the help of others. Does this help make the co-operating person a murderer? It is strange to speak of murder under these circumstances because the person concerned has asked to die. However, the law failed to adequately address this question, so all such incidents evoke media attention.[56]

A related story involves Erwin Krickhahn, who was dying of Lou Gehrig's disease. He invited the media to watch him commit suicide, thereby hoping to persuade Parliament to legalize assisted suicide. If the media were to attend the event, would their presence influence the event itself? Is it their role to advance such a cause? In the end, only the *Toronto Sun* said it would assign a reporter to the suicide. The other media chose to abstain and said they would cover the story by assigning reporters to a 'deathwatch' outside Krickhahn's home. For most journalists, his was a story not to cover. Krickhahn then decided to postpone the event.[57]

Another form of assisted suicide that the media felt compelled to report because of its public dimension was police-assisted suicide. The press reported the story of Moshe Pergament who was shot by a police officer. Later detectives discovered an envelope addressed 'To the officer who shot me'. The note said: 'I'm sorry to get you involved. I just needed to die … '. The *Globe and Mail* reported that no one knows how many people manipulate police into killing them, but two recent studies suggest it is surprisingly common: researchers who examined hundreds of police shootings in British Columbia and in Los Angeles County 'found that in at least 10 per cent of the cases, the dead and wounded sought death'.[58]

This phenomenon is clearly newsworthy. In its report, the *Globe* emphasized that every time police-assisted suicide happens, there are victims on both sides of the gun. The newspaper wanted to draw public attention to the phenomenon, and to warn the police that some people would wish to have police-assisted suicide. The newspaper also wanted to show the officers who were involved in this, against their will, that it was a phenomenon of which they should be aware, and that similar cases took place elsewhere.

The next two sections briefly reflect on media coverage of suicide in Great Britain and then discuss in some more length coverage of suicide in Israel. It will be argued that media coverage of suicide in both societies is more extensive than it is in Canada. With regard to the BBC, it seems that its policy is not much different from the unwritten Canadian guidelines.

Media coverage of suicide in Great Britain

In the summer of 1997 I studied media ethics in Britain.[59] The discussion is based in the main on reports of my meetings with decisionmakers and media scholars. My open questionnaire included the following question:

> The Canadian press has an unwritten policy not to report suicides unless the people concerned are so well known that it becomes news. The main impetus for this is the fear of 'copycats'. Is there any such unofficial policy in Britain?

I added that I assumed that in Britain, as in Canada, some people used the underground (tube) for this purpose. The unwritten Canadian policy was practically unknown to the people I interviewed. However, the undisputed consensus arising from the dozens of interviews was that the case was very different in Britain. The British media did not espouse such a policy.

Charles Moore, editor of the *Daily Telegraph*, said that his newspaper would not run a story of someone who tried to commit suicide. Nevertheless he thought that sometimes there was a need to publish suicide cases, not only where public figures were concerned, but also common citizens. If, for instance, a high school girl committed suicide after being bullied by her friends because she was fat, there was a story to tell to evoke public discussion about the dangers of bullying. Mr Moore maintained that the *Telegraph* would also report suicides of students, trying to understand what brought them to such an act, as universities should also address this issue.[60]

So in fact, the *Telegraph* accordingly would cover suicide stories when they were of public interest, under the heading called 'phenomenon' here. Mr Moore maintained that the *Daily Telegraph* would not run a story of any person who tried to commit suicide but immediately admitted that the paper once did publish photos of such an event. He said that he was away and the decision to print the photos was made without his knowledge. A young person climbed to a high roof with his dog, pushed his dog over the edge and then jumped. The *Telegraph*

published a series of dramatic pictures of the event, telling the story. Mr Moore's replacement published them because he thought they were amazing photos. Subsequently the paper apologized to the boy's family.[61]

Similar views were invoked by Alan Rusbridger, editor of the *Guardian*, and by senior personnel of the Reuter Foundation and of the BBC. Mr Rusbridger expressed the opinion that journalists must be careful about sanitizing the news. Copycat was not a good enough reason to have a general policy of refraining from covering suicide. Therefore the *Guardian* reported suicides like any other story.[62] In turn, Mr Godfrey Hodgson, Director of the Reuter Foundation Programme for Journalists, Oxford, said that suicide cases were reported routinely.[63] Mr Martin Bell, a former prominent reporter with the BBC and now member of the House of Commons, likewise testified that the British media did not have a policy of not reporting suicide. Suicide cases were reported like any other news.[64] Ms Margaret Hill, Senior Advisor of the BBC Editorial Policy, and Mr Fraser Steel, BBC Head of Programme Complaints, considered each case in terms of its public interest. Ms Hill said: 'We never say "never"'. She emphasized that there were no absolute policies and that the BBC refrained from making blanket decisions. Sometimes the BBC did report suicide in radio and local programmes, the thought being that the story should be discussed in public. Like Mr Moore, Ms Hill and Mr Steel argued that if someone was bullied and committed suicide, it was important to report the incident.[65]

The BBC *Producers' Guidelines* book postulates that the factual reporting of suicides may encourage others. Bearing this in mind, reports should usually avoid graphic details of suicide methods. Reporters should be particularly circumspect about details when the method is unusual. The *Guidelines* proceed by saying that in drama, unnecessary concentration on suicide methods should be avoided. They instruct that particular care should be taken in making editorial judgments about any drama that seems to exploit or glorify suicidal behaviour and actions.[66] Accordingly, the BBC usually does not mention what means suicides used. This was reiterated also in my discussion with Ms Hill and Mr Steel. On the whole it seems that the BBC is quite careful in its coverage of suicide, and that its directors are aware of the harmful repercussions of sensationalized reporting.

Media coverage of suicide in Israel

The Israeli press does not follow such ethical guidelines. Suicide stories are covered in minute detail. This was not always the case. During the

1960s the press usually did not report suicide for ethical reasons. It was believed that suicide stories might encourage similar conduct. Even when public figures were involved, the reports would say 'died in tragic circumstances' without elaboration.[67] Over the years, the press started to use the term 'suicide', but suicide stories were reported in brief in the back pages. The drastic change took place during the 1980s, with the increased competition between the two tabloid newspapers, *Yedioth Ahronoth* and *Ma'ariv*, when they discovered the sensational element in suicide stories. They would compete in providing more 'juicy' details, including the means of how the suicide was committed.

Weimann and Fishman conducted a systematic content analysis of more than 430 suicide cases published in *Ma'ariv* and *Yedioth* from 1955 to 1990. They found that the number of press reports on suicide declined during the 1960s, increased moderately during the 1970s, and increased dramatically during the 1980s and 1990s, an increase of more than 500 per cent compared with 1955, despite the relative consistency of suicide acts in reality. Moreover, the space devoted to suicide stories increased steadily, as did the prominence of the stories in the paper. While between 1955 and 1970 no suicide story exceeded a half page in length, the frequency of articles longer than that increased from 2 per cent of the articles in 1975 to 5.6 per cent in 1980, 6.1 per cent in 1985, and 7.2 per cent in 1990. More and more stories appeared on page one; by 1990, almost 20 per cent of all articles published appeared there. Weimann and Fishman suggest that the growing interest of the press in reporting suicide may be related to the tough competition between the two popular dailies, one that led to sensationalization of the news and increased space devoted to violence and crime.[68]

The Israeli press has no qualms reporting the means by which suicides are committed. Weimann and Fishman show that the press focused on the more violent modes of suicides: shooting (28.8 per cent of all reports), hanging (20.2 per cent), jumping from high buildings (17.4 per cent). The less violent modes were less attractive for the press, with taking poison (the most frequent mode of suicide among females) comprising only 8.4 per cent of the stories, far below its actual frequency (34.2 per cent among females, 20.9 per cent among males).[69]

As may be imagined, the motive for suicide also plays a major role in the decision whether to report it or not. It is alarming to note that the press operates in accordance with stereotypes that distort reality and convey a false impression to readers. Weimann and Fishman have shown that the reality perceived through the media is very different from the reality formally portrayed by the official statistics. They chose

to review three 'most obvious' motives for suicide: economic hardship, romantic disappointment, and mental problems. They found that the first two had low frequencies in the official statistics but high prevalence in the press. The last motive was underrepresented in the press compared with its high prevalence in reality. According to their data, the leading motive for suicide in Israel was personal depression, motivating 42.7 per cent of the males and 53.3 per cent of the females who committed suicide, but only 18.1 per cent of the suicide stories demonstrated personal depression. Furthermore, the distortion of reality was intensified when they examined the motive and the gender of suicides together. While females, according to the official data, tended to commit suicide because of economic hardships more often than males, the media portrayed the reverse picture, that males were more likely than females to commit suicide owing to economic problems. In addition, the official statistics showed that males tended to have the romantic motive assigned to their suicide at a much higher frequency than females, while the press underplayed that fact and even slightly, though not statistically significantly, tended to attribute it more than females.[70]

During the 1980s and the 1990s, there were several waves of suicides. One wave involved some six teenagers from the Jerusalem area. There was a feeling that the elaborate reports on the front pages of the newspapers contributed to the suicides in this wave, when the press numbered each suicide and provided the most personal details. A second wave involved young soldiers in the Israel Defence Forces (IDF). Yet again, there was the notion that the detailed reports produced copycats.[71]

In April 1986, a special symposium was convened to discuss this issue of media coverage of suicide. Professor Aryeh Arhel, President of Red Magen David (the Israeli Red Cross), argued that bold publication of suicide stories, especially of youngsters, might provoke a suicide wave. He noted that, generally speaking, suicide is not a sudden incident but the result of the internal struggle of a person under personal and other pressures. The decision on how to cope with his/her situation is a delicate matter that could be influenced by media coverage of suicide. His opinion was that it was preferable to report suicides in small print on the last page and to refrain from giving such stories prominence in the newspapers. Dr Bracha Geoni, Director of the Youth Department of Shalvata Hospital, contended that newspaper coverage of suicides is a catalyst to further suicides among youth. According to her data, 80 per cent of suicides in Israel take place among normal

youth. The dramatization of suicide stories by the media might drive other youth in sensitive conditions to copy this act. She reported several copycat incidents, and said that in the past newspaper clippings concerning suicide reporting were found in the rooms of young people who tried to commit suicide. In her opinion, the media should refrain from publishing the means by which suicides were committed. This is because in several incidents suicides imitated the methods reported by the media.

Amos Shapira, a law professor at Tel Aviv University and currently the Deputy President of the Israel Press Council, voiced a totally different opinion. He argued that there was not a single poll demonstrating that lack of publicity on suicide helped to prevent such incidents. He advocated finding ways to fight the factors that caused people to commit suicide rather than fighting against the media, which merely presented the given reality. In a free society, the role of the press was to bring relevant material to the attention of concerned parents. We need to invest more in education and explanation, to try to discover causes for depression among the youth, and to raise a voice against easy access to weapons that facilitate suicide.[72]

Professor Shapira's viewpoint is too sweeping, and therefore lacks sensitivity. Of course we should invest more efforts to fight depression, and education is a vital tool in this respect. At the same time, we should not relieve the media from their public responsibilities. Responsibility prescribes proportionality and caution in the coverage of suicide: not to glamourize such incidents; to report while being aware of the likelihood of the copycat phenomenon.

As stated, suicide stories in Israel are reported in the most sensational terms. On 9 January 1994, the last news page of *Yedioth Ahronoth* carried a detailed story of how a young girl, aged 15, burned herself to death.[73] Recently, *Yedioth* reported in a white-and-red headline that a 15-year-old boy hanged himself in his room during his brother's circumcision. The report elaborated that the boy took a belt and tied it on a crossbar in his room. He was found by his 17-year-old sister.[74] Periodically, the press publishes statistics about the motives for suicide attempts, how they were committed, and the profile of suicides: their gender, age, and country of origin.[75]

Conclusion

The main impetus for not reporting suicide in Canada over the years has been that it is a private matter of no public interest. The media on

the whole are quite responsible and sensitive where suicide is concerned. Principally, newspapers rarely report routine suicide. Many feel that reporting on suicides should be done with utmost sensitivity because people contemplating suicide are emotionally unstable and may be influenced by the reports. Generally, the Canadian media do not report methods of suicide; do not report underground suicide (which apparently is common, especially in Toronto); do not show live suicide; and do not publish suicide statistics. They do cover suicides of public figures and when the case involves some wider dimensions.[76] This study found that suicide is reported when it is identified as a problem among sections of the population: youth; native people; Aids patients; farmers; abused children; the particular problem of Quebec; and when the story involves different forms of assisted suicide. Quite naturally, the suicides of well-known figures, whose stories encompass unusual human drama and suggest a general problem that may affect some segments of the population, are reported more widely.

The grounds for reporting such incidents of suicide are solid and well reasoned. The public should be aware of phenomena that exceed the emotional distress of one particular individual. At the same time, caution demands not to sensationalize suicide stories, both for the sake of sensitivity towards the people concerned and awareness of the consequences of suicide reporting. Media reporters and editors are not abstract humans living in some sort of 'state of nature'. They are *citizens* who are expected to show responsibility in their reporting. Entry into the industry of journalism does not exempt citizens from this basic responsibility. On the contrary, because of the extra burden of affecting the lives of others, media reporters and editors are expected to show sensitivity and to adhere to the liberal background rights, first and foremost respect for others and not harming others.[77] Whenever the media cover a suicide story, they should not provide details about how the suicide was conducted, and they should not romanticize the deed. I conclude with Section III of the Statement of Principles for Canadian Daily Newspapers, which is pertinent:

> The Newspaper has responsibilities to its readers, its shareholders, its employees and its advertisers. But the operation of a newspaper is in effect a public trust, no less binding because it is not formally conferred, and its overriding responsibility is to the society which protects and provides its freedom.[78]

7

The Work of the Press Councils in Great Britain, Canada, and Israel: a Comparative Appraisal

Introduction

The aim of this chapter is to review the work of the press councils in Britain, Canada, and Israel. Britain and Israel are unitary states, each with its own national press council. Canada is a federal state with provincial press councils in all provinces except Saskatchewan. The British Press Council and the Press Councils in Canada, with the exception of Quebec, deal only with the written press. The Quebec Press Council and the Israel Press Council deal with both the written and electronic media.

The press councils, however, do not possess real ability to sanction newspapers for misconduct. The espoused idea is of self-regulation by the press. The essay considers the history of the press councils in Britain, Canada, and Israel, analysing the ways they developed, their work, and how they have achieved their current status. It is argued that the existing situation in the three democracies is far from satisfactory, and that the media should advance more elaborate mechanisms of self-control, empowering the press councils with greater authority and equipping them with substantive ability to sanction.

The British case

At the end of World War II, Britain and its politicians were concerned about the growing tendency toward concentration of ownership (which was much less marked then than it is now), and about the ethical standards of newspaper proprietors and journalists. In 1947, the first Royal Commission (the Ross Commission) was set up 'to inquire

into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations'.[1] Two years later, in 1949, the Ross Commission submitted its report which recommended the establishment of a council consisting of members from the newspaper owners', editors', and journalists' organizations, with lay people representing the public and an independent chair. The newspaper industry showed no enthusiasm to set up the council, and only after two more years of negotiations and an implied threat on the part of government to impose a statutory council did the newspaper industry agree to form the press council.[2]

The British Press Council was founded in 1953. It was a voluntary body, formed and sponsored by the press, not imposed by or answerable to the government. Its aims were to preserve the freedom of the press while trying to ensure its responsibility, 'to further the efficiency of the profession and the well-being of those who practise it',[3] and to resolve the grievances of those who felt they had been wronged. The Council was initially composed of 25 newspaper proprietors, and later included magazine proprietors, editors and journalists.[4]

The poor performance of the Press Council was subject to scathing criticism. The Council was financed wholly by the industry, as its successor is now. It did little to influence the development of professional standards and failed to draw attention to the increasingly monopolistic tendencies in the industry.[5] In February 1961, the government appointed a second Royal Commission (the Shawcross Commission) to take another look at the ethics and economics of newspapering. The Commission recommended a reformed press council which, in addition to its existing duties, would scrutinize and give publicity to changes in ownership and control of newspapers; publish up-to-date statistics; ensure that newspapers carried the name of the company or individual in ultimate control of its affairs; hear complaints from journalists of undue influence from advertizers, and change the membership composition of the Council so as to include lay members in it.[6]

In 1963, on the advice of the Shawcross Commission, members of the public were introduced into the Council in the proportion of five of them to 20 press people. The Council also accepted the Royal Commission's recommendation to appoint an independent chairman. The first lay chairman was Lord Devlin, appointed in 1964. He was a distinguished and well-respected retired judge who had no connections with the press. Fourteen years later, in 1978, the balance between members of the public and members of the industry was made even

with 18 representatives on each side, and an independent, voting chairperson to tip the scales to the public side.

The Press Council had no power of sanction. The norm, however, was to first try to resolve any matter through correspondence with the editor of the offending paper. If no satisfaction were obtained, the Council would then take action. Any newspaper against which a complaint was upheld was required to publish in full the Press Council's adjudication on the complaint. Usually the publication was hidden on the inside pages so no one would read it.[7]

In a period of 37 years, there were only 11 occasions out of hundreds on which a publication failed to report the adjudication against it. It was an accepted moral obligation. Only one of the 11 occasions involved a national newspaper (the *Daily Sketch*), which no longer exists. The other ten occasions involved small, specialized newspapers. The Press Council acknowledged third-party complaints. They are not acknowledged today by the Press Complaints Commission (PCC).[8]

However, the feeling was that the Press Council was ineffective, without sufficient authority or powers. Its bureaucracy was very slow and its work was little known to the public.[9] The press did not regard this body as an authority to decide matters because it never codified its views, and because its decisions were inconsistent: different panels decided similar cases differently (later on we shall see that the same flaw exists also in the Canadian and Israeli press councils). In fact, the Council did not enjoy much of a reputation, and did not gain the respect of the press, or people outside the press.[10]

In 1973, the Younger Committee on Privacy analysed the Council's performance on that subject. Its view was that freedom of the press, rather than the interests of complainants, was the Council's main priority.[11] It argued that the Council could not expect to command public confidence in its work unless there was at least an equal membership of public representatives. The Younger Committee also recommended that the Council's adjudication be published with a prominence equal to that given to the original offending article, and that it should codify its adjudication and keep the code up to date. Neither of these recommendations was implemented.[12]

In 1974, Lord Shawcross became chairman of the Council, resigning directorships of Times Newspapers and Thames Television in order to do so. Robertson argues that he was an advocate, not a judge, and his annual reports 'were outspokenly partisan and moralistic'.[13] That same year, the third Royal Commission (the McGregor Commission) was established, and after three years of work it issued its report. The McGregor

Commission made a detailed study of the Press Council, arguing that the Council 'had so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers'.[14] The Commission held that the work of the Press Council gave the impression that it was more concerned to protect publications from the public than to raise standards in the interests of the public. The Commission also noted the evident absence of standards that should be set down in a code of conduct, the Council's refusal to condemn inaccuracy and distortion, and the ineffectiveness of its sanctions. The Commission found evidence of 'flagrant breaches of acceptable standards', 'inexcusable intrusions into privacy', and that there was 'a pressing call to enhance the standing of the Press Council in the eyes of the public and potential complainants'.[15]

The McGregor Commission urged the Council to publish a code based largely on its earlier adjudication and decisions. However, the Council felt then that it was still preferable to rely on building up its jurisprudence rather than to seek to reduce practice and ethics to a tight code.[16] The Council also rejected the idea of seeking more funds and publicity for its services, and undertakings from newspapers to give front-page prominence to complaints upheld against them.[17]

Thus, the detailed and reasoned report made only little impact. A former journalist was appointed as a 'conciliator' to try to negotiate settlements before complaints were formally adjudicated, and adjustments to the composition of the Council were made so that half of its membership would come from the public. The Guild of Editors, the National Union of Journalists (NUJ, a trade union), and the Institute of Journalists (an older and much smaller independent, élite body) selected the 18 nominees of the publishers' organizations in England and Scotland. A journalist could not be affiliated with both organizations, which traditionally competed with one another. Each of the 36 members served for a period of three years.

Of the 18 public representatives, any citizen was eligible for election provided he or she did not have any connections with the press. A selection (appointment) committee reviewed the applications and chose the people. The main functions of the Press Council were threefold: first, to deal with complaints of the public against the press; second, to deal with complaints of the press against any other body for their conduct against the press. This was quite rare. The third function was to institute on its own initiative a general inquiry into some aspects of press behaviour. This was done occasionally, for instance, on cheque-book journalism, and on the conduct of the press regarding a particular story, the Yorkshire Ripper.[18]

In 1980, the main union representing journalists, the NUJ, voted at its annual conference to withdraw entirely from the Council because of its ineffectiveness and incapacity for reform. The union felt that the Council could never be free of the proprietors' control and despite increased lay membership still did not provide a representative forum to deal with complaints. Instead the union decided to rely on its own code of conduct and disciplinary procedures to maintain and improve journalistic standards.[19]

At the end of the 1980s there was growing unease with regard to the functioning of the press. One of the most notorious stories was published by the *Sun*. Four days after the tragic Hillsborough stadium disaster during the FA Cup semi-final (15 April 1989), the *Sun* tabloid published an article headlined 'THE TRUTH'. Its subsidiary headline alleged, 'Some fans picked the pockets of victims. Some fans urinated on the brave cops. Some fans beat up PC giving kiss of life.' Following this publication, the Press Council received numerous complaints, including a petition from the Merseyside Area Student Organization with some 7000 signatures. The Council held that the article was one-sided, unbalanced, offering no counter to the allegations, and its general effect was misleading. The Council maintained that the headline 'THE TRUTH' was insensitive, provocative, and unwarranted.[20] This was one of the rare occasions on which a single story had a negative effect on newspaper's sales. Even today, the *Sun* does not sell well in Liverpool.

That same year, 1989, two Private Members' Bills were initiated in Parliament, a Protection of Privacy Act, and a Right of Reply Act, to enforce responsibility on the press.[21] The government was never going to give them the necessary time in the House to complete their required stages. However, the Thatcher government certainly did not want to get into the embarrassing position of having to use the government vote whipping system to kill the bills off. To avoid that embarrassment, the government decided to form an inquiry committee to consider the behaviour of the press and to suggest remedies for the people who complained that the press had invaded their privacy.[22] While this was going on, the Press Council drafted and adopted a code of practice intended to reflect its earlier decisions and declarations, but this was not conceived to be sufficient.

The issue of privacy was at the forefront of concern of the inquiry committee. The committee, headed by Sir David Calcutt, held that 'the Press Council's poor image derives from its ineffectiveness. This in turn is the result of its nature, procedures and inadequate funding.'[23] The

committee recommended, among other things, various procedural changes, in particular, publication of a code of practice, establishment of a hotline, a public commitment by publishers, a quicker handling of complaints; they also recommended that the Press Council be replaced by a new body, the Press Complaints Commission (PCC), similarly voluntary, but the recommendation was accompanied with the threat to turn it into a statutory body armed with powers of law if the voluntary system did not work. The report, issued in June 1990, instructed the new body to concentrate on providing an effective means of redress for complaints against the press. It concluded with the view that 'the press should be given one last chance to demonstrate that non-statutory self-regulation can be made to work effectively. This is a stiff test for the press. If it fails, we recommend that a statutory system for handling complaints should be introduced.'[24]

Following the Calcutt Report, the new and much smaller body was set up in 1991: the Press Complaints Commission. It had the same offices; for a time, it had the director of the Press Council, and it was (and still is) funded by the newspaper industry. It comprised 16 members, including the chairperson. A small commission selected the members: initially nine were editors or senior press people, and six were members of the public coming from the élite, 'the great and the good'. Now there are more public representatives than editors so as to better serve the interests of the public.[25]

A special committee of editors, chaired by the then editor of the *News of the World,* drafted a new Code of Practice for the newspaper industry. The PCC is supposed to ensure that British newspapers and magazines follow the letter and spirit of the ethical Code dealing with issues such as inaccuracy, privacy, misrepresentation, and harassment. The Commission 'resolves complaints about possible breaches of the Code and gives general guidance to editors on related ethical issues'.[26]

Some two years after the establishment of the PCC, at the government's request, Sir David Calcutt alone, this time without a committee, reviewed the work of the PCC. The January 1993 Report argued that the Press Complaints Commission was not an effective regulator of the press. Sir David maintained that the PCC did not 'hold the balance fairly between the press and individual. It is not the truly independent body which it should be. As constituted, it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.'[27] Accordingly, the report recommended replacing the self-regulatory body of the press with a statutory

regime designed to ensure that privacy 'is protected from unjustifiable intrusion, and protected by a body in which the public, as well as the press, has confidence'.[28]

Although Sir David said that his recommendations

> are designed to make a positive contribution to the development of the highest standards of journalism, to enable the press to operate freely and responsibly, and to give it the backing which is needed, in a fiercely competitive market, to resist the wildest excesses,[29]

the government of John Major did not accept his recommendations. The feeling was that the formation of a statutory regime might hinder freedom of expression and the right of the public to know. That feeling was accentuated in the report of the National Heritage Select Committee established after the Calcutt review, which felt that his recommendations were inappropriate for regulating the media. The Select Committee preferred voluntary restraint combined with general laws not aimed solely and specifically at the media.[30]

There are some fundamental differences between the Press Council and the PCC. Whereas the Press Council was largely comprised of people from the industry, the majority of members in the PCC are independent people, including the chairperson. Previously, people approaching the Press Council could not go to the courts.[31] Now people can approach the PCC and subsequently go to the courts. The PCC cannot adjudicate if the issue is under court review, but it can adjudicate when it is not under the court's consideration. In addition, the Code of Practice is written in clear language that lay people without knowledge of law can comprehend. As we shall see, the Israel Press Council adopted many features of the British model.

Every year over 2500 complaints are brought to the PCC. Most concern possible breaches of the Code, and nearly all of those concerning inaccuracy are resolved directly by editors. The Commission adjudicates formally on the remainder. On the whole, 75 per cent of the complaints are resolved without the need of adjudication, while 25 per cent are adjudicated.[32]

In six years of operation there has not been a case when a newspaper failed to publish the PCC's adjudication when asked. Ms Anderson, press officer of the Press Complaints Commission, ensured me that the item appears in a place of comparable prominence to the original piece that provoked the complaint. If the adjudication appears on the inside page, and it is thought that it should be more prominent, the PCC can

demand that it be published again. So usually the press follows the guidelines.[33]

However, this is the only power of the PCC – the requirement to publish the adjudication. This seems to be too little to effectively control the conduct of the media. Much of the debate about the work of the PCC in the last decade revolved around the media's treatment of the Royal family, especially Princess Diana. On 8 June 1992, the PCC issued a press release saying that the recent

> intrusive and speculative treatment by sections of the press (and, indeed, by broadcasters) of the marriage of the Prince and Princess of Wales is an odious exhibition of journalists dabbling their fingers in the stuff of other people's souls in a manner which adds nothing to legitimate public interest.[34]

The manner and tone of the reporting of the private lives of the Prince and Princess of Wales was without a doubt in breach of the Code of Practice. The Code was supposed to provide the framework of decency within which all competitors must work, but in practice the media, most notably the tabloids, clearly betrayed it every day in their publications. Their 'acceptance' of the Code is still lip service at best.

A notable incident that took place in 1993 demonstrated the necessity of such a regulatory body to be truly independent. Photographs of Princess Diana exercising in a gym were published in the *Daily Mirror*. The former chairperson of the PCC, Lord McGregor, was quick to act, recommending that companies should not publish their advertizements in the Mirror Group newspapers. This recommendation was way beyond his authority. The PCC was supposed to be an adjudicating body, with Lord McGregor as the presiding judge, but here he was giving his verdict not only before hearing the evidence but even before a complaint had been made. In protest, the Mirror Group resigned from the PCC. The resignation of such an influential media group was a blow to the PCC and could have led to the breakdown of this body. Lord McGregor realized the mistake he had made and within a day he retreated from his suggestion and the Group rejoined the PCC.[35]

As long as the PCC is funded by the press, it will find it difficult to bite, on justifiable grounds, the hand that feeds its activities.[36] In this regard Mr Charles Moore, Editor of the *Daily Telegraph,* commented:

> The PCC is too frightened from the proprietors. See what happened to Lord McGregor. McGregor acted foolishly, but it was not for the

> proprietors to tell him to go. The proprietors could bully the PCC. They can direct their papers to attack the PCC. They might threaten to leave the PCC.[37]

On 31 August 1997, the Princess of Wales and her lover were killed in Paris. Following her death many people in Britain called for a re-examination of the tension between the right to freedom of expression and the right to privacy.[38] Voices for governmental regulations were heard, but with greater public support. Lord Wakeham, chairperson of the Press Complaints Commission, conceded that the PCC's Code of Practice might change after consultation with editors.[39] On 24 October 1997 the Newspaper Publishers Association sent a memorandum to all national and Sunday newspaper editors, asking for their thoughts on the amended Code of Practice.[40] Bearing in mind the attitude to the Code of Practice of leading personalities within the press I do not think that significant changes will take place. About two months after Princess Diana's tragic death, I had an interview with Mr Robin Esser, consultant editor of the *Daily Mail,* who said that self-regulation was working quite well in Britain, and that there was no need to vest the PCC with more powers.[41] In turn, Rupert Murdoch was asked in an interview whether he had any regrets regarding the conduct of his papers during Diana's life. He answered that his only regret was that he had to pay too much for the paparazzi photos.[42]

On 12 November 1997, the *Guardian* published the results of a public poll on the work of the PCC and on the Royal family. One of the questions was: 'Do you think the current system of self-regulation by the Press Complaints Commission is working?' Of the respondents, 30 per cent thought that the system was working; 59 per cent thought the system was not working, and 12 per cent answered 'Don't know'. Another question addressed the issue of privacy: 'Would you be in favour or against the introduction of a law giving people the right to privacy?' In response, 87 per cent were in favour; 10 per cent were opposed, and 3 per cent answered 'Don't know'.[43] This poll shows the disbelief that the public shares with regard to the work of the press, and the growing support for taking legal steps to protect individual privacy against press intrusion.

The Canadian case

The press councils in Canada were established following the recommendations of the Davey Committee of 1970. Members of that Committee

thought that many of the problems of the press could be alleviated by the existence of a watchdog organization that would monitor the press the way the press monitors society. The Davey Report noted that public confidence in the press was declining and that a press council could help reverse this trend. The Report maintained that the media's tendency towards monopoly threatened to restrict the public's access to diverse and antagonistic sources of information, and that a press council could meet this threat by helping to ensure that media monopolies did not act as though they owned the news. Furthermore, a press council could help foster a sense of professionalism and contribute to developing a set of standards for an occupation that badly needed them. Finally, the Report said that even if a press council did nothing whatever, the very act of setting one up 'would force journalists and publishers, for the first time, to come together on an organised basis to think about what they're doing, how well they're doing it, and why'.[44]

Davey recommended instituting a *national* press council. The Committee recognized that Quebec's special position made it desirable and inevitable that the province have its own regional organization and thought it was equally desirable that a counterpart organization for English-speaking Canada be formed, and that the two bodies affiliate themselves to form a national body.[45] The media preempted the initiative by pushing to establish local press councils. The first to be established were the press councils in Windsor in 1971, and in Alberta and Ontario in 1972.[46] In 1973 the Quebec Press Council was formed.[47] This process continued well into the 1980s,[48] following the strong recommendation of the Kent Commission, which issued its report in 1981.[49] Today there are provincial press councils in all provinces except Saskatchewan.

Right from the Councils' inception, the senior management of the press were very touchy about the possibility of outsiders meddling in their affairs, regarding the very idea of press councils with considerable mistrust. The President of Sterling Newspapers, David Radler, characterized press councils as 'an open forum for denunciations'.[50] Murray Burt, managing editor of the Winnipeg *Free Press,* did not like 'the prospect of editing over my shoulder, perhaps second-guessing three months after the fact – or however long after the fact'.[51] Equally harsh opinions are voiced nowadays. Mr Eddie Greenspon, Ottawa Bureau Chief of the *Globe and Mail,* regards the Ontario Press Council as 'overzealous' and admits that he does not care much about its work. Greenspon thinks that 'ethics is a personal matter, and I apply my own judgement. I do not like the idea that bureaucrats tell me what to do.'[52]

As stated, the Davey Report recommended the creation of a national press council. Some ten years later, at the Kent Commission hearings, the most common suggestion was to establish press councils in provinces. The arguments were that provincial councils had an established practice, that there was already an established jurisprudence that differed from one place to another, and that the nature of the councils differed from one place to another. All this presented obstacles from the outset to the creation of a national organization.[53]

However, one of the major players in the Canadian media, arguably the most influential, Conrad Black, came out in favour of a national press council with the power to accredit journalists; he lobbied for a journalism profession:

> The much-bruited idea of a national press council with regional divisions has considerable merit… .Without being endowed with the disciplinary powers of a bar association (at least initially), the council should have a composition capable of calling members to account for their conduct when necessary, and should be vested with genuine powers of moral suasion.[54]

Mr Black's opinion is yet to be accepted and, furthermore, it is not clear what he means by 'genuine powers of *moral* suasion' (emphasis added), and to what extent such moral powers have, indeed, the ability to persuade. Without being too cynical, I feel that the power to persuade is geared more toward the public than to the press.

In essence, the establishment of the press councils in Canada was a preemptive measure. The press councils in Canada, as well as those in Britain and Israel, serve a highly instrumental purpose: they exist to show the public that the press industries are willing to self-regulate, and that there is no need for external regulation. The question, however, is whether the press councils serve and represent the *public* to the same degree that they serve and represent the press. My impression is that the press councils (at least those in Quebec and Ontario) do not work very hard for different reasons: the press industry does not really want them to work hard; they are incapable of working hard; and the people who work on the councils are perhaps satisfied with the current situation. Let me explain.

Like the British case, the main sponsors of the press councils in Canada (and Israel) are the federation of journalists and the publishers.[55] The councils are said to be totally independent. But because the newspapers might cut their fees to the councils if they feel unhappy

with their adjudication, the councils must be aware of their critics. As in Britain, they find it difficult to bite the hand that feeds them.

Although people in Canada do not take much notice of the work of the press councils,[56] the media do not seem troubled by this, apparently because the situation serves their interests. The media are not thrilled to produce special programmes on their control mechanisms, namely press councils, the ombudsman institution, and so on, because they do not really want to make these institutions well known and popular. As they see the issue, publicizing these institutions is asking for trouble and, therefore, more complaints.

The staff of the Canadian and Israeli press councils is very small in comparison with the British Press Council. They consist of between two and four salaried people.[57] The representatives on the councils – of the journalists, the publishers, and the public – are volunteers. This small staff is incapable of dealing with a large number of complaints, and the media industries that sponsor them obviously do not wish to enlarge it. They are happy with the limited work that the councils accomplish. At the same time it seems that the small staff working on the press councils do not take pains to publicize their existence and their work because they are comfortable dealing with a relatively small number of complaints.[58] They are well aware of their limitations, and that the likelihood of expanding the councils is slight.[59]

The fact that members of the press councils are volunteers creates another problem. Usually they are fairly prominent people, who are busy with their own work. They are unable, and unwilling, to invest a lot of time in the work of the councils. Therefore, the councils meet infrequently. The Quebec Press Council meets four or five times a year. The Ontario Press Council meets three times a year. As we can see, a vicious cycle is at work here. Press councils would need to meet more often if there was more work, but nobody wants to generate more work. Members of the councils and the media industry at large seem satisfied with this arrangement. I call into question whether the interests of the public are best served in this way.

Those who do complain in Quebec and Ontario are often disappointed with the process. Because the councils meet only a few times a year, a complaint received immediately after one meeting will be dealt with only at the next meeting a few months later. Usually it takes several months, sometimes a year, from the time a complaint is received until its adjudication.[60] In that time, the public can forget what was the matter, and the publication of the adjudication is out of context. Mr Michel Roy, President of the Quebec Press Council, admitted that

the process takes too long, and that people want to have a much quicker response. He argued that the Council was respected, and later in the same interview he testified that 'if we find a complaint justified, the newspaper will keep an eye for a week, and then get back to business'.[61]

Moreover, its seems that at least part of the council's work is not systematic. Michael C. Auger, President of the Journalists Federation in Quebec, argued that the body is comprised of volunteers who have no time to invest in the work of the Council, and that there is no respect for the work of the Quebec Press Council, not only because it is conceived as a weak body, with limited authority and a small budget, but also because it gave different adjudications on similar issues.[62] David Pritchard, who studied the work of the Quebec Press Council, asserted that its jurisprudence has never been indexed in any meaningful way, and that essential principles have never been systematically distilled from the hundreds of cases. Pritchard quoted J. Serge Sasseville, who handled all the Quebecor's dealings with the Council: 'They don't know what they're doing!'. He concluded that the jurisprudence of the Council is in a 'state of chaos'. Because the Council's staff had no efficient way to review previous decisions, and the Council did not have the means to undertake the crucial indexing, the Council's decisions rarely cited precedents. Consequently, it was impossible for news organizations to know what the landmark cases were.[63] Inconsistency is a problem shared by the press councils in the three democracies under review.

In Canada, as noted, most people are oblivious to the work of the Press Councils. Some try to look at the councils' work in a positive way. While believing that the press councils have little *long-term* impact, and acknowledging that their impact on the *daily* working of newspapers is also limited, these people argue that press councils serve as a useful outlet for complaints.[64] Others are far more critical. Professor Enn Raudsepp said that the press is obliged to publish a summary of the Press Council's adjudication, and it publishes the adjudication in brief, with a tiny headline at the bottom of the page. He maintained that nobody is compelled to join the council, and concluded, 'it is a totally useless organisation, a window dressing'.[65]

The Israeli case

The foundations for the Israel Press Council were laid in 1956. As in Britain, journalists realized that they had better do something themselves

before the government began to restrict their activities. At that time there were tendencies and voices in the government to legislate a press law and to restrict journalistic activities. In addition, penetrating criticism was voiced by many journalists about their own daily activity. Under this pressure, the journalists instituted a special committee, called the Ethics Committee, whose role was to legislate ethics codes and to form a body that would preempt 'intervention from above'.[66]

Prior to the establishment of the Ethics Committee, the activists in this initiative studied the situation in other democracies. They approached foreign journalists' organizations and finally chose the British as the model, according to which the Israeli journalists formulated their first Code of Ethics. In the first five years of its activity, the Ethics Committee did not receive many complaints. The most critical rulings against newspapers were 'severe reprimand'.[67] In 1962 the National Union of Journalists was established and a year later the Press Council was formed. Many journalists supported the decision but there were also cautionary voices. Gershom Schocken, then Editor of the respected *Ha'aretz* newspaper, said that the press should be very careful in instituting such a controlling body, and that 'we should be careful in obser-ving the limited and well-defined authority of such a body'.[68]

The National Union of Journalists, the Press Editors' Committee, and the Union of the Dailies Management decided to go ahead with the initiative and to establish the Council. The former President of the Supreme Court, Yitzhak Olshan, who in the mid-1960s became the second president of the Council (the first was Zeev Scherf who at one point became the Finance Minister in one of Mapai's governments), explained the rationale and the need for the Council:

> Because in the modern era there are increasing points of friction between the need for freedom of the press and the public interests, the press realised that they should take it upon themselves to bridge the gap between them.[69]

President Olshan served two four-year terms in office before he stepped down and was succeeded by Attorney Yehoshua Rotenstreich. Olshan thought that a free press was a public right rather than a privilege of journalists. A journalist in the Press Council is first and foremost a citizen, and he or she should not subject the Council to his or her professional interests. He saw the prime aim of the Council as preventing abuse of the freedom journalists enjoy through self-restraint. This, in turn, would avert legislative attempts designed to curb such abuse.[70]

President Olshan's first motion was to propose that journalists would not publish facts or rumours before substantiating them in accordance with the best available data. His motion encountered objections from the journalists' representatives, who, Olshan said, preferred getting scoops to safeguarding the public interest. After long deliberations, the motion was accepted.[71]

Next, President Olshan strove to establish 'Clarification Committees' to consider complaints. He wanted these Committees to include public figures who were not press professionals. Again, the motion encountered much opposition on the ground that journalists do not need to be subjected to external control. After a long struggle, the motion passed in the plenary.[72] The same scenario took place when President Olshan suggested including public figures in the plenary and on the Executive Committee, all with voting rights. The motion was eventually adopted.

In 1968, the Press Council decided that it had the authority to discuss complaints also against papers that were not members of the Council. In the event that a paper refused to take part in the deliberation, the Council would be permitted to publish the refusal. The Council considered itself the representative of all the media, without regard to the question of membership. However, this authority was not used systematically. On occasion the Council did deal with such complaints. On many other occasions, especially when the complaints concerned local papers, the Council refused to deal with them on the ground that the papers were non-members.[73]

Like the British and Canadian councils, the Israel Press Council is a voluntary body whose institutions are comprised of representatives of the press (30 per cent); representatives of publishers and editors (30 per cent), and public representatives (40 per cent). Sixty members sit in the plenary organ, and ten in the presidency organ that implements the decisions of the plenary. Recently there have been discussions to expand membership in the plenary and the presidency. This is because the cable television stations as well as Galei Zahal (the military radio station) and the News Corporation of the Second Television and Radio Authority wish to join the Council, and the three major dailies – *Ha'aretz, Yedioth Ahronoth,* and *Ma'ariv* – demand more representatives.[74] The functions of the Council are to protect freedom of the press and information, to crystallize ethical codes, and to examine complaints regarding violations of the codes.[75]

Until 1994 the Clarification Committees considered complaints and submitted their conclusions to the Executive Committee of the Press

Council. Moshe Ronen, a past member in the Executive Committee, testified that the deliberations in this body, which no longer exists, had been partisan and biased. He recalls an incident when the Executive Committee refrained from asking a newspaper to publish the Clarification Committee's ruling, which was very unpleasant for the newspaper. In exchange, after a few minutes the Committee also refrained from asking the rival newspaper to publish another unpleasant ruling that concerned itself. In another incident, members of the Executive Committee organized a lobby within the Committee against the acceptance of the Clarification Committee's ruling concerning complaints of a journalist who became a politician. Those members opposed the politician's views and did not wish to grant him any form of support.[76]

The Israel Press Council has undergone significant changes during the past ten years or so. In 1988, Professor Yitzhak Zamir, former Legal Adviser to the Government (Attorney-General), was elected President of the Council. Prior to his acceptance of the appointment, Professor Zamir clarified that he cared very much about freedom of the press and that he objected to legal intervention to control the Council's work. At the same time, he emphasized the need for an effective mechanism of press self-regulation, with the necessary 'teeth' to maintain professional ethics.[77]

Justice Zamir testifies that he had found an organization with virtually no office and no money. There were no protocols for meetings, hardly any documentation at all. In essence, says Justice Zamir, he found an organization under the leadership of one person: Dr Yehoshua Rotenstreich, who served as President of the Council. President Rotenstreich operated the Council: he convened the meetings, decided on priorities, and ruled the body. Justice Zamir maintains that in practice President Rotenstreich ran the Council's affairs from his well-to-do law office, and with the help of the then Secretary-General, Yoseph Karni, who was a volunteer. The Union of Journalists gave the Secretary-General a desk and telephone in the Journalists' House (Beith Sokolov), and arranged for the typing of his letters. Beith Sokolov also arranged rooms for the meetings of the Council's organs. There were not many complaints because there was not much public awareness of the Council's work. The journalists and editors wanted a council, but did not want to invest in it. It appears, to use Professor Raudsepp's words, that the Council was an Israeli-made window dressing. It was basically a figleaf to cover the indecencies and breaches of ethics on the part of the journalists and their editors and publishers.

More than a year before Professor Zamir took office, Dr Rotenstreich died and the Council practically ceased operations during this period. The Editor of *Ha'aretz* newspaper, Hanoch Marmari, later said that the Council did not operate for a year and nothing happened. He regarded this as proof that it was obsolete.[78] President Zamir's first priority was to secure funds for the work of the Council. The Union of Journalists and the Editors' Committee provided a two-room office in the Journalists' House. They also undertook to pay monthly membership fees to secure a budget for the day-to-day work. Nevertheless, securing the funding was not an easy task and the fees were hard to raise. After a few months the Presidency of the Council started to work on drafting Press Council bylaws and on revising the Professional Ethics Code. President Zamir proposed to institute an Ethics Tribunal to replace the existing Clarification Committees. The journalists did not like the idea of a Tribunal to which they would be subordinated, and members of the Executive Committee realized that the institution of the Tribunal would render them obsolete because the decisions of the Tribunal would no longer necessitate ratification of the adjudication by the Committee. However, the Council bylaws and the Ethics Code were slowly drafted and updated by the plenary, including the institution of the Tribunal, until the discussion came to deal with the 'teeth': the powers of the Tribunal.

For President Zamir, the Ethics Code and the mechanism for *effective* self-regulation were the main things. The existing most severe sanction – the publication of adjudication – was not to be ignored: journalists did not like it. At the same time, it was not a painful penalty, and, moreover, the public did not think it was a substantial sanction. Many times the publication of adjudication was brief and the President's protests fell on deaf ears because the Council lacked real power. In such circumstances, when the journalists did not appreciate the work of the Council, no wonder it also lacked public esteem. President Zamir thought it was important that the public would see the sanctions as significant, and would truly regard the Press Council as a shield to protect the press from legislation. He also thought that if the press did not introduce these sanctions, the legislature would find it necessary to intervene. Some press representatives calmed his worries by saying that the politicians were afraid of the press and would never resort to legislation.[79] In essence, the industry wanted a limited Council with limited powers and abilities.

The journalists and editors were willing to accept the existing sanctions: reprimand and publication of adjudication. President Zamir

pushed for two additional sanctions: a maximum fine of NIS10 000 (roughly US$7000 in 1992 terms) on newspapers, and a recommendation to suspend journalists for one month for severe breaches of the Ethics Code. After many hesitations and long negotiations, the journalists agreed, but the editors stood firm in their objection. Then the journalists retreated and joined the editors. President Zamir explained his position and threatened to resign. When the resolution failed to pass in the plenary owing to the objection of journalists and editors, who were the majority (the public representatives supported the President's motion), Zamir resigned from office (in 1992). Because of this episode, Justice Zamir thinks that the majority of the Council should consist of public representatives who would truly care for the public interest.[80]

In 1993, Attorney Haim Zadok (a former Minister of Justice) was nominated President of the Council. During his first year in office, he pushed forward some of his predecessor's initiatives. The Executive Committee and the Clarification Committees were abolished. The Ethics Tribunal was established in their place. In addition, the new Press Council bylaws and the revised Professional Ethics Code were ratified by the plenary in May 1994 and in May 1996 respectively.

The Press Council bylaws set forth the ends and functions of the Council (as described above); explicate the identity of the Council's members, in accordance with the proportion described between journalists, editors, and publishers, and public representatives; set out procedures for the work of the Council, and the allocation of budget; and discuss the roles of the Ethics Tribunal. The Professional Ethics Code covers issues similar to those invoked in the British and Canadian Codes: decency; fairness; truth; objectivity; privacy; coverage of specified segments of the population (victims; minors; patients, and so on); racism; discrimination; freebies; confidentiality of sources, and so on.[81]

Complaints are dealt with according to the following procedure: the President of the Council, or person/s appointed by him (usually the Secretary-General),[82] reviews the complaint upon its receipt. If the complaint is found to be lacking any substance, he/she may turn it down and inform the complainant of the reasoning. If the complaint is not rejected, the Secretary-General passes the complaint to the Council's Legal Advisor or his/her deputy (usually to the latter). The Deputy Legal Advisor reviews the complaint and if he/she thinks it is *prima facie* valid, it is supposed to be sent within 48 hours to the media organization that is the subject of the complaint with a request to submit a response within ten days. As in Britain, the Council does not deal with complaints that are handled by judicial courts or by the police.

Within ten days the complaint and the response to it are supposed to be examined by the Council's Legal Advisor (usually by the deputy). The examiner is required to decide within 21 days from the receipt of the complaint whether to pass it on to the Chairperson of the Ethics Tribunal. The examiner will do so only if he/she thinks that there has been *prima facie* violation of the Code of Ethics. Before the complaint is passed to the Chairperson of the Ethics Tribunal, the President of the Council is entitled to seek ways to settle the complaint without adjudication, provided that the complainant and the media organization concerned agree to this.[83]

Once the Chairperson of the Ethics Tribunal has received the complaint, he/she appoints a tribunal comprised of three members: a public representative (Chairperson of the tribunal), a journalists' representative, and a representative of the publishers and editors. The Chairperson of the Ethics Tribunal makes sure that the representatives of the journalists, publishers, and editors are not from the same media organ that is the subject of the complaint. The Tribunal is required to submit its ruling within 21 days. The ruling is not required to be unanimous. A majority vote is binding. In the event that one of the sides wishes to appeal against the ruling, an appeal must be submitted within ten days. It will be adjudicated by a larger panel of the Tribunal, comprised of five or seven members nominated by the Chairperson of the Ethics Tribunal. Two of the members of the appeal panel must be public representatives. The other three are representatives of the journalists, publishers, and editors.[84]

The Tribunal is supposed to weigh the interests of the Press Council, and to serve as a guide and a 'watchdog'.[85] Members of the Tribunal are elected for a period of three years and can be re-elected. In the event that a complaint is found justified, the Tribunal can decide on one of the following measures against the journalist and/or his/her newspaper: to issue a warning; to reprimand; to ask that an apology be published; or to suspend the newspaper from the Council for a limited period of time.[86] The punishment of suspension is not a very wise alternative given that the Council is striving to have all newspapers become members. In the words of President Zadok, this punishment saws off the bough one is sitting on.[87] Attorney Uri Slonim, Chairperson of the Ethics Tribunal from the day of its establishment, some three years ago, and Mr Bezalel Eyal, Secretary-General of the Council, said that the most extreme measure taken by the Tribunal was to ask the paper concerned to publish the Tribunal's adjudication in a prominent place. The newspapers usually comply with the rulings of the Tribunal.[88]

In 1994, the Press Council received 95 complaints; 27 complaints were submitted to the Tribunal for deliberation and ruling, the others were rejected or resolved prior to the Tribunal. In 1995, 94 complaints were received, of which 19 reached the Tribunal. In 1996 the Council received 92 complaints, and 18 necessitated the attention of the Tribunal. In 1997 there were 148 complaints and 17 were passed to the Tribunal. In 1998 the Council received 130 complaints, most of which were pending resolution in 1999 owing to the dispute with the journalists, publishers, and editors over the issues of representation and funding.[89] Secretary-General Eyal said that on average it takes three months from the time a complaint is received until the Tribunal resolves it.[90] He nevertheless admitted that the process is longer now because of the crisis that has paralysed the work of the Council for a few months (see *infra*). My own examination of the Council's files during the three years 1996 to 1998, and the Council's most recent *Select Tribunal Decisions and Judgements* that covers the years 1994–95, shows that it takes between one and thirteen months to resolve complaints that necessitated the attention of the Tribunal, and that the average time of dealing with complaints is six months.

In the review of the Canadian situation it was said that the Ontario Press Council meets three times a year. Similarly, the plenary of the Israeli Press Council is also supposed to meet three times a year. The plenary decides on policy issues. The Ethics Tribunal of the Israel Press Council deals with complaints and they meet 'in accordance to need'. The needs, it appears, are not overwhelming.

The Israel Press Council rarely met during 1998 because the journalists, who fund 40 per cent of the Council's budget, decided to stop the funding. President of the Council Zadok tried to raise funds from independent sources but did not succeed. After long deliberations, a new arrangement is being formed according to which 80 per cent of the budget will be funded by the publishers and editors, and only 20 per cent by the journalists.[91] The publishers and editors offered to cover the entire budget of the Council but the Israel Union of Journalists rejected this generous offer and agreed to take upon itself the burden of 20 per cent. This new arrangement will grant more power to publishers, and the Council will be more cautious in scrutinizing them. There will have to be a dramatic change to allow truly free and independent work by the Council.[92]

President Zadok is, on the whole, satisfied with the Council's work. He thinks that it should remain voluntary, equipped with public–moral sanctions, and that the developments – the new Professional Ethics

Code of 1996, and the formation and work of the Ethics Tribunal – strengthened the position of the Council. One positive sign that reflects the status of the Council is the fact that its representatives are consulted whenever members of The Knesset contemplate new press laws. However, the fact that there are growing number of efforts to legislate laws that would limit press freedom is alarming. President Zadok is striving to have publishers and editors see the importance of sitting on the Council, rather than sending third-rate representatives. Subsequently President Zadok plans to convince prominent journalists to become members. Right now, activists of the Israel Union of Journalists sit on the Council, and these are not necessarily the most prominent people in the industry. After solving the issue of representation, President Zadok thinks it will be easier to secure more funding from publishers, editors, and journalists, which will foster more effective work by the Council. He does not think that funding should be secured outside the press industry, and would like to think that more people in the industry are more appreciative of the necessity in having a strong Press Council, especially in the face of a growing wave of attempts to legislate illiberal press laws.[93]

As a member of the Council's plenary, I am far from satisfied with its current conduct. The Council meets irregularly, at best three times a year. It does not raise its voice with regard to important ethical concerns on the public agenda. Its budget is ridiculous – NIS300 000 a year (US$74 000) – and as a body it is unable to scrutinize effectively the work of the press that funds the organization. Its image among the public is one of a stagnant, ineffective body, whose work is obscure and whose existence is questionable. There needs to be a major reassessment of the work of press councils and a systematic reorganization of their machinery in order to make these bodies effective entities that really are able to fulfil their duties of supervision and monitoring the media. The press councils should be equipped with more power, and have the support of independent, non-partisan foundations that care about the media and about democracy.

One of the criticisms against the work of the Ethics Tribunal concerns its inconsistent adjudication. As with the British and Canadian Press Councils, different panels of the Tribunal may decide similar cases differently. In order to prevent this, the Tribunal's decisions should be published regularly, and in any event they should be circulated among members of the Tribunal. The Tribunal's judgments are supposed to be published once in every year. However, because of the limited budget and the past year-long dispute with the journalists,

publishers and editors, only one such selection of judgments was published in 1996.

Professor Amos Shapira, Deputy President of the Press Council, thinks that this problem of inconsistent adjudication needs to be addressed and answered through more publication and circulation of the Tribunal's decisions among its members.[94] Justice Zamir thinks that one of the roles of the Secretary-General (Mr Eyal is a former journalist, not a lawyer) and the Legal Advisor is to review all the rulings and see that the working of the Tribunal conforms to the norms and precedents.[95] I believe this is a major issue and that members of the Tribunal need to be consistent in their judgments to maintain their credibility. Inconsistency is a prescription for justified grievances. Newspapers and journalists might feel that justice would be ill served if they were found guilty of violating the Code when another paper is acquitted after committing the same questionable deed. Furthermore, it is unjust to inconsistently penalize different papers for similar ethical misconduct. One paper would be warned while the other would be suspended for the same misconduct. Diversity of interpretations is fine within boundaries. Each panel of judges should not decide inharmoniously without being aware of precedents.

In the current state of affairs, the Council cannot work effectively. The Legal Advisor and deputy are volunteers. The Legal Advisor is a successful lawyer who can hardly find time to review the complaints, and the work is currently done by the deputy. The deputy has more time but with limited energies. There is a need to secure a budget for an independent salaried Legal Advisor. I asked Secretary-General Eyal whether it was possible to resolve the problem of inconsistency at least through a steady issuing of reports that cover the work of the Tribunal. His answer was that he had prepared another selection of the Tribunal's rulings, but because of budget constraints he could not have it published. As for my suggestion to circulate the rulings, at least among the members of the Ethics Tribunal, this too was impossible. The budget did not allow photocopying and sending decisions to all members, and the secretary, who is working part-time, cannot devote time and attention to mailing the more than 150 members of the Tribunal.[96]

In February 1996, the Minister of Justice and the Minister of the Interior established a public committee to check the legal arrangements relating to the work of the press in Israel. The Committee, headed by President of the Council Zadok, issued its report in September 1997. With regard to the Press Council, the Zadok

Committee concluded that its voluntary status and the fact that the Council's decisions were not binding hindered its ability to enforce the Ethics Code. The Committee voiced its concern that the present situation permitted the press to ignore the professional and ethical rules, and to conduct their affairs as they saw fit. The Committee therefore recommended the enactment of a new obligatory arrangement that would compel the press to abide by the Code of Ethics and, at the same time would improve the public image of the press.[97]

The arrangement, accordingly, would consist of two parts: on the one hand, the authority to write and impose the professional Ethics Code would remain in the independent hands of the Press Council; on the other hand, the law would determine that every journalist and every newspaper ought to conduct their affairs as prescribed by the Ethics Code, and that they must respect the rulings of the Ethics Tribunal. At the same time, the Committee decided to refrain from prescribing sanctions for the violation of the law: 'The sanctions would be public, professional and moral, determined by the Press Council's bylaws and its Code of Ethics.'[98] This arrangement of imperfect legal obligation was deemed necessary by the majority of the committee,[99] in order to balance the interest of strengthening the normative status of the Code and in the interest of keeping the media independent of governmental involvement in determining the contents of the Ethics Code. The recommended law, the 'Press Council Law', would hold that 'every newspaper and every journalist will be obliged to maintain the Ethics Code of the Press Council, and to abide by the Council's Tribunal'.[100]

The Zadok Committee expressed concern that the self-regulatory mechanisms of the media were not working as they should, and that something should be done to enforce the Code of Ethics. I see no harm in the enactment of the suggested law. I do not think that this law could undermine the independent status of the press and it might strengthen, in a positive way, the authority of the Press Council. On this issue my view is similar to that of Attorney Slonim, who is also in favour of such a law, thinking that it would strengthen the status of the Council and would provide its Ethics Tribunal with 'more teeth'.[101] The Secretary-General of the Council, Bezalel Eyal, does not think that this law will pass in The Knesset in the foreseeable future.[102] President of the Council Zadok hopes that it will pass at some later point by the Knesset.[103] Justice Zamir is ideologically 'unhappy' with the need to resort to legislation. He would have liked the Committee to specify significant sanctions for the Council. At the same time, Justice Zamir thinks that this might be the solution in the present state of affairs, given

that the journalists and editors are unwilling to grant the Council further sanctions, and reporters continue to breach the Ethics Code. This moderate form of legislation could prove to be the beginning of a solution.[104]

The concluding section offers some further recommendations to improve the work of the press councils.

Conclusion

Many people in the media portray any limitation on free expression as the infringement of a virtue that lies at the heart of democracy. But often this portrayal is exaggerated. We need to acknowledge the 'democratic catch': that the very foundations of democracy might open the gate for denial of fundamental rights. Often the case is not one of a zero-sum game. Quite the contrary: sometimes limitations on free speech are required to safeguard basic liberal values, like the right to privacy. The freedom to print and publish does not include the freedom to unjustifiably ruin one's name, one's honour and dignity. Indeed, the British, Canadian, and Israeli societies have sensational tabloid journalism that does not care much for the work of the press councils, and prints whatever story is likely to increase its sales. Financial and ethical considerations do not necessarily go hand-in-hand. To ensure that some standards are maintained, the press (in Israel and Quebec the media at large) must have a strong, independent, and effective Press Council, with significant powers of sanction. The Press Council should publicize itself, its powers, work, and adjudication, to make itself known to the public and to gain its trust. The budget to run each council's affairs should be far larger than it now is. We have seen that the very limited budget of the councils does not allow them to carry out their duties adequately.

We also witnessed that the media industries conceive the press councils more or less as lightning rods. They exist to show that the press cares about ethics, that it grapples with ethical dilemmas, that it is interested in what the public thinks; therefore there is no need for restrictive legislation. Press councils are designed to receive and deal with public grievances as well as to calm intolerant tendencies on the part of the legislature.

There are many similarities between the press councils in Britain, Canada, and Israel. The only powers that the press councils have is the publication of adjudication against the papers. This is a very limited power. Newspapers in Britain and Canada that have opted out and are not members of the press councils are not obliged by their adjudication.

The case is different in Israel, as described *supra*. In the three democracies, papers that do publish adjudication of justified complaints against them do not necessarily grant the adjudication a prominent place in the newspaper.

Furthermore, the press councils are little known in their respective countries. Large segments of all three societies are unaware of their existence, and many of those who are aware of their presence do not appreciate their work. This is because the press councils are voluntary bodies, with little authority and power, with very limited abilities, and they enjoy only qualified support of the industry. The press industries want the councils to act as preventive bodies, to preempt measures that would interfere with press freedom; they do not really want the press councils to represent the public interests; they fund the work of the councils and through this they secure their dependence. The result is that the public conceives their work as a 'sold game', and most of it remain indifferent or uninterested in what the councils do.

Some of the papers, while upholding the idea of press freedom, abuse that freedom. This should not be allowed. As Anthony Smith believes, it is essential that the press councils be accorded the powers to humiliate, to expose hideous and ghastly publications and behaviour.[105] These powers should include the following:

- The publication of adjudication. Any newspaper against which a complaint has been upheld should publish in full the Press Council's adjudication on that complaint. The publication should appear in a prominent place. If the Council is unhappy with the placement of the adjudication, it should be able to ask the paper to republish the item on a specific page. The Council should be able to decide where, on what page, the adjudication should be published, so as not to allow newspapers to bury the adjudication-in-brief in small letters on an inside page. We have seen that the publication of adjudication is the only power that press councils possess, and that it is not enough to adequately monitor the work of the press.

Additional powers should be granted to the councils which would include:

- The ability to impose significant fines on newspapers for gross misconduct. These fines should be given to designated charities. Because of the inherent conflict of interests, the fines should not be made available to sponsor the work of the Press Council. After the

tragic death of Princess Diana in 1997, the British PCC contemplated this idea but in the end it was decided not to expand the powers of control. Charles Moore and Anthony Smith are among the experts who thought that the ability to impose fines was a good idea that would enhance the effective working of the PCC. Justice Zamir suggested the same for the Israel Press Council.[106]

- The ability to suspend journalists for gross misconduct for a limited period of time (see Justice Zamir's initiative *supra*).
- The ability to suspend publication of newspapers. A threat to suspend publication even for one day would be effective, even more than fines. In Britain, where competition between the tabloids is particularly fierce, readers looking for their usual paper would not find it, and would buy another paper, and might switch their allegiance.[107]

The Press Council should be comprised, as they are indeed now, of public representatives and representatives of the press industry, of the proprietors, and of the editors. A special and independent Select (or Appointment) Committee, selected by leading publishers and prominent journalists, would decide who would serve on the Council among those who offer their candidacy. The independent public representatives should have a majority within the body and include the Chairperson (see Justice Zamir's experience and analysis *supra*). This would be to avoid a partisan majority and a leader who would care more for the interests of the industry than for those of the public.[108]

Members of the Press Council should serve for a period of five years. They could be re-elected by their colleagues for an additional five years if the majority of members felt that they could continue carrying out their duties and if the representatives felt that they were able to continue to commit themselves. After a maximum period of ten years, members should be expected to retire so as to allow the introduction of new members.[109]

Members of the Council should be paid for each meeting in which they take part. We have seen that one of the inherent problems in the working of all the press councils in the three democracies reviewed concerns the voluntary character they assume. The councils are composed of relatively prominent people who do not have the time and the will to adequately meet the responsibilities involved. Volunteering is a lofty idea but it hinders the effective working of the councils. Serving on press councils should be considered a responsibility that deserves some financial recognition. The exact payment should be

decided in accordance with the budget of each council. In any event, the payment should not be seen in terms of a salary but as a token of appreciation for the commitment, time, and effort invested by the members. Members of the Ethics Tribunal or Committees dealing with complaints should convene every two or three months for a weekend during which they would hear complaints and adjudicate. Members of these organs deserve substantial payment for their involvement. Here I follow the pattern set by the British Standards Council, an independent body on behalf of the audience, whose roles are to consider complaints, to conduct research and monitor the broadcasting media, and to provide a forum for the discussion of wider issues. The 12 members of the Council are paid for their work (each member is paid some £14 000 a year, a sum that is more than a mere token of appreciation), and they meet several times a year for concentrated sessions of two to three days to adjudicate complaints.[110] Complaints to the Press Council should be made in writing, snail mail and electronic mail, free of charge, as is the case now. The procedure should be fast, informal, and available to ordinary people. One should not have to have a lawyer to be represented.

Funding is an essential prerequisite for independence of the councils. The press councils should be funded by an independent body – a charity or a foundation – that cares about the press and understands its significant role in a democratic society. This body is required to be apolitical, without any affiliation to the media. Existing bodies like the Ford or MacArthur foundations would be a suitable model, or alternatively special charities ('Concerned Citizens for Accountable Media') could be founded. We must change the existing situation where proprietors fund the councils that are supposed to scrutinize their conduct. There is room to suspect that the public interests are not adequately served when the entire funding comes from the industry.

The press councils' adjudication should be made in accordance with a written Code of Ethics. The Code should be written in clear language that lay people without knowledge of law can comprehend. The Code of Ethics should not cover areas that are covered by the law but should set normative standards for ethical and professional reporting. The Code of Ethics should be circulated among media circles and among the public at large so people will be aware of its existence. Editors should see that the Code is on the desk of every reporter. This is not the case now in most media organizations in Britain, Canada, and Israel. As suggested in Chapter 5, the Code of Practice should be incorporated into the journalists' contracts.

The adjudication of the press councils should be reported regularly every several months, as is the case in Britain. It is assumed that if the above recommendations were accepted, there would be sufficient material to issue a report every two months or so. These reports should be sent to all people involved in the work of the councils: reporters, publishers, editors, and members of the public.

Finally, serving on the press council should be regarded as an honour for media organizations, reflecting their keeping of ethical standards. As suggested in Chapter 5, we should create a two-tier press system of those who accept and abide by ethical standards and those who would print any news that would sell. Incentives should be given to those who adhere to ethical standards.

Appendix: Perceptions of Media Coverage among the Israeli-Jewish Public: a Reflection of Existing Social Cleavages?[1] (with Itzhak Yanovitzky)

Introduction

In recent years we have witnessed growing criticism of the conduct of the mass media in Israel.[2] This criticism is multidimensional (social, political, economic, cultural, and ethical) and is grounded partially in facts and mostly in beliefs concerning the conduct of the media. Among those who criticize the media are representatives of the political right and left, Jews and Arabs, religious and secular, elite members and lay people, academics, judges, and media professionals themselves.

Three typical critiques are raised against the media. First, that the media are not an objective but a politically biased mediator. This criticism is common among all political parties in Israel, on the right and the left, and is especially prominent during political tensions, like election campaigns.[3] Another common criticism is that the Israeli media lack social responsibility. In this respect, some express concern that the media's irresponsible coverage of national events may undermine state security[4] or offend (unintentionally) public morale. One such contention is that intense coverage of terrorist events, such as those that followed the signing of the Oslo Accords in September 1993, increased public fears and anxieties.[5]

Finally, some find the Israeli media's pursuit of sensationalism owing to market-driven competition to be a major flaw. The media, they argue, frequently and needlessly invade the privacy of individuals, and consequently severely impair the reputation of individuals, groups, or organizations.[6] The use of hidden listening devices, on the instructions of the editor of the national newspaper *Ma'ariv*, in the offices of its competitor *Yedioth Ahronoth*, is only one (although the principal) example of behaviour driven by unrestrained competition.[7]

These criticisms are not unique to Israel. Similar arguments are an integral part of public discourse in most democratic societies.[8] More often than not, these arguments are not substantiated by empirical data. It may be argued that in a considerable number of cases biased judgements lead to a perception of biased media, and not *vice versa*.[9]

Both critics and supporters of the Israeli media ignore one of the most important aspects of the debate: how do the media consumers themselves (that is, the

public) evaluate the conduct of the Israeli media? The goals of this case study were (a) to explore the attitudes of the Jewish public toward the conduct of the Israeli media,[10] (b) to examine the extent to which there is a discrepancy between public perceptions of the conduct of the media and their view of how the media ought to behave, and (c) to try and explain this discrepancy as a product of existing social cleavages in the Israeli society.

The media's role in democratic societies: the 'is' versus the 'ought'

The mass media are widely assumed to occupy a central role in modern democratic societies. The media are the primary providers of essential information to the public,[11] the force that sets the public agenda,[12] the 'watchdogs' of government on behalf of the public,[13] important agents of political socialization,[14] an important mechanism of mobilization,[15] and the essential platform of participatory democracy.[16]

To a large extent, these functions of the media derive from the democratic thinking.[17] Democracy is founded on principles such as majority rule while respecting the rights of minorities;[18] representation;[19] participation;[20] open discussion of public matters;[21] tolerance,[22] and equal access to societal resources.[23] Despite differences between the popular perception and the elitist perception of democracy[24] and among the various definitions of participation in democratic procedures (passive versus active, mass versus representation, and so on),[25] the participation of the citizens in political procedures constitutes an essential component of democratic societies. The complex and diverse nature of modern societies requires institutionalization of various mediation procedures. The mass media are widely assumed to play this role.[26]

This basic ideology about the role of the mass media in society highlights the media's role as impartial and objective mediators between government and public opinion. The media, in service of the public, are expected to closely follow government procedures and facilitate social changes when such changes are needed. The media are also said to be objective, free of political biases and partisan considerations (such as economic profits, and personal or institutional benefits), to maintain balanced reporting, uphold social responsibility, and protect individual privacy.[27] Such an image is common among both journalists[28] and politicians,[29] and is increasingly evident in public attitudes.[30]

This ideal type of media conduct does not exist in reality and its future existence is probably unlikely. This pessimistic view stems from recognition of the impact of the social, economic, and political environment in which the media operate. In an era that is characterized by an 'overflow of information', the mass media have no real way of covering all events or all aspects of a given story. Moreover, the media are aided by news selection processes that are not and cannot be objective.[31] These procedures, in turn, are not immune to pressures and manipulations exerted by politicians and bureaucrats, advertisers,[32] pressure groups,[33] publishers,[34] and media owners.[35]

The restrictions within which the media operate are not unknown to the public, which tends to address media content with considerable cynicism and suspicion.[36] This tendency causes consumers to resist the messages they receive,[37]

and it may even lead to increased hostility towards the media and media professionals. Indeed, criticism and hostility are often interwoven, and only rarely do the media receive praise for their conduct.[38] Hence, that perceptions of biased media exist is a predictable consequence of the normative realm that surrounds the mass media. The questions we should ask, therefore, are: against what standards are the media judged, and do these standards vary across individuals and groups in society because of prior dispositions.

As in many current democracies, the status of the media in Israel is quite low.[39] For example, Yuchtman-Yaar found that the Israeli press, alongside the *Histadrut* (the umbrella organization of major trade unions in Israel) and political parties, were ranked the lowest on the trust-in-institutions scale.[40] In a recent study, Yuchtman-Yaar found that the media were ranked fourth out of six with a 46 mark on his 0 to 100 trust-in-institutions scale, after the Israel Defence Forces (82), the Supreme Court (76), and the universities (71), and before the government (39) and the Rabbinate (33).[41] Similarly, Liebes and Ribak found that about half of media consumers in Israel reported considerable mistrust of some or most news they were exposed to.[42] In this study, individual differences in attitudes toward the media were accounted for by four variables: level of education, level of religiousness, age, and ethnic origin. Higher levels of education and religiousness, younger age, and Asian-African origin were found to be associated with higher levels of discontent with the media. In the Israeli context two of these variables are not only measures of sociodemographic characteristics, but also correspond to existing cleavages in the Israeli society. They capture the religious cleavage between orthodox and secular Jews and the ethnic cleavage between Jews of European-American origin (Ashkenazim) and Jews of Asian-African origin (Sephardim).[43]

This study examined the extent to which the Israeli public is content with the performance of the media. This is done by comparing the Israeli public's normative perception of the media's conduct (the 'ought') with its perception of the media's conduct in practice (the 'is'). More specifically, we attempt to answer the following questions: what does the public perceive to be the priorities of journalists and media organizations when reporting the news? Does the public think that media priorities should be changed and, if it does, according to what guiding principles? Finally, are different levels of discrepancy between desired and actual media conduct associated with current social cleavages in Israeli society?

It is hypothesized that a greater level of discrepancy between the desirable and actual conduct of the Israeli media will be greater among (1) more educated people, (2) more religious people, (3) younger people, and (4) people of Asian-African origin. The assumptions underlying these hypotheses are as follows. People with a higher level education tend to be more critical towards the conduct of the media because they tend to devote more thinking to the role of societal institutions.[44] Younger people tend to be more cynical towards the conduct of the media, as they are towards other social institutions.[45] Religious people are more alienated from the predominantly secular culture in Israel and from the media that are part of this culture, and thus are more likely to regard the secular media as obscene, anti-religious and dangerous.[46] Yuchtman-Yaar found that 80 per cent of the ultra-religious expressed no trust or little trust in the media, compared with 63 per cent of religious Jews, 39 per cent of moderately religious Jews (*massortiim*), and 20 per cent of secular Jews.[47] Jews of Asian-African origin revealed a higher level of suspicion towards democratic ideals and towards the

media and their roles in society, especially when fulfilling these roles were perceived as undermining state security and strength. This is because they tended to be more hawkish in their views on security matters.[48]

Data and methods

The sample

Data for the purposes of the current research project were collected from telephone interviews conducted by a survey company (Michshuv) on a random sample of the adult (age 18+) Jewish population of Israel ($N=501$). The sample characteristics are described in Table A1.

Table A1 Demographic characteristics of respondents in the sample ($N=501$)

	Distribution (in percentages)
Sex	
Men	46.0
Women	54.0
Ethnic origin	
Asian-African	33.1
European-American	36.6
Native Israeli	26.1
Immigrants from the former Soviet Union	4.2
Religiousness	
Secular	58.0
Traditional	29.2
Religious	12.8
Age	
18–34	48.2
35–54	37.2
55+	14.6
Education	
Less than high school	7.9
High school education (12 years)	40.9
Greater than high school	51.2
Income*	
Less than average monthly income	30.8
Average income	34.6
Higher than average income	34.6

*Average monthly household income in Israel at the time of the survey (June 1996) was about NIS 4800.

Note: In comparison with the Central Bureau of Statistics demographic distribution, people with higher education are slightly overpresented in the sample.

The questions included in the questionnaire examined public attitudes regarding the conduct of the media, and were similar to questions included in previous research in Israel and in the United States.[49]

Respondents were first asked to answer a general open question concerning the principal considerations they believed underlay the production of news by journalists. Next, respondents were asked about the values they believed guided journalists in practice (the 'is') and those they believed should guide journalists (the 'ought'). Note that in contrast to past research, which focused on the amount of trust granted to the Israeli media in general, we asked about the relative importance (on a scale from 1 to 10) of the following dimensions of media conduct: social responsibility, protecting state security, pursuit of 'scoops', safeguarding individual privacy, objectivity in covering events, and the extent to which the media follow the principle of the public's right to know. The rationale for choosing the six dimensions derived from the fact that typical critiques against the Israeli media were concerned with objectivity, social responsibility, and the pursuit of sensationalism. The two other dimensions were the public's right to know, which was often quoted in Israel and elsewhere as the basic justification for freedom of expression and freedom of the press,[50] and state security – a highly sensitive issue in the Israeli culture.[51]

Also examined was the extent to which criticism voiced against the Israeli media regarding the overly obsessive coverage of terrorist events was held by the entire public, and not only by the élite. The years after the signing of the peace Olso Accords in September 1993 were saturated with terrorist attacks against civilian targets, launched by the Hamas and the Islamic Jihad and designed to reverse the peace trend and to forestall the negotiations between Israel and the PLO. Two additional questions aimed at examining public attitudes regarding the superiority of the public's-right-to-know principle when in conflict with important values such as state security and individual privacy. The two final questions canvassed public perceptions regarding two proposals that were raised in Israel in recent years. One asked whether ethical–professional guidelines similar to those imposed on medical and the legal professionals should be imposed on journalists (see Shimon Peres's suggestion in Chapter 5). The other asked whether more severe restrictions on freedom of speech, including freedom of the press, should be imposed in Israel (see Addendum).

Variables

The dependent variable in the research was the level of discrepancy between attitudes about the desired conduct of the media ('ought' value) and attitudes about the actual conduct of the media in practice ('is' value). For each respondent, this level of discrepancy was calculated separately for each of the six dimensions presented above by subtracting the 'is' value from the 'ought' value. Possible values of this variable ranged from 0 (indicating lack of discrepancy) to ± 10 (the highest possible level of discrepancy). The reliability of the items in the questionnaire that composed this variable was measured by Cronbach's Alpha and was found to be satisfactory ($\alpha = 0.71$). The independent variables were sex, ethnic origin, level of religiousness (interval), age (ratio), level of education (interval), and level of income (interval).

Results

Twenty-four different answers were given by the respondents to the open question: 'What are, in your opinion, the primary considerations that guide journalists' selection of news?' Each respondent was given the opportunity to list up to three considerations. The answers were grouped into five categories: (1) personal interests of journalists (that is, journalists' opinions and political views, personal reputation, and personal gain), (2) interests of media organizations (political interests, audience preferences, scoops, sensations, economic profit, and higher ratings), (3) social values (maintaining state security, protecting freedom of speech, pursuing the public's right to know), (4) serving the public (reporting matters of public interest, revealing facts and 'truths', revealing failures and corruption); (5) ethical considerations (not offending public emotions, weighing the possible results of the publication, safeguarding individual privacy and dignity, weighing the possible influence of the report on the behaviour and conduct of the public). The distribution of these categories is presented in Table A2. Because respondents were given three possibilities regarding the considerations that guide the media, Table A2 presents the cumulative percentage of the considerations mentioned. Hence, the cumulative percentage of all answer categories is greater than 100 per cent.

Table A2 Public opinion about the considerations that are perceived to guide the Israeli media news selection

Consideration	*Cumulative percentage of all subjects*
Personal interests of the reporters	19.5
Interests of media organizations	50.0
Social values	17.0
Serving the public	71.0
Ethical considerations	6.0
Number of respondents	**449**

Table A2 shows that most respondents (71 per cent) indicated that providing a service to the public as the main guiding consideration of media practices. A substantial proportion of respondents also indicated partisan interests of either media organizations (50 per cent) or individual journalists (19.5 per cent) as the prime motive for reporting a certain story. Seventeen per cent thought that social values guided journalists in their work, and only 6 per cent indicated ethical considerations to be a factor in this respect. No statistically significant cross-group (that is, sex, ethnic origin, education, income, and religiousness) differences were found in this respect.

The next step of the analysis was to examine the level of discrepancy between the 'is' and the 'ought'. Figure A1 presents a comparison of average 'is' and 'ought' scores, indicating the relative importance respondents attributed to the six dimensions of media conduct (that is, social responsibility, protecting state security, pursuit of 'scoops', safeguarding individual privacy, objectivity in covering events, and the extent to which the media follow the principle of the public's right to know).

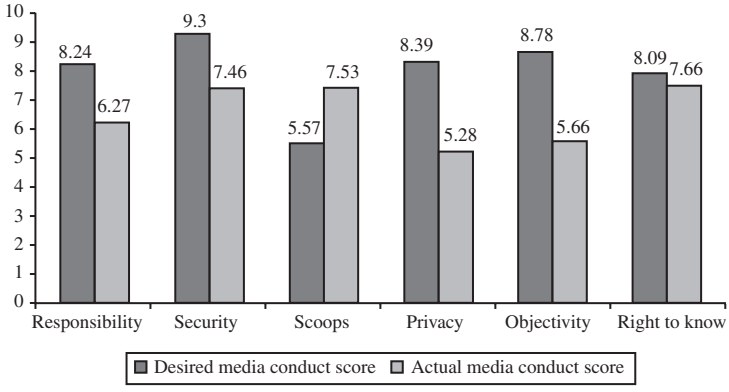


Figure A1 A comparison of average desired and current media conduct scores by six aspects of media conduct ($N = 493$).

Figure A1 describes the level of discrepancy between the perception of how the media ought to function and how they function in practice. The prime consideration that *ought* to guide the media was state security. Following this consideration, in decreasing order of importance, were objectivity in the reporting, protecting individual privacy, social responsibility, the public's right to know, and finally, the pursuit of 'scoops'.

In contrast, the average perception of the considerations that guided the media *in practice* was altogether different. Respondents thought that the main consideration that guided the media in practice was the public's right to know. Following this consideration were the pursuit of 'scoops', state security, social responsibility, objectivity in reporting, and finally, safeguarding individual privacy. The greatest discrepancies between the desired and the actual existed with regard to the dimensions of objectivity in the reporting, ($d = -3.12$) and protecting the privacy of individuals ($d = -3.11$). Clearly the Jewish public wished that the media would give more weight to these considerations. Substantial discrepancies also appeared between the 'ought' and the 'is' on the issues of social responsibility ($d = -1.97$) and state security ($d = -1.84$). In addition, the media were perceived as being overly motivated by the search for 'scoops' ($d = 1.96$). The public's right to know was the only dimension where the discrepancy between the 'ought' and the 'is' was relatively small ($d = -0.43$).

Next we examined whether different sub-populations in the Jewish public differed in their level of discrepancy between 'is' and 'ought'. We performed this analysis in two stages. First we compared the level of discrepancy regarding each of the six dimensions of media conduct across these sub-populations. Next, we estimated the magnitude and significance of group differences by employing a set of multiple-regression analyses.

Several interesting findings emerged from the first part of the analysis. The average 'ought' score on all six dimensions was higher in the more educated group (above high school education) than in the less educated (high school education and less). An identical pattern was found regarding the average 'is'

scores: those with higher education gave the media higher scores than did those with less education on all six dimensions.

As for religiousness groups, secular people granted on average higher 'ought' scores on all six dimensions than traditional and religious people did. Secular people also gave higher average 'is' scores on four dimensions (protecting privacy, safeguarding state security, demonstrating social responsibility, and pursuit of scoops) than did traditional and religious people. In general it seems that as individual's level of religiousness increases, his or her normative and actual evaluation of media conduct decreases, hence the low 'ought' scores.

Negligible differences in the normative and actual evaluation of media conduct across age groups were apparent. Individuals from various age groups seem to perceive the way the media ought to function in a similar manner, though younger people tended to report slightly higher average evaluations of the actual conduct of the media on all six dimensions.

Finally, average 'ought' scores among European-Americans were slightly higher than those reported by Asian-Africans, Israeli natives, and new immigrants. By contrast, Asian-Africans reported the lowest average 'is' scores of all ethnic groups.

To estimate the magnitude and significance of these group differences a series of multiple-regression models were employed. The inherent benefit of employing multiple-regression analysis was teasing out the effects of individual independent variables (that is, education, ethnic origin, religiousness, and age), while controlling for the effects of other possible influences. In addition, this analysis assisted us in avoiding possible spurious associations between the dependent variable and the independent variables stemming from the interaction of different independent variables. The dependent variable for the purposes of this analysis was the level of discrepancy between the normative and actual media conduct on each of the six dimensions. The independent variables were introduced successively into the regression model according to their relative contribution to the explained variance in the dependent variable (that is, a stepwise procedure). Only the significant results of this analysis are reported in Table A3.

As expected, one central finding is that as the level of education increased, the higher was the level of discrepancy. This is particularly true regarding the dimensions of privacy and state security. In addition, the younger the person, the higher the level of discrepancy regarding the privacy dimension. Finally, the higher the level of religiousness, the higher the level of discrepancy regarding all four dimensions in the analysis. As little variance existed in the level of discrepancy regarding the dimension of the public's right to know (see Figure A1), no significant effects of demographic variables were found. Similarly, null effects of demographic variables on level of discrepancy regarding the pursuit of scoops were found. Finally, no interaction terms were found to have a significant effect on the association between the dependent and independent variables.

In the next stage of the analysis we examined the answers respondents gave to questions dealing with various aspects of their personal preferences of media coverage. One question referred to the coverage of terror attacks that occurred in the last months of 1996. Of those interviewed ($N = 490$) 46.3 per cent replied that the coverage was too extensive, 49 per cent thought that the coverage was appropriate, and only 4.7 per cent thought that there was not enough coverage. A weak yet significant negative correlation was found between the respondent's age and this variable ($\text{Gamma} = -0.16$; $p = 0.001$). Younger people felt slightly more than older people that the media coverage of terrorism was too extensive.

Table A3 Multiple-regressions of levels of discrepancy between desired and actual media conduct on four dimensions of media conduct by level of education, level of religiousness, and age: standardized regression coefficients (standard errors)

	Objectivity	*Privacy*	*Security*	*Responsibility*
Education	0.124	0.21*	0.12**	0.04
	(0.30)	(0.32)	(0.31)	(0.30)
Religiousness	0.25*	0.13*	0.08*	0.13*
	(0.26)	(0.28)	(0.27)	(0.26)
Age	−0.09	−0.17*	−0.07	−0.05
	(0.13)	(0.14)	(0.14)	(0.13)
Adjusted R-square	0.177	0.22	0.19	0.15
N	489	490	490	487

*$p<0.05$.
**$p<0.001$.

In addition, respondents were asked two related questions that dealt with the extent to which the public's-right-to-know principle was superior to other values such as state security and privacy. Of the respondents, ($N=493$) 88.2 per cent thought that preference should be given to state security over the public's right to know. Only 4.9 per cent thought that we should decide the issue in accordance with the extent of the likely harm to the state security, and 4.7 per cent stated that we should give preference to the public's-right-to-know principle. The rest of the respondents had no opinion on the matter.

With regard to privacy versus the public's right to know, 62.5 per cent of the respondents ($N=496$) thought that individual privacy should be prioritized over the public's right to know. Of the respondents, 14.1 per cent answered that the decision should be made according to the potential harm caused to individual privacy, while 19.6 per cent preferred the public's-right-to-know principle under any circumstances. No statistically significant demographic differences were found regarding answers to both questions.

In the final stage of the analysis we examined the willingness of the Israeli public to impose restrictions on journalists and on the freedom of press. Of the 493 respondents, 51.6 per cent *were certain* that there was a need to impose ethical guidelines on journalists, similar to those imposed on medical and legal professionals. An additional 32.9 per cent *thought* that there was a need to impose ethical guidelines, while about 10 per cent thought that there was no need to do so. Respondents with higher levels of education were more likely to consider this option positively ($\gamma=0.31$; $p=0.002$).[52]

Finally, 18.8 per cent of the respondents ($N=487$) *were certain* that more severe restrictions should be imposed on free speech and free press in Israel and another 24.4 per cent *thought* that this should be done. By contrast, 30.1 per cent did not think that there was a need to expand the existing restrictions and

a further 24.8 per cent absolutely rejected such a possibility. The willingness to restrict free speech and free press was positively correlated with level of religiousness ($\gamma = 0.29$; $p = 0.001$) and negatively correlated with the level of education ($\gamma = -0.32$; $p = 0.023$).[53]

Discussion

The purpose of the present research was to analyse the Israeli public climate of opinion regarding the conduct of the Israeli media. First, it appears that the public is less cynical about the conduct of the media than the American public.[54] While between 30 and 35 per cent of the American public believe that the mass media operate in the interest of the public, nearly half of the Jewish public in Israel believes this according to the findings of this study. This finding is particularly encouraging as the survey was conducted in proximity to the end of the election campaign in Israel (June 1996), which was accompanied by fierce criticism of the media by politicians and public figures. Although we are unable to estimate public attitudes towards the media before the elections, it seems that the Israeli media enjoy a higher appreciation than that accorded them in the United States. However, it is noteworthy that the Jewish public in Israel is by no means naive about the role of personal and institutional considerations in media coverage.

Another finding that emerged from our research is that different levels of discrepancy between the normative and actual conduct of the Israeli media exist on different dimensions of media performance. The greatest levels of discrepancy between the 'ought' and the 'is' concern the dimensions of objectivity in reporting and safeguarding individual privacy. On average, the Jewish public feels that the media give insufficient weight to these dimensions. A significant level of discrepancy also exists regarding the extent to which the media should be guided by standards of social responsibility and safeguarding the state security. In addition, the public feels that the media are overly motivated by the pursuit of 'scoops'. The only dimension where the 'ought' and the 'is' almost converges is the public's right to know.

The prevailing opinion that the media are guided primarily by the consideration of providing services to the public can be explained by their success in revealing failings and corruption in public office.[55] However, the level of discrepancy regarding other dimensions should not be ignored. Media organizations and professionals should take these findings into consideration and ponder the reasons for these opinions and perceptions.

The findings of this research partially support the hypothesis that the level of discrepancy regarding the normative and actual functioning of the media is influenced by the existing social cleavages in Israel. For example, the more religious people exhibit a greater level of discrepancy than less religious. This finding is consistent with past research.[56] We also found a positive correlation between a higher level of education and a higher level of discrepancy in relation to privacy matters. A higher level of education also predicts lower willingness to constrain free speech and free press, and a higher level of support for imposing ethical guidelines on journalists. Overall, the more educated people tend to present a higher level of expectation concerning the conduct of

the media and to evaluate their actual conduct more positively than the less educated.

Finally, and slightly surprisingly, we acknowledge the weakening of ethnic origin as a predictor of the level of discrepancy concerning the role of the media. A possible explanation for this is the existing overlap between origin and the level of education on the one hand (Ashkenazim are more educated than Sephardim), and religiousness on the other (Sephardim tend to be more religious). However, this seems unlikely given that no interaction terms between ethnic origin and other demographic characteristics were found to be significant in the regression analysis.

As expected, the enduring prominence of security considerations in Israeli society[57] dictates, in the eyes of the Jewish public, restrictions on the conduct of the media. The majority of the public conceives security considerations as superior to the principle of the public's right to know. In this regard the media are expected to follow the principle of the public's right *not* to know. Similar findings were reported by Yuchtman-Yaar.[58] Yet in contrast to the argument that media coverage of terror attacks is excessive,[59] about half of the Jewish public feels that the coverage is appropriate under the circumstances.

We observe with concern the relatively high proportion of the public (43 per cent) that supports the imposition of restrictions on freedom of speech and press. This finding could be interpreted as an additional expression of the lack of democratic values among large segments of Israeli society. At the same time, this message of dissatisfaction with regard to the conduct of the media should receive appropriate consideration by all people involved in the media: publishers, concessionaires, editors, and reporters. In any event, it is reiterated that regulations and constraints on the media should be self-imposed, rather than the products of the legislature and court rulings. But if the media do not take ethical considerations seriously, there might be a necessity to resort to legal measures.

Addendum

The survey questionnaire (given as a percentage of the total responses *N* = 501)

The survey was conducted by the Michshuv Institute, directed by Dr Rachel Israeli, in June 1996.

Question: What are, in your opinion, the primary considerations used by media reporters (journalists, radio reporters, and television reporters) to decide which stories will be reported and which will not?

First answer	97.2
Second answer	47.5
Third answer	10.1

Question: When you think of good professional media (written press, television, and radio), what importance should be given, in your opinion, to each of the following factors? Rate on a scale from 1 ('no importance') to 10 ('very important').

Social responsibility	98.8
Safeguarding state security	98.8
Publication of 'scoops'	98.8
Safeguarding individual privacy	98.8
Objectivity in reporting	98.8
The public's right to know	98.8

Question: In your opinion, what importance do the Israeli media attribute to the following factors? Rate on a scale from 1 ('no importance') to 10 ('very important').

Safeguarding individual privacy	98.8
Objectivity in reporting	98.8
The public's right to know	98.8
Social responsibility	98.8
Safeguarding state security	98.8
Publication of 'scoops'	98.8

Question: After the terror massacres at Beit-Lid, Jerusalem, and Dizengoff Street, the evening newspapers and television broadcasts dedicated most pages and news broadcasting to the coverage of the attacks. In your opinion, was the coverage (98.4)

1. Too extensive
2. Appropriate
3. Insufficient

Question: When there is a conflict between the public's right to know and state security, which of the two considerations should take precedence? (do not read the answers out loud) (98.8)

1. The public's right to know
2. State security
3. Depends on the level of offence caused to state security
4. I do not know

Question: When the public's right to know and safeguarding individual privacy (the right to privacy) come into conflict, which consideration should take precedence? (do not read the answers out loud) (99.6)

1. The public's right to know
2. Safeguarding individual privacy
3. Depends on the level of offence caused to individual privacy
4. I do not know

Question: There are professions, such as medicine and law, which require commitment to certain guidelines of professional ethics. In your opinion, is there a need for ethical guidelines that will be binding on media reporters?

1. Yes, certainly
2. Yes, I think so
3. I do not know/have any opinion
4. I think not
5. Certainly not

Question: In your opinion, would it be justified to impose more severe restrictions on freedom of speech, including freedom of the press in Israel? (97.8)

1. Yes, certainly
2. Yes, I think so
3. I think not
4. By no means/certainly not
5. I do not know/have any opinion

Profile

Education

1. less than complete high school (less than 12 years)
2. complete high school (12 years)
3. above high school (more than 12 years)

Where were you born? (if Israeli native, ask where the father was born)

1. Asia-Africa
2. Europe-America
3. The former Soviet Union
4. Israel (the father was born in Israel)
5. Israel (the father was born in Asia-Africa)
6. Israel (the father was born in Europe-America)

Is your family: 1. Secular 2. Traditional 3. Religious

Age: 1. 18–24 2. 25–34 3. 35–44 4. 45–54 5. 55–64 6. 65+

The average net income per month per household in Israel is about NIS 4800. Is the income in your household:

1. Much below the average
2. Slightly below the average
3. About average
4. Slightly above the average
5. Much above the average

Sex: 1. Male 2. Female

Notes

Introduction

1 For further discussion on the concept of rights, see Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977); Roland J. Pennock and John W. Chapman (eds), *Human Rights* (New York: New York University Press, 1981); L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1989); Michael Freeden, *Rights* (Minneapolis: University of Minnesota Press, 1991); Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994); Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996); Annabel S. Brett, *Liberty, Right and Nature* (Cambridge: Cambridge University Press, 1997); Richard Dagger, *Civic Virtues* (New York: Oxford University Press, 1997); Matthew H. Kramer, N. E. Simmonds and Hillel Steiner, *A Debate over Rights*: *Philosophical Enquiries* (Oxford: Clarendon Press, 1998); Samuel Walker, *The Rights Revolution* (New York: Oxford University Press, 1998); Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998); John R. Rowan, *Conflicts of Rights* (Boulder, CO.: Westview Press, 1999).

2 See Alf Ross, *Why Democracy?* (Cambridge, Mass.: Harvard University Press, 1952); Robert B. McKay, 'The Preference for Freedom', *New York University Law Review,* Vol. 34 (1959), 1182–227; Hugo L. Black, 'The Bill of Rights', *New York University Law Review*, Vol. 35 (1960), 865–81; Milton R. Konvitz, *First Amendment Freedoms* (Ithaca, New York: Cornell University Press, 1963); Thomas I. Emerson, 'Toward a General Theory of the First Amendment', *The Yale Law Journal,* Vol. 72, No. 5 (1963), 877–956; Alexander Meiklejohn, *Political Freedom* (New York: Oxford University Press, 1965); *idem*, 'Freedom of Speech', in Peter Radcliff (ed.) *Limits of Liberty* (Belmont, California: Wadsworth Publishing Co., 1966), 19–26; Walter Berns, *Freedom, Virtue and the First Amendment* (New York: Greenwood Press, 1969); J. A. Barron, *Freedom of the Press For Whom* (Bloomington: Indiana University Press, 1973); Aryeh Neier, *Defending My Enemy* (New York: E. P. Dutton, 1979); Harry H. Wellington, 'On Freedom of Expression', *The Yale Law Journal,* Vol. 88 (1979), 1105–42; Franklin S. Haiman, *Speech and Law in a Free Society* (Chicago and London: University of Chicago Press, 1981); Lee C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press, 1986); David A. J. Richards, *Toleration and the Constitution* (New York: Oxford University Press, 1986); Norman Dorsen, 'Is There a Right to Stop Offensive Speech? The Case of the Nazis at Skokie', in Larry Gostin (ed.), *Civil Liberties in Conflict* (London: Routledge, 1988), 122–35.

3 See, for example, Anthony Skillen, 'Freedom of Speech', in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge: Cambridge University Press, 1982), 139–59; Andrew Belsey and Ruth Chadwick (eds), *Ethical Issues in Journalism and the Media* (London: Routledge, 1992); Bud Ward, 'Crossing the Line?', *American Journalism Review*, Vol. 17 (January/February 1995), 12–13;

S. J. Heyman (ed.), *Controversies in Constitutional Law*: *Hate Speech and the Constitution* (New York and London: Garland Publishing Inc., 1996); Owen M. Fiss, *Liberalism Divided* (Boulder, Col.: Westview Press, 1996); Clifford Christians and Michael Traber (eds), *Communication Ethics and Universal Values* (Thousand Oaks, Cal.: Sage, 1997).

4 R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: The University Press of Florida, 1994).

5 For a general discussion on the nature of regulation and the rationales for media regulation, see Thomas Gibbons, *Regulating the Media* (London: Sweet and Maxwell, 1998), 2nd edn, esp. pp. 4–13.

6 *Report of the Secretary's Task Force on Youth Suicide* (Washington, DC: U.S. Government Printing Office, 1989).

7 Tom Kent, 'The Time and Significance of the Kent Commission', in Helen Holmes and David Taras (eds), *Media, Power and Policy in Canada* (Toronto: Harcourt Brace Jovanovich, 1992), p. 39.

8 Most public polls conducted in Israel are restricted to the Jewish population because there is a problem accessing the Palestinian communities, and translation to Arabic is often required which makes polls very expensive.

1 Harm Principle, Offence Principle, and Hate Speech

1 I have benefited from discussions with Joel Feinberg, G. A. Cohen, and Michael Freeden on various aspects of this chapter.

2 When people speak of the content of the speech, they may refer to its *truthfulness* or to its *consequences* or to both. Here I refer not to the truthfulness of the speech but to the consequences that it is intended to bring about.

3 R. M. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. 266–78; 'Liberalism', in *A Matter of Principle* (Oxford: Clarendon Press, 1985), pp. 181–204.

4 The view is that the right to freedom of expression has to be balanced against the right to personal honour. Cf. the German Federal Constitutional Court's decision of 7 December 1976. BVerfGE, Vol. 43, 130 (at 137, 139).

5 Article I of the *Grundgesetz* provides: 'The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.' Cf. Eric Barendt, *Freedom of Speech* (Oxford: Clarendon Press, 1985), p. 165.

6 The two qualifications that were presented in the article are quite problematic because it is difficult to reconcile them with his arguments in *On Liberty*. One qualification is concerned with telling 'the truth', when that 'truth, without being of any advantage to the public, is calculated to give annoyance to private individuals'. The other qualification is concerned with the publication of false statements of facts. Cf. 'Law of Libel and Liberty of the Press', in Geraint L. Williams (ed.), *John S. Mill on Politics and Society* (Glasgow: Fontana, 1976), pp. 143–69. For further discussion, see R. Cohen-Almagor, 'Why Tolerate? Reflections on the Millian Truth Principle', *Philosophia,* Vol. 25, Nos. 1–4 (1997), pp. 131–52; *idem,* 'Ends and Means in J. S. Mill's *On Liberty*', *The Anglo-American Law Review,* Vol. 26, No. 2 (1997), pp. 141–74.

7 J. S. Mill, *On Liberty* (London: Dent, Everyman's Edition, 1948), p. 114.

8 Mill acknowledged the importance of intentions in other places. For instance, speaking of employing military commanders by ministers, Mill said that as long as a minister trusts his military commander he does not send him instructions on how to fight. He holds him responsible only for intentions and results. 'Appendix', in *Dissertations and Discussions*, Vol. I (New York: Haskell House, 1973), pp. 471–2.
9 Similar reasoning, as far as shortage of time is concerned, guided Mill in supporting interference in the other's freedom in the case of the unsafe bridge.
10 *Gitlow v. New York*, 268 U.S. 652, 673 (1925).
11 *Schenck v. U.S.,* 249 U.S. 47 (1919).
12 Note that in this instance it does not matter whether the intention of the actor was only to do this specific act and not to bring about harmful consequences. The actor may say that he only wanted to break the silence or to attract public attention and that he did not think of creating panic. Still, he will be held accountable for his action. The same reasoning guides us in prosecuting those who press emergency buttons in trains just because they cannot resist the temptation of 'these beautiful red buttons'.
13 Z. Chafee, *Free Speech in the U.S.* (Cambridge, Mass.: Harvard University Press, 1946), p. 397.
14 The Millian Harm Principle holds that something is *eligible* for restriction only if it causes harm to others. Whether it ought to be restricted remains to be considered; whereas this argument provides conditions in which a harm *ought* to be restricted.
15 For a different view, see Wayne Sumner, 'Should Hate Speech be Free Speech? John Stuart Mill and the Limits of Tolerance', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).
16 Mill, *On Liberty*, op. cit., p. 153.
17 John Skorupski, *John Stuart Mill* (London: Routledge, 1989), pp. 347–59, speaks of the concept of moral freedom which is conceived by Mill as rational autonomy. The autonomy which one values as an independent part of one's own good is the freedom to lead one's life but this is not just 'freedom to do as one likes' either. Autonomy is sovereignty over one's own life, not sovereignty over anyone else's.
18 Mill, 'Bentham', in *Dissertations and Discussions*, Vol. I, p. 386.
19 In *Utilitarianism* (p. 45) Mill explained: 'We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil it … '
20 One common argument, following Mill, is that action – if it endangers the public or part of it – might have its consequences immediately; whereas speech, if it has any endangering effect would have it in most cases sometime in the future, thus allowing us a much wider range of manoeuvres. The assumption is that an opinion does not necessarily entail action, and that, in most cases, opinions do not automatically translate into action, and

so there is enough time to stop ideas before they materialize into harmful action. Even if a specific view might cause harm or risk of harm to others, the danger is not immediate, so free speech has to be allowed.

21 There are situations in which the offence done by the defamatory remarks is immediate and irreparable, so there is no time for a reply. An example would be the publication of false accusations against a rival candidate on the eve of elections.

22 Joel Feinberg, *Offence to Others* (New York: Oxford University Press, 1985), pp. 1–2.

23 Ibid., p. 26.

24 T. M. Scanlon, 'Freedom of Expression and Categories of Expression', *University of Pittsburgh Law Review,* Vol. 40 (1979), p. 527.

25 David Kretzmer, 'Freedom of Speech and Racism', *Cardozo Law Review,* Vol. 8 (1987), pp. 445–513. See also Justice Matza in *Iddo Elba v. State of Israel,* C.A. 2831/95 (September 1996, Hebrew); and Jean-Paul Sartre, who wrote that anti-Semitism does not fall within the category of ideas protected by the right of free expression (*Reflexions sur la Question Juive,* Gallimard, 2nd edn, 1954). In addition, several international law treaties justify restricting racist speech on the grounds of the possible connection between racist expressions and discrimination. Cf. *Universal Declaration on Human Rights,* Art. 7; *Convention on the Elimination of all Forms of Racial Discrimination*, Art. 4; *International Covenant on Civil and Political Rights*, Art. 20(2).

26 But when dealing with the right to participate in elections I am in favour of the principled approach. This is because here we speak not of free speech alone but of speech accompanied by the ability to legislate and to overturn the *raison d'être* of democracy that favours liberty and tolerance. See *Chapter 3*.

27 Accordingly, pornography may be dealt with under the Offence Principle. This issue, however, requires a separate analysis.

28 Skokie had the highest number of Holocaust survivors of any city in the United States, outside the city of New York.

29 In *Brandenburg v. Ohio*, 395 U.S. 444 (1969) the court ruled that the expression of a particular idea may not be suppressed unless it is both directed to and likely to incite or produce imminent unlawful conduct. See also *Hess v. Indiana* 414 U.S. 105 (1973).

30 Justice Clark dissented without submitting any explanation.

31 *Skokie v. NSPA.*, 373 N.E. 2d, 21 (1978). Chief Justice Vinson wrote in *Dennis v. U.S.* 341 U.S. 494 (1951) that the basis of the First Amendment is the hypothesis that speech can rebut speech, propaganda will answer propaganda, free debate of ideas will result in the widest governmental policies. Powell J. argued in *Gertz v. Robert Welch*, 418 U.S. 323 (1974) that under this amendment there is no such thing as a false idea.

32 Under constitutional precedents, the threat of violence could not serve as an argument to prevent assemblies, rallies, and the like. *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Feiner v. New York*, 340 U.S. 315 (1951); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Street v. New York*, 394 U.S. 576 (1969); *Tinker v. Des Moines*, 393 U.S. 503 (1969); and *Bachellar v. Maryland*, 397 U.S. 564 (1970). In Britain the most notable case is *Beatty v. Gillbanks*, 9 QBD 308 (1882). The reasoning of the British courts on this issue is similar to that of

the American courts, holding that the hostile audience problem should not serve as grounds for suppression of demonstrations.

33 *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). See also *Cohen v. California*, 403 U.S. 15 (1971). In Great Britain the 'fighting words' doctrine came into expression in Lord Parker's phraseology, that a speaker must insult his audience in the sense of 'hitting them with words' for an offence to be committed (*Jordan v. Burgoyne*, 2 QB 744, 1963).

34 The 'fighting words' doctrine is not applicable to Skokie for it gives grounds to punish a person who, in a face-to-face encounter, states something so provocative and insulting as to cause an immediate violent response. This was not the case in Skokie.

35 One may suggest, following *Chaplinsky*, that there may be room for a 'fighting symbols' doctrine. I disagree. The crux of the matter in the 'fighting words' doctrine is that certain utterances are seen as having no essential part of any exposition of ideas, or rather utterances which do not communicate any ideas. Therefore they are ruled out of the Free Speech clause of the Constitution. On the other hand, the very using of a symbol intends to convey a certain idea, otherwise it would not be considered a symbol. It may be intended to insult or intimidate, but one cannot employ the reasoning of *Chaplinsky* here: 'fighting words' seem to contain no idea; symbols, by their very characterization as such, *do* contain a certain idea.

36 Feinberg, *Offence to Others*, op. cit., pp. 87–8. I find Feinberg's arguments confusing, for he also writes that the feelings of a Jewish survivor of a Nazi death camp as a small band of American Nazis strut down the main street of his town 'cannot be wholly escaped merely by withdrawing one's attention, by locking one's door, pulling the window blinds, and putting plugs in one's ears'. Feinberg maintains that the offended state of mind is at least to some degree independent of what is directly perceived (at p. 52).

37 For a similar line of argument, see Lee C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press, 1986), p. 60. Bollinger further argues that we should grant wide latitude to freedom of expression, even though the speech in question might be harmful because of the societal benefits derived from the lessons learned through toleration (p. 198). The contesting argument holds that to tolerate speech abusing racial groups is to lend respectability to racist attitudes, which in turn may foster an eventual breakdown of public order. Barendt, *Freedom of Speech*, op. cit., p. 161.

38 Quite surprisingly, and without much explanation, Feinberg does not justify the decision which allowed the march. He states that one can have sympathy for the A.C.L.U. decision to back the Nazis, but he disagrees with this stand (*Offence to Others*, op. cit. p. 93). In a private discussion he admitted that he did not make his position explicit enough and expressed regret for not fully clarifying his reasoning.

39 Feinberg, *Offence to Others*, op. cit., p. 87.

40 The same conduct can be interpreted in totally different ways, according to the motives of the agent. Witness a farmer who takes his old donkey to be killed. If he wishes that the donkey not be subjected to further pain, we would regard this as a humanitarian act. But if the same farmer takes his donkey to be killed in front of the gates of the White House, in protest at the high interest that the farmers of the South are required to pay, which

brings many of them to bankruptcy, and states that a similar end awaits the Democrat donkey (referring to the Democrat president), then this is surely a political act and many humanitarians are likely to protest.

41 It would not make any significant difference if the Nazis were primarily concerned to persuade the Skokie Jews of their views rather than deliberately to cause offence.

42 In a private communication made to me on an earlier version of this essay. Thomas Scanlon told me that he approves of the Skokie decision because he did not like the idea that a local government passes an ordinance that is effectively designed to prohibit speech it does not like. For further deliberation, see Richard L. Abel, *Speaking Respect, Respecting Speech* (Chicago: University of Chicago Press, 1998), pp. 15–19, 53.

43 Feinberg, *Offence to Others*, op. cit., p. 2.

44 Franklin S. Haiman, *Speech and Law in a Free Society* (Chicago: University of Chicago Press, 1981), p. 425.

45 Ibid., pp. 425–6.

46 Ibid., p. 97.

47 Ibid., p. 154.

48 Bollinger, *The Tolerant Society*, op. cit., pp. 197–200. See also *New York Times*, 7 February 1978 (Dr William Niederland's letter); D. A. Downs, *Nazis in Skokie* (Notre Dame, Indiana: University of Notre Dame Press, 1985), chaps 1, 8; and the statement of Sol Goldstein, a concentration camp survivor whose mother was killed by the Nazis, in Aryeh Neier, *Defending My Enemy* (New York: Dutton, 1979), p. 46.

49 Thomas Scanlon in 'A Theory of Freedom of Expression', in R. Dworkin (ed.), *The Philosophy and Law* (Oxford: Oxford University Press, 1977) contemplates that an assault is committed when one person intentionally places another in apprehension of imminent bodily harm. He maintains that instances of assault necessarily involve expressions since an element of successful communication must be present (p. 158).

50 There were several occasions in which the United States Supreme Court considered whether certain types of speech are of only 'low' First Amendment value. Among them are the 'fighting words' doctrine (*Chaplinsky v. New Hampshire* 315 U.S. 568, 1942); incitement (*Dennis v. U.S.*, 341 U.S. 494, 1951); obscenity (*Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498, 1957; *Miller v. California*, 413 U.S. 15, 1973); defamation (*Beauharnais v. Illinois*, 343 U.S. 250, 1952; *New York Times v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686, 1964), and false statements of fact (*Gertz v. Robert Welch*, 418 U.S. 323, 1974). Geoffrey R. Stone, 'Content Regulation and the First Amendment', *William and Mary Law Review,* Vol. 25 (1983), pp. 189–252 and Justice Scalia's judgment in *R.A.V. v. St. Paul,* 505 U.S. 375 (1992), esp. 381–8.

51 *Village of Skokie v. NSPA.*, 366 N.E. 2d 347 (1977), p. 357.

52 Donald Vandeveer, 'Coercive Restraint of Offensive Actions', *Philosophy & Public Affairs*, Vol. 8 (1979), p. 177.

53 Robert C. Carson, James N. Butcher and Susan Mineka, *Abnormal Psychology and Modern Life* (New York: HarperCollins, 1996).

54 Chapter 16, Section 8 of the Swedish Criminal Code (amended in 1982) reads: 'Anyone who publicly or otherwise in a declaration or other statement

which is disseminated to the public threatens or expresses contempt for an ethnic group or some similar group of persons, with allusion to race, colour, national or ethnic origin or religious creed, shall be sentenced for agitation against ethnic groups by imprisonment of up to two years or, if the crime is petty, to a fine.' On the laws of other countries concerning racist speech see Bollinger, *The Tolerant Society*, op. cit., pp. 253–6.

55 In addition, under the Race Relations Act of 1976 a speaker can theoretically be prosecuted if he uses in public threatening, abusive, or insulting words. Section 70 of this Act inserted a new section (5A) into the Public Order Act 1936. The section made it an offence for any person to publish or distribute written matter or to use in any public place or at any public meeting words which were threatening, abusive, or insulting in a case where hatred was likely to be stirred up against any racial group. This law altered the previous law in that it was no longer necessary, as it had been under Section 6 of the Race Relations Act (1965), to prove that the accused intended to stir up racial hatred.

It did not, however, confer any powers to ban demonstrations or meetings by racialist organizations. It should also be said that prosecutions for incitement to racial hatred require the consent of the Attorney General. For a critique of the British stance see Ronald Dworkin, *Freedom's Law* (Cambridge, MA.: Harvard University Press, 1996), chap. 9.

56 A number of speakers in Parliament justified the legislation prohibiting racist expressions on the grounds of the fear, alarm, and distress caused to members of minority groups. W. J. Wolffe, 'Values in Conflict: Incitement to Racial Hatred and the Public Order Act 1986', *Public Law* (1987), p. 94.

57 *Parkin v. Norman*, (1982) 3, W. L. R. 523.

58 Cf. part III, 'Racial Hatred'. According to the Attorney General 15 prosecutions for incitement to racial hatred were brought between March 1986 and November 1990 under part III of the 1986 Act, or under section 5A of the 1936 Act (180 *Parliamentary Debates,* 1990–91, p. 88W).

59 Fifth Report of the Home Affairs Committee of the House of Commons 1979–80, HC 756, para. 51. Cf. Barendt, *Freedom of Speech*, op. cit., p. 198.

60 In 1948, the Home Secretary invoked the Public Order Act to ban all political marches in London for three months after the Fascists marched through Jewish areas of London. The same reaction was made in the 1970s after the 'National Front' decided to march through immigrant areas. For a general discussion, see A. T. H. Smith, *The Offences Against Public Order* (London: Sweet and Maxwell, 1987).

61 I also think that Skokie-like cases will not take place in Canada. This is because the Canadian criminal law is extensive on prevention of hate speech. Here we need to understand the basic ideologies that underlie the Canadian and American cultures. The different ideologies bring the two societies to confront the democratic 'catch' in very different ways. Canada is perceived to be a mosaic, whereas the prevalent ideology in the United States is one of a melting pot. Consequently, the attitude to government and its roles is significantly different. In both countries minorities are encouraged to speak and express opinions. In Canada it is acknowledged that hate speech builds on differences and targets minorities for hatred.

Hate speech is less tolerable because it destroys the mosaic that is so important for the Canadian identity. The Special Committee on Hate Propaganda in Canada (the Cohen Committee) noted that individuals subjected to racial or religious hatred may suffer substantial psychological distress, the damaging consequences including loss of self-esteem, feelings of anger and outrage, and strong pressure to renounce cultural differences that mark them as distinct. *Report of the Special Committee on Hate Propaganda in Canada* (Ottawa: Queen's Printer, 1966). Other study groups and court judgments have echoed the Cohen Committee's conclusion that hate propaganda presents a serious threat to society. See the 'Report of the Special Committee on Participation of Visible Minorities in Canadian Society', *Equality Now* (Ottawa: Supply and Services, 1984). The Supreme Court concluded that messages of hate undermine the dignity and self-worth of target group members and 'contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality'. *Taylor et al. v. Canadian Human Rights Commission et al.*, *Dominion Law Reports,* Vol. 75 (4th) (1990), 593–4. I benefited from discussion with The Honourable Justice Ian Binnie, The Honourable Justice Peter de C. Cory and The Honourable Justice Frank Iacobucci, The Supreme Court of Canada (28 September 1998). For further deliberation, see Mayo Moran, 'Talking about Hate Speech: A Rhetorical Analysis of American and Canadian Approaches to the Regulation of Hate Speech', *Wisconsin L. Rev.*, No. 6 (1994), pp. 1425–514; Warren Kinsella, 'Challlenges to Canadian Liberal Democracy', in R. Cohen-Almagor (ed.), *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin* (London: Ashgate, 2000); Irwin Cotler, 'Holocaust Denial, Equality and Harm: Boundaries of Liberty and Tolerance in a Liberal Democracy', and Richard Moon, 'The Regulation of Racist Expression', both in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance,* op. cit.

62 Note that international treaties speak of 'the right to freedom of *peaceful* assembly' (emphasis added). Cf. Article II of the *European Convention of Human Rights;* Article 20 of the *Universal Declaration of Human Rights;* and Article 21 of the *UN International Covenant on Civil and Political Rights*.

63 Home Office, *Review of Public Order Law,* Cmmd. 9510 (White Paper). May 1985, pp. 23–4.

64 It may be of interest to note that part II of the Public Order Act 1986 speaks of imposing conditions on public processions, holding that if a senior police officer reasonably believes that the procession in question 'may result in serious public disorder, serious damage to property or *serious disruption to the life of the community* … he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation' (sect. 12, emphasis added). The courts, it seems, interpret the above as being in line with the 'breach of the peace' reasoning.

65 Home Office, *Review of Public Order Act 1936* (The Green Paper), April 1980, esp. pp. 11–12, and Home Office, *Review of Public Order Law* (The White Paper), May 1985, esp. p. 23. In both papers it was reiterated that considerations of public order should be the sole test for banning of processions. For

my part, I do not see why in delicate or (if we resort to familiar phraseology) 'hard' cases – such as Skokie – it has to be left to the police to decide whether or not to allow the demonstration in question. Moreover, this reasoning does not fully consider the extent of harm that is inflicted upon the target group, which cannot avoid being exposed to the offensive utterances.

66 Bollinger, *The Tolerant Society*, op. cit., p. 34. In the same vein, Aryeh Neier (*Defending My Enemy*, op. cit., p. 142) rightly contends that speakers characteristically carry their messages to places where their views are anathema. However, he fails to distinguish incidents of protest from demonstrations aiming to offend a specific target group, who cannot avoid being exposed to it.

67 By discrimination is meant 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an actual footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. Cf. *International Convention on the Elimination of All Forms of Racial Discrimination*. Article 1 (1).

68 R. M. Dworkin, *Taking Rights Seriously*, op. cit., pp. 266–78; 'Liberalism', in *A Matter of Principle*, op. cit., pp. 181–204. It seems that Mill failed to adequately address this issue of grounds for offence. I imagine he did not envisage that people who uphold anti-humanitarian and discriminatory principles would become champions of free speech so as to enable them to offend others.

69 See R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994), chap. 12.

70 See Herbert McClosky and Alida Brill, *Dimensions of Tolerance* (New York: Russel Sage Foundation, 1983).

71 For Further deliberation, see Simon Lee, *The Cost of Free Speech* (London: Faber and Faber, 1990), pp. 73–105; Joseph Raz, 'Free Expression and Personal Identification', *Oxford Journal of Legal Studies,* Vol. 11, No. 3 (1991), esp. pp. 319–23.

72 A similar line of reasoning guided the framers of the *European Convention on Human Rights* when they enacted Articles 9, 10, and 17. Note in particular the language of Article 17: 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.' A case in point concerning the right to freedom of expression in general and freedom of expression in the context of elections in particular is *Glimmerveen and Hagenbeek v/the Netherlands* (1980) *Decisions and Reports*, Vol. 18, E. Comm. H. R., pp. 187–208. For further discussion of the social and legal aspects of hate propaganda, see Frederick M. Lawrence, *Punishing Hate* (Cambridge, MA.: Harvard University Press, 1999); James Weinstein, *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine* (Boulder, CO.: Westview, 1999); James B. Jacobs and Kimberly Potter, *Hate Crimes* (New York: Oxford University Press, 1998); Samuvel Walker, *Hate Speech* (Lincoln: University of Nebraska Press, 1994).

2 The Right to Demonstrate versus the Right to Privacy: Picketing Private Homes of Public Officials

1 I am grateful to Martin Golding, Geoffrey Marshall, Amir Zolty and Bernard Dickens for providing me with some relevant documents and court judgments.
2 Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1979); Richard Dagger, *Civic Virtues* (New York: Oxford University Press, 1997), esp. chap. 9.
3 *Walinsky v. Kennedy*, 404 N.Y.S.2d 491, 495 (1977).
4 *Martin v. City of Struthers*, 319 U.S. 141 (1943), at 145.
5 Sylvia Arizmendi, 'Residential Picketing: Will the Public Forum Follow Us Home?', *Howard L. J.*, Vol. 37 (Spring 1994), 495, at 496, 548.
6 H.C. (High Court of Justice) 456/73. *Rabbi Kahane v. Southern District Police Commander* (was not published); Justice Shamgar's judgment in F.H. 9/83. *Military Court of Appeals v. Vaaknin*, P.D. 42 (iii), 837, 851.
7 Justice Douglas in *Public Utilities Commission v. Pollack*, 343 U.S. 451, 467 (1952). See also *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L.Ed.2d 542 (1969); *City of Wauwatosa v. King* 182 N.W. 2d 530, 537 (1971). See also 'Supreme Court Denied Certiorari in Anti-Abortion Demonstrators' Picketing Case', *West's Legal News* 3061, 1995 WL 910586 (19 October 1995).
8 *Martin v. City of Struthers*, 319 U.S. 141, 153 (1943).
9 *Gregory v. City of Chicago*, 394 U.S. 111, 125, 118, 89 S.Ct. 946, 953–54, 950, 22 L.Ed.2d 134 (1969).
10 *Carey v. Brown*, 447 U.S. 455, 471 (1980). In *Rowan v. United States Post Office Department*, 397 U.S. 728, 737, 90 S.Ct. 1484, 25 L.Ed.2d 736 (1970), Chief Justice Burger stated that the concept that 'a man's home is his castle' into which not even the king may enter, has lost none of its vitality.
11 Daniel M. Taubman, 'Comment: Picketing at the Doorstep', *Harvard Civ. Rig. Civ. Lib. L. Rev.*, Vol. 9, No. 1 (January 1974), pp. 95–123, at 121.
12 *State v. Anonymous*, Conn, Cir. 372, 274 A.2d 897, 898 (1970).
13 Professor Kretzmer writes that public leaders cannot lay the same claim not to be 'bothered' by others as people who refrain from positions in public life. This certainly does not imply that public leaders can be bothered at all times of the day and night; it also in no way implies that private individuals can expect immunity from being bothered. What it does imply, however, is that one person's bother may be another person's harassment. A picket outside the home of the prime minister or mayor need not be regarded as harassment even if the same picket outside the home of a private individual can be so regarded. David Kretzmer, 'Demonstrations and the Law', *Israel L. Rev.*, Vol. 19, No. 1 (1984), pp. 47–153, at 142.
14 In his comments on a draft of this paper, Georg Nolte writes that Germany has so far not had any major court cases dealing with picketing in front of the private homes of public figures. He supposes that the German courts would take a rather restrictive approach in this respect. Although they would start with *ad hoc* balancing and would not exclude the possibility of picketing in certain exceptional circumstances, they would insist on the right of privacy even of politicians.

15 See R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994), esp. chap. 5.
16 *Wauwatosa v. King*, 49 Wis. 2d 398, 182 N.W.2d 530 (1971); *Walinsky v. Kennedy*, 404 N.Y.S.2d 491 (1977); *Pursley v. City of Fayetteville*, 628 F.Supp. 676, 678 (W.D. Ark. 1986); *Frisby v. Schultz*, 487 U.S. 474, 101 L.E.2d 420 (1988).
17 *State of Maryland v. Schuller*, 372 A.2d 1077 (1977); *Bernard Carey v. Roy Brown et al.*, 447 U.S. 455 (1980); *United States v. Grace*, 461 U.S. 171 (1983); *Pursley v. City of Fayetteville*, 820 F.2d 951 (8th Cir. 1987).
18 *Thornhill v. State of Alabama,* 310 U.S. 88, 102 (1940).
19 Ibid.
20 Cf. *Flores v. Denver*, 122 Colo. 71, 220 P.2d 373 (1950).
21 *United States v. O'Brien*, 391 U.S. 367 (1968) concerning symbolic speech, a person who burnt his registration certificate. The court held that sufficient governmental interest was shown to justify his conviction. For further discussion, see Robert E. Rigby, Jr., 'Balancing Free Speech in a Public Forum vs. Residential Privacy: *Frisby v. Schultz*', *New England L. Rev.*, Vol. 24, No. 3 (Spring 1990), pp. 889–915.
22 *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948 (1983).
23 *United States v. Grace*, 461 U.S. 171, 177 (1983).
24 *Cornelius v. NAACP Legal Defense and Education Fund, Inc* 473 U.S. 788 (1985).
25 Ibid., at 797.
26 Ibid.
27 This was reiterated, *inter alia,* in *Klebanoff v. McMongale*, 380 Pa. Super. 545, 552 A.2d 677 (1989); *Kaplan v. Prolife Action League of Greensboro*, 111 N.C.App. 1, 431 S.E.2d 828 (1993). See also Lyle R. Smith, '*Pursley v. City of Fayetteville*: Flat Bans on Residential Picketing Held Unconstitutional', *Arkansas L. Rev.*, Vol. 41 (1988), pp. 861–74, at 863–66.
28 *Frisby v. Schultz*, 487 U.S. 474 (1988). 108 S. Ct. 2495 (1988). Following *Frisby,* in *Barrington v. Blake,* 568 A.2d 1015 (R.I. 1990), the Supreme Court of Rhode Island ruled that a town ordinance on picketing did not violate First Amendment insofar as it prohibited focused residential picketing. It is difficult to reconcile this construction with the plain language of the ordinance, which prohibited picketing 'in front of, adjacent to or with respect to any property used for residential purposes'. *Barrington v. Blake,* at 1017.
29 *Frisby v. Schultz,* at 2504.
30 Ibid., at 2507.
31 Pro-life activists murdered a few abortionists in recent years. See *Planned Parenthood of the Columbia/Willamette Inc. et al v. American Coalition of Life Activists*, No. 95-1671-JO, 41 F.Supp.2d 1130 (March 16, 1999). See also *Tompkins v. Cyr*, 995 F.Supp. 664 (N.D. Tex. 1998), at 671–673; *Tompkins v. Cyr*, 2000 WL 96076 (5th Cir. Tex. 2000), at 2; *K-T Marine Inc. v. Dockbuilders*, 251 N.J. Super. 107, 597 A.2d 540 (1991); *Boffard v. Barnes*, 248 N.J. Super. 501, 591 A.2d 699 (1991).
32 *Dayton Women's Health Center et al. v. Enix et al.*, 68 Ohio App. 3d 579, 589 N.E.2d 121 (1991), at 126; *Perry Education Assn. v. Perry Local Educators Assn.*, 460 U.S. 37, 103 S.Ct. 948, 74 L.E.2d 794, 804 (1983), at 955.

33 *Ramsey v. Edgepark*, 66 Ohio App.3d 99, 583 N.E.2d 443 (1990), at 451. In *Valenzuela v. Aquino*, 763 S.W.2d 43 (1989) the Texas Court of Appeals, Kennedy J., held that injunction prohibiting residential picketing within half a mile of owner's home was overly broad and unnecessarily infringed picketers' First Amendment rights. On the other hand, a year later, the same Court of Appeals held that a permanent injunction mandating abortion opponents to cease picketing within 400 feet of centre of lot upon which physicians' home was located was content-neutral, narrowly tailored limitation on place and manner of picketers' expressive activities, and provided ample alternative avenues of communication. Thus, the said injunction did not violate First Amendment. *Valenzuela v. Aquino*, 800 S.W.2d 301 (1990).
34 *Madsen v. Women's Health Center*, 114 S.Ct. 2516 (1994); *Trojan Electric and Machine Co. v. Heusinger et al.,* 162 A.D.2d 859, 557 N.Y.S.2d 756 (1990).
35 Hazel A. Landwehr, 'Unfriendly Persuasion: Enjoining Residential Picketing', *Duke L. J.*, Vol. 43, No. 1 (October 1993), pp. 148–88.
36 *Chalfont v. Kalikow,* 392 Pa.Super. 452, 573 A.2d 550 (1990).
37 *Madsen v. Women's Health Center*, 114 S.Ct. 2516 (1994). See also *Everywoman's Health Centre Society (1988) et al. v. Bridges et al.*, 109 Dominion Law Reports (4th) where three defendants were found guilty of civil contempt of court after they violated a restraining order which was issued to prevent them from 'watching or besetting' an abortion clinic in Vancouver, Canada.
38 *Lawson v. Murray*, 119 S. Ct. 387 (1998), at 387.
39 Ibid. See also Alan Phelps, 'Picketing and Prayer: Restricting Freedom of Expression Outside Churches', *Cornell L. Rev.*, Vol. 85 (November 1999), 271, at 284.
40 *State of Maryland v. Schuller*, 372 A.2d 1076 (1977).
41 *Roy Brown et al. v. William J. Scott et al.*, 462 F. Supp. 518 (U.S. District Court, N.D. Illinois, 27 September 1978).
42 *State of Maryland v. Schuller*, 372 A.2d 1077 (1977).
43 Ibid., at 1080.
44 *Brown v. Scott*, 602 F. 2d 791 (1979).
45 The Illinois Residential Picketing Statute provides:

> It is unlawful to picket before or about the residence or dwelling of any person, except when the residence or dwelling is used as a place of business. However, this Article does not apply to a person peacefully picketing his own residence or dwelling and does not prohibit the peaceful picketing of a place of employment involved in a labor dispute or the place of holding a meeting or assembly on premises commonly used to discuss subjects of general public interest.

46 *Brown v. Scott,* 462 F. Supp. 518, at 525.
47 Ibid., at 528.
48 *Hague v. CIO*, 307 U.S. 496, 515-516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939).
49 *Brown v. Scott,* 462 F. Supp. 518, at 530.
50 Ibid., at 532.
51 *Bernard Carey v. Roy Brown et al.*, 447 U.S. 455 (1980), 100 S.Ct. 2286, at 2289. Justice Rehnquist filed a dissenting opinion in which Chief Justice Burger and Justice Blackmun joined.

52 *Hudgens v. NLRB*, 424 U.S. 507, 515, 96 S.Ct. 1029, 1034, 47 L.Ed.2d 196 (1976).
53 *Carey v. Brown*, 447 U.S. 455, at 2291.
54 *Stromberg v. California*, 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L.Ed. 1117 (1931).
55 *Cox v. Louisiana*, 379 U.S. 559, 563–4, 85 S.Ct. 476, 480, 13 L.Ed.2d 487 (1965). After *United States v. Grace* 461 U.S. 171 (1983), this dictum should be reconsidered. The court said in *Grace* that it is protected speech to picket outside courthouse.
56 *Adderley v. Florida*, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966).
57 *Teamsters v. Vogt Inc*., 354 U.S. 284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957).
58 *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 209, 95 S.Ct. 2268, 2272, 45 L.Ed.2d 125 (1975).
59 *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 2509, 101 L.Ed.2d 420 (1988). For further discussion, see Randall M. England, 'Residential Picketing: Balancing Freedom of Expression and the Right to Privacy', *Missouri L. Rev.*, Vol. 54 (1989), pp. 209–23.
60 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem* (not published), para. 1 in Justice Levine's judgment.
61 In Northern Ireland the right to march was used by the Protestant majority to intimidate the Catholic minority. This is not the intention of the Free Speech Principle.
62 *Garcia et al. v. Gray et al*., 507 F.2d 539 (U.S. Court of Appeals, Tenth Circuit, 17 December 1974).
63 *United States v. Pyle*, 518 F. Supp. 139, 160 (E.D. Pa. 1981).
64 *Grayned v. City of Rockford*, 408 U.S. 104 (1972).
65 See Justice Brennan's dissenting opinion in *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 2507, 101 L.Ed.2d 420 (1988), and Hugh J. O'Halloran, 'Balancing First Amendment Rights to Freedom of Expression Against the Rights of an Individual to Privacy in the Home. *Schultz v. Frisby*', *Marquette L. Rev.*, Vol. 71 (1987), pp. 201–16.
66 For contrasting views, see Justice Levine's judgment in H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, *infra*; 'Picketing the Homes of Public Officials', *Un. of Chicago L. Rev.*, Vol. 34, No. 1 (Autumn 1966), 106–40; Alfred Kamin, 'Residential Picketing and the First Amendment', *Northwestern U. L. Rev.*, Vol. 61, No. 2 (May–June 1966), pp. 177–236.
67 In summing up the British stance I rely, *inter alia*, on communications and conversations with Geoffrey Marshall, Eric Barendt and David Feldman. I thank them for their comments and advice. For further deliberation, see D. Feldman, 'Protest and Tolerance: Legal Values and the Control of Public-Order Policing', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).
68 See Emma Wilkins, 'Princess wins court bar on photographer', *The Times* (16 August 1996), p. 1, column e. Princess Diana's affidavit gives details of Mr Stenning's behaviour towards her over an extended period. See *The Times* (17 August 1996), p. 2. Earlier in 1996, a German doctor had been stalking the Princess. He was arrested and bailed after waving a placard outside the health club where she worked out in January (see *The Times,*

13 January 1996, p. 1, column g); arrested again after distributing leaflets outside Harrods shortly before she was due to go there (*The Times*, 8 March 1996, p. 2, column g); and was later subject to a court order barring him from going within 8 km of the places where she was to attend engagements.

69 See the judgment of Sir Thomas Bingham M.R. in *Burris v. Azadani* [1995] 4 All ER 802, C.A.

70 Under Public Order Act 1986, Part I, Section 5 (3) (c), it is a defence for accused (press photographers, protesters, and so on) to show that his or her conduct was 'reasonable'. For further discussion, see Helen Fenwick and Gavin Phillipson, 'Confidence and Privacy: A Re-examination', *Cambridge Law Journal*, Vol. 55, No. 3 (November 1996), pp. 447–55, esp. 448–50.

71 See Roy Jenkins, *Gladstone* (London: Macmillan, 1996), p. 268.

72 Vorspan argues that particular characteristics of nuisance law made it an effective tool to regulate labour picketing. It was easily adaptable to judicial purposes; it imposed on plaintiffs and prosecutors minimal evidentiary requirements; it ostensibly applied to all persons impartially, and it operated independently of legislative judgments in the area of labour relations. Rachel Vorspan, 'The Political Power of Nuisance Law: Labour Picketing and the Courts in Modern England 1871–Present', *Buffalo L. Rev.*, Vol. 46 (Fall 1998), 593, at 697.

73 For further deliberation, see David J. V. Jones, *Rebecca's Children: A Study of Rural Society, Crime and Protest* (Oxford: Clarendon Press, 1989).

74 *Carey v. Brown*, 447 U.S. 455, esp. 478–79 (1980).

75 *Frisby v. Schultz*, 487 U.S. 494, 108 S.Ct 2495, 2507 (1988).

76 *Frisby v. Schultz*, 487 U.S. 494, 108 S.Ct 2495, 2510 (1988).

77 *Hubbard v. Pitt* [1976] Q.B. 142, C.A.

78 Examples of these developments include *Thomas v. National Union of Mineworkers* (South Wales Area) [1985] 2 All ER 1; *Khorasandjian v. Bush* [1993] 3 W.L.R 476, 3 All E.R. 669, C.A.; *Burris v. Azadani* [1995] 4 All E.R. 802, C.A.

79 H.C. 148/79. *Saar v. Minister of the Interior and the Police*, P.D. 34 (ii), 169; H.C. 153/83. *Levy and Amit v. Southern District Police Commander*, P.D. 38 (ii), 393. See also H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*; H.C. 4712/96. *MERETZ v. District of Jerusalem Police Commander* (not published).

80 H.C. 153/83. *Levy and Amit v. Southern District Police Commander*, at 398.

81 Ibid.

82 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, paras 2, 3 in Justice Levine's judgment.

83 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, para. 3 in Justice Levine's judgment.

84 *Gregory v. Chicago*, 394 U.S. 111 (1969), where the Supreme Court overturned the conviction of protesters who marched from City Hall to the home of Chicago Mayor Richard Daley urging him to accelerate desegregation of public schools.

85 *Carey v. Brown*, 447 U.S. 455 (1980). This judgment is also concerned with content regulation.

86 In several early cases, the court's position was that regulation, not prohibition, was the appropriate policy in dealing with free speech questions. In *Lovell v. Griffin*, 303 U.S. 444 (1938) ordinance requiring permit to distribute literature was declared invalid on its face. In *Schneider v. State*, 308 U.S. 147, 160, 162 (1939) flat prohibition on leafleting to prevent littering was declared unjustified. In *Cox v. New Hampshire*, 312 U.S. 569 (1941) the court established that time, place and manner regulations of parades are permissible. *Saia v. New York* (334 U.S. 558, 1948) and *Kovacs v. Cooper* (336 U.S. 77, 1949) deal with regulations of sound trucks and loudspeakers on city streets.

87 *Klebanoff v. McMongale*, 380 Pa. Super. 545, 552 A.2d 677 (1989); *Barrington v. Blake*, 568 A.2d 1015 (R.I. 1990), at 1021; *Kaplan v. Prolife Action League of Greensboro*, 111 N.C.App. 1, 431 S.E.2d 828 (1993). In *Hibbs v. Neighborhood Organization to Rejuvenate Tenant Housing*, 433 Pa. 578, 252 A.2d 622 (1969) the court overturned an injunction barring protestors from picketing the home of Hibbs as violative of the picketers' First Amendment rights because Hibbs conducted his business affairs in such a secretive manner that no other place was available for the protestors to communicate their views.

88 *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981), at 654–5; *Klebanoff v. McMongale,* 380 Pa. Super. 545, 552 A.2d 677 (1989). See also Phelps, 'Picketing and Prayer: Restricting Freedom of Expression Outside Churches', op. cit., at 282.

89 But, as we have seen, in *Frisby* the court said it is permissible to prohibit focused picketing taking place solely in front of a particular residence.

90 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, para. 28 in Justice Barak's judgment.

91 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, para. 12 in Justice Barak's judgment.

92 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, para. 25 in Justice Barak's judgment. For further discussion, see Aharon Barak, 'The Tradition of Freedom of Expression in Israel and Its Problems', public lecture delivered on 13 May 1996 at Tel-Aviv University. An English translation of the text, albeit in a shorter version, is found in *Justice*, No. 9 (June 1996), 3–10; *idem,* 'Freedom of Expression and Its Limitations', in R. Cohen-Almagor (ed.), *Challenges to Democracy: Essays in Honour and Memory of Professor Sir Isaiah Berlin* (London: Ashgate, 2000).

93 H.C. 2481/93. *Yoseph Dayan v. Police Chief District of Jerusalem*, para. 4 in Justice Goldberg's judgment.

94 *Frisby v. Schultz*, 487 U.S. 474, 494 (1988).

3 The Right to Participate in Elections: Judical and Practical Considerations

1 The terms 'party' and 'list' are used interchangeably.

2 *Village of Skokie v. The National Socialist Party of America*, 373 N.E. 2d 21 (1978).

3 Anthony Skillen, 'Freedom of Speech', in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge, England: Cambridge University Press, 1982), 139–59.
4 Norman Dorsen, 'Is There A Right to Stop Offensive Speech? The Case of the Nazis at Skokie', in Larry Gostin (ed.), *Civil Liberties in Conflict* (London: Routledge, 1988), 122–35.
5 T. M. Scanlon, 'Freedom of Expression and Categories of Expression', *University of Pittsburgh Law Review,* Vol. 40, No. 3 (1979), 519–50.
6 Frederick Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982); *idem,* 'The Cost of Communicative Tolerance', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000). In his comments on a draft of this essay, Jim Weinstein argues that the fundamental liberal objection to hate speech bans, such as the one imposed by Skokie, is the quite principled objection that government has no business regulating public discourse because it disagrees with its message or finds the message offensive. So consequentialist arguments are not necessarily unprincipled ones. The focus of this view, however, is different from mine. While my prime consideration has to do with the question of concrete harm that is inflicted on a designated group, Weinstein and like-minded liberals focus on societal considerations. For further deliberation see James Weinstein, *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine* (Boulder, CO.: Westview, 1999); *idem*, 'An American's View of the Canadian Hate Speech Decisions', in W. J. Waluchow (ed.), *Free Expression* (Oxford: Clarendon Press, 1994), pp. 175–221.
7 Lee C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press, 1986).
8 In his comments on this essay, Dave Boeyink writes that in the American Declaration of Independence people do have a right to overthrow the government, but only when the government itself has become destructive of the ends of democracy.
9 Election Appeal (E.A.) 1/65, *Yeredor v. Chairman of the Central Committee for the Elections to the Sixth Knesset,* P.D. 19 (iii), 365.
10 Ibid., at 369.
11 *Yeredor,* p. 390.
12 *Yeredor,* p. 390.
13 See A. T. H. Smith, *The Offences Against Public Order* (London: Sweet and Maxwell, 1987).
14 For further analysis of the majority and minority judgments in *Yeredor*, see R. Cohen-Almagor, 'Disqualification of Lists in Israel (1948–1984): Retrospect and Appraisal', *Law and Philosophy,* Vol. 13, No. 1 (1994), pp. 43–95.
15 For discussion on Rabbi Kahane and 'Kach', see Robert I. Friedman, *The False Prophet* (London: Faber and Faber, 1990); R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel* (Gainesville, FL: The University Press of Florida, 1994), esp. chaps 9, 11.
16 E.A. 2/84. *Neiman and Avneri v. Chairperson of the Central Committee for the Elections to the 11th Knesset*. P.D. 39 (ii), 238.
17 E.A. 2/84. *Neiman and Avneri v. Chairperson of the Central Committee for the Elections to the 11th Knesset*. P.D. 39 (ii), 237.
18 Ronald Dworkin, *Law's Empire* (Cambridge, MA.: Harvard University Press, 1986), pp. 255–6.

19 Ronald Dworkin calls this theory of adjudication 'a naturalist approach'. Cf. ' "Natural" Law Revisited', *University of Florida Law Review*, Vol. 35 (1982), pp. 165–88.
20 E.A. 2/84. *Neiman and Avneri v. Chairperson of the Central Committee for the Elections to the 11th Knesset*. P.D. 39 (ii), 265.
21 Ibid., at 279.
22 *Neiman,* p. 326.
23 Sections 144 (A–E) of Penal Law, Amendment No. 20 (1986).
24 Basic Law: The Knesset. Amendment No. 9. 1155 *Sefer Ha'chukim* (Book of Laws), 1985 (Hebrew).
25 Parties Law, 1992, in 20 *Dinim*, at 12036c (Hebrew) (emphasis added).
26 E.A. 2/88, *Ben Shalom and Others v. the Central Committee for the Elections to the 12th Knesset*. P.D. 43 (iv), 221.
27 E.A. 1/88. *Neiman and 'Kach' v. Chairperson of the CEC to the 12th Knesset,* P.D. 42 (iv), 177, at 189.
28 For further deliberation on the 1988 and 1992 elections, see R. Cohen-Almagor, 'Disqualification of Political Parties in Israel: 1988–1996', *Emory International Law Review,* Vol. 11, No. 1 (1997), pp. 67–109.
29 E.A. 2805/92. *'Kach' v. Chairperson of the CEC to the 13th Knesset;* E.A. 2858/92. *'Kahane Is Alive' Movement v. Chairperson of the CEC to the 13th Knesset* (both decisions rendered on 9 June 1992).
30 *Yalkut Ha'pirsumim* (14 March 1993), 4202, p. 2786 (Hebrew).
31 *The Official Gazette*, No. 24 (29 September 1948).
32 Attorney-General Michael Ben-Yair's opinion paper to Prime Minister Yitzhak Rabin Regarding the Declaration of the 'Kach' and 'Kahane Chai' ('Kahane Is Alive') movements as well as Their Combination and Derivatives as Terrorist Organizations (10 March 1994), paras. 2, 1 (Hebrew).
33 Ibid., paras 2, 3.
34 Karl Popper, *The Open Society and Its Enemies* (London: Routledge & Kegan Paul, 1962), and 'Toleration and Intellectual Responsibility', in S. Mendus and D. Edwards (eds), *On Toleration* (Oxford: Clarendon Press, 1987), pp. 17–34.
35 For further discussion, see R. Cohen-Almagor, 'La Lutte Contre L'Extremisme Politique en Israel', *Pouvoirs,* Vol. 72 (1995), pp. 83–96 (French), or 'Combating Right-Wing Political Extremism in Israel: Critical Appraisal', *Terrorism and Political Violence,* Vol. 9, No. 4 (1997), pp. 82–105. See also Justice Zamir's judgment in 6897/95. *Benjamin Zeev Kahane v. Commander Kroyzer, Israeli Police* (12 December 1995).
36 Parties Law, 1992, in 20 *Dinim*, at 12036c (Hebrew).
37 P.C.A. 7504/95, 7793/95, *Yassin and Rochly v. the Parties' Registrar and Yemin Israel* (28 April 1996).
38 Ibid., see para. 5 in P. Barak's judgment.
39 P.C.A. 7504/95, 7793/95, *Yassin and Rochly v. the Parties' Registrar and Yemin Israel,* para. 5 P. in Barak's judgment.
40 Ibid., para. 8 in P. Barak's judgment.
41 Ibid., para. 15 in P. Barak's judgment.
42 R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), and *A Matter of Principle* (Oxford: Clarendon Press, 1985); R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance,* esp. chaps 3, 4, 13.

43 P.C.A. 7504/95, 7793/95, *Yassin and Rochly v. the Parties' Registrar and Yemin Israel,* para. 17 in P. Barak.'s judgment.
44 Ibid., para. 22 in P. Barak's judgment.
45 Ibid., para. 27 in P. Barak's judgment.
46 Ibid., para. 28 in P. Barak's judgment.
47 P.C.A. 2316/96 *Meiron Aizekson v. the Parties' Registrar and the Arab Movement for Change* (28 April 1996).
48 Ibid., para. 7 in J. Cheshin's judgment.
49 Ibid.
50 Ibid., para. 11 in J. Cheshin's judgment.
51 Ibid., para. 20 in J. Cheshin's judgment.
52 Ibid., para. 27 in J. Cheshin's judgment.
53 Ibid., para. 30 in J. Cheshin's judgment.
54 Ibid., para. 12 in J. Cheshin's judgment.
55 Ibid., para. 13 in J. Cheshin's judgment.
56 Ibid.
57 Ibid., para. 16 in J. Cheshin's judgment.
58 Ibid., para. 17 in J. Cheshin's judgment.
59 Ibid., para. 19 in J. Cheshin's judgment.
60 Ibid., para. 20 in J. Cheshin's judgment.
61 Ibid., para. 23 in J. Cheshin's judgment.
62 Ibid., para. 24 in J. Cheshin's judgment.
63 Ibid., para. 25 in J. Cheshin's judgment.
64 Ibid., para. 27 in J. Cheshin's judgment.
65 H.C. 426/94 *Yoseph Adler v. Israeli Police Head of Investigations et al.*
66 P.C.A. 2316/96 *Meiron Aizekson v. the Parties' Registrar and the Arab Movement for Change,* para. 28 in J. Cheshin's judgment.
67 Ibid., para. 29 in J. Cheshin's judgment.
68 Ibid., para. 31 in J. Cheshin's judgment.
69 Ibid., para. 31 in J. Cheshin's judgment.
70 Ibid., para. 32 in J. Cheshin's judgment.
71 Ibid., para. 34 in J. Cheshin's judgment.
72 Ibid., para. A in J. Tal's judgment.
73 Cf. *Glimmerveen and Hagenbeek v/the Netherlands* (1980) *Decisions and Reports* 18 European Community H.R. 187–208.
74 E.A. 2/84. *Neiman and Avneri v. Chairperson of the CEC to the 11th Knesset,* p. 304.

4 Objective Reporting in the Media: Phantom Rather than Panacea

1 A draft of this essay was presented in summer 1996 at *The 12th National Workshop on the Teaching of Ethics in Journalism*, Freedom Forum First Amendment Center, Vanderbilt University, Nashville, Tenn., and at *Conversation and Community*, The Australian and New Zealand Communication Association Annual Conference, QUT (Queensland University of Technology), Brisbane, 1996. I express gratitude to Dave Boeyink, Ed Lambeth, Mayo Moran, and John McManus for sending me their respective writings.

The University of Haifa Research Authority provided me with a research grant that helped facilitate part of the work. I am most grateful to the Research Authority for its kind support.

2 Dan Schiller, *Objectivity and the News* (Philadelphia: University of Pennsylvania Press, 1981), pp. 7–10; Robert A. Hackett and Yuezhi Zhao, *Sustaining Democracy? Journalism and the Politics of Objectivity* (Toronto: Garamond Press, 1998), esp. chap. 1; Celeste Michelle Condit and J. Ann Selzer, 'The Rhetoric of Objectivity in the Newspaper Coverage of a Murder Trial', *Critical Studies in Mass Communication,* Vol. 2, No. 3 (1985), pp. 197–216, esp. 210–11; Theodore L. Glasser and James S. Ettema, 'Investigative Journalism and the Moral Order', *Critical Studies in Mass Communication,* Vol. 6, No. 1 (1989), pp. 1–20, at 4.

3 Gaye Tuchman, *Making News* (New York: The Free Press, 1978), pp. 160–1, 177–81.

4 For further discussion, see Meenakshi Gigi Durham, 'On the Relevance Standpoint. Epistemology to the Practice of Journalism: The Case for "Strong Objectivity"', *Communication Theory*, Vol. 8, No. 2 (May 1998), pp. 118–19.

5 Theodore L. Glasser, 'Objectivity Precludes Responsibility', *The Quill* (February 1984), pp. 14–15.

6 Michael Schudson, *Discovering the News* (New York: Basic Books, 1978), p. 9.

7 It should be noted that the code was revised three times since then. The latest revision, in 1996, does not mention the word 'objectivity', which is a significant omission. There are many other codes of ethics that aspire to objectivity in media reporting. See, for instance, Section 6 of the Israeli Professional Ethics Code of Journalism (ratified on 16 May 1996); Chapter C of the Guidelines of the Israeli Second Television and Radio Authority (1994); Article 2 of the Italian Riforma della legge 3/2/1963 N. 69 'Ordinamento della Professione di Giornalista', and Sections 2 and 3 of Carta dell'informazione e della programmazione a garanzia degli utenti e degli operatori del servizio pubblico – Rai (December 1995). For further discussion, see Tiina Laitila, 'Journalistic Codes of Ethics in Europe', *European Journal of Communication,* Vol. 10, No. 4 (1995), pp. 527–44.

8 Robert A. Hackett and Yuezhi Zhao, *Sustaining Democracy? Journalism and the Politics of Objectivity,* op. cit., p. 54.

9 Seven areas of concern were cited most frequently. The other six were reporter misrepresentation; privacy rights versus the public's right to know; conflicts of interest; anonymous sources; 'freebies'; and balancing compassion for subjects with newspaper policy. See Douglas Anderson, 'How Managing Editors View and Deal With Ethical Issues?', *Journalism Quarterly,* Vol. 64 (1987), pp. 341–5, at 344.

10 I am not suggesting that neutrality and objectivity are one and the same. One can be objective about facts without being neutral. What I suggest is that moral neutrality is one of the notions involved in this rather complex and vague concept of objectivity.

11 Thomas Nagel, 'The Limits of Objectivity', in Sterling M. McMurrin (ed.), *The Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press, 1980), pp. 83–4.

12 See Michael Schudson, *Origins of the Ideal of Objectivity in the Professions* (New York and London: Garland Publishing, 1990), p. 3. He provides an

analysis of the historical development of the concept of objectivity in journalism in chap. vii, esp. pp. 231–69.

13 Herbert J. Gans, *Deciding What's News* (New York: Pantheon Books, 1979), pp. 183, 187–93, 304–35.

14 Stephen D. Reese, 'The News Paradigm and the Ideology of Objectivity: A Socialist at the Wall Street Journal', *Critical Studies in Mass Communication*, Vol. 7 (1990), pp. 390–409, p. 394.

15 The Agreement accompanying the BBC's Charter specifies that 'due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles', in the *BBC Producers' Guidelines* (November 1996), p. 14.

16 See I. Roeh and S. Feldman, 'The Rhetoric of Numbers in Front-page Journalism: How Numbers Contribute to the Melodramatic in the Popular Press', *Text,* Vol. 4, No. 4 (1984), pp. 347–68.

17 The Israel Broadcasting Ethics Code addresses this issue. Section 106 is entitled 'How many participated in the demonstration?'. It says that the number of participants in demonstrations is a newsworthy fact. Reporters should not rely on estimations of partisan parties. Such information should be received from senior police officers. See Nakdimon Rogel and Amit Shechter, *The Nekdi Document* (Israel Broadcasting Authority, July 1995), pp. 42–3 (Hebrew).

18 The BBC has always stressed the importance of accuracy. See Thomas Gibbons, *Regulating the Media* (London: Sweet and Maxwell, 1998), Second Edition, pp. 99–100. The CBC *Journalistic Standards and Practices* (Canadian Broadcasting Corporation, 1993) holds that information programmes must reflect established journalistic principles: accuracy; integrity, and fairness, and that 'application of these principles will achieve the optimum objectivity and balance that must characterise CBC's information programs' (p. 28).

19 Lehman-Wilzig's view is more extreme than mine. In his comments on this chapter he writes that journalists are *never* objective, nor can they be. As yesterday's events involve hundreds of details and the reporter must select which to include and which to exclude, such selection entails a high level of subjectivity. Moreover, Professor Lehman-Wilzig maintains that about 50 per cent of all news items originate through someone outside the paper (for example, public relations officers and professional spokespersons) who often have partisan interests. Thus, if the source is not objective, how can the report itself be? Lehman-Wilzig concludes his point by saying that the published results are selective and subjective in the highest order.

20 See Christopher Hewitt, 'Public's Perspectives', in David L. Paletz and Alex P. Schmid (eds), *Terrorism and the Media* (Newbury Park, CA.: Sage, 1992), pp. 170–207; Herbert G. Kariel and Lynn A. Rosenvall, 'Cultural Affinity Displayed in Canadian Daily Newspapers,' *Journalism Quarterly*, Vol. 60 (1983), pp. 431–6.

21 Amos Schocken, the owner of the Israeli daily newspaper *Ha'aretz* and some other local newspapers, said in a public meeting on Israeli media that the only requirement of a journalist is to write in accordance with the preferences of the editor. Academic Forum, Dan Carmel Hotel, Haifa (27 February 1996). David Radler, president of the Canadian media giant, Hollinger Inc. said: 'If editors disagree with us, they should disagree with us when they are

no longer in our employ.' See Maude Barlow, and James Winter, *The Big Black Book* (Toronto: Stoddart, 1997), p. 11.

22 John McManus, 'How Objective Is Local Television News?' *Mass Communication Review,* Vol. 18, No. 3 (1991), pp. 21–30, 48.

23 Leftist ideologists advance Marxist arguments that hold that the media actively frame and promote news stories that serve the needs and concerns of the élite. Herman and Chomsky provide a systematic 'propaganda model' to account for the behaviour of the corporate news media in the United States. They preface their discussion of the propaganda model by noting their fundamental belief that the mass media serve to mobilise support for the special interests of power groups and large corporations that dominate the state, the media, the advertising industry, and private activity. In their view propaganda is a very important aspect of the work of the media. See Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (New York: Vintage, 1995).

24 John C. Merrill, 'Is Ethical Journalism Simply Objective Reporting?', *Journalism Quarterly,* Vol. 62, Nos. 1–2 (1985), pp. 391–3.

25 Raphael Cohen-Almagor, 'Female Circumcision and Murder for Family Honour among Minorities in Israel', in Kirsten E. Schulze, Martin Stokes and Colm Campbell (eds), *Nationalism, Culture and Diasporas: Identities and Rights in the Middle East* (London: I. B. Tauris, 1996), pp. 171–87.

26 I discuss medical ethics in 'The Patients' Right to Die in Dignity and the Role of Their Beloved People', *Annual Review of Law and Ethics*, Vol. 4 (1996), pp. 213–32; 'Autonomy, Life as an Intrinsic Value, and Death with Dignity', *Science and Engineering Ethics*, Vol. 1, No. 3 (1995), pp. 261–72; *idem*, 'Reflections on the Intriguing Issue of the Right to Die in Dignity', *Israel Law Review,* Vol. 29, No. 4 (1995), pp. 677–701; ' "Muerte con dignidad", "calidad de vida", "estado vegetativo", "doble efecto" y otras expresiones empleadas por los medicos', *Perspectivas Bioeticas,* No. 5 (1998), pp. 26–44 (Spanish); *The Right to Die in Dignity: Au Argument in Ethics, Medicine and Law* (forthcoming); Raphael Cohen-Almagor and Merav Shmueli, 'Can Life Be Evaluated? The Jewish Helachic Approach vs. the Quality of life Approach in Medical Ethics: A Critical View', *Theoretical Medicine and Bioethics* (2000).

27 Sarah Davidovitz, a columnist working for a local newspaper in Jerusalem, was explicitly asked whether she would report misconduct of politicians she worked with. Her answer was no less explicit. She said that she would not report the misconduct. There are enough journalists who would be happy to provide their readers with such news. She left it to them. Interview on *Yoman Ha'shavuah*, Channel 1 Israel Television (Friday, 9 February 1996).

28 The Declaration of Independence holds, *inter alia*, that Israel will foster the development of the country for the benefit of all its inhabitants; that it will be based on the foundations of liberty, justice, and peace; that it will ensure complete equality of social and political rights to all of its citizens irrespective of religion, race, or sex; and that it will guarantee freedom of religion, conscience, language, education, and culture.

29 H.C. 399/1985. *Kahane v. Board of Directors of the Broadcasting Authority*. *Piskei Din* (Judgments of the Israeli Supreme Court), 41 (iii), 255. For a fuller account of this case, see Raphael Cohen-Almagor, *The Boundaries of Liberty*

and Tolerance: The Struggle Against Kahanism in Israel (Gainesville, FL: The University Press of Florida, 1994), chap. 12.

30 David E. Boeyink, 'How Effective Are Codes of Ethics? A Look at Three Newsrooms', *Journalism Quarterly*, Vol. 71 (1994), pp. 893–904, esp. 895.

31 A Canadian editor used almost the same words during an interview I conducted in the summer of 1998.

32 405/1995. '*CLAL' and Others v. the Broadcasting Authority and Others,* Jerusalem (16 January 1996).

33 For a different example concerning Cecil Andrews who set himself on fire after calling upon a camera crew to film him igniting himself, see Stephen D. Reese, 'The News Paradigm and the Ideology of Objectivity: A Socialist at the Wall Street Journal', op. cit. p. 390.

34 Gideon Ezra, former Deputy Head of the SHABAC (Israel internal security) (Communication Forum on Terror and Communication, University of Haifa, 30 April 1996). For further discussion on staging events, see A. P. Schmid, 'Terrorism and the Media: The Ethics of Publicity', *Terrorism and Political Violence*, Vol. 1, No. 4 (1989), pp. 539–65.

35 Rilla Dean Mills, 'Newspaper Ethics: A Qualitative Study', *Journalism Quarterly,* Vol. 60, No. 4 (1983), 589–94, 602.

36 Ronald M. Dworkin, 'Liberalism', in *A Matter of Principle* (Oxford: Clarendon Press, 1985), pp. 181–204; Ronald M. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. 266–78.

37 See Theodore L. Glasser and James S. Ettema, 'Investigative Journalism and the Moral Order', op. cit., p. 7.

38 Standard 1 of the Society of Professional Journalists Code of Ethics speaks of Responsibility. See also Section 1 of Associated Press Managing Editors Code of Ethics. On the social responsibility theory, see Deni Elliot (ed.), *Responsible Journalism* (Beverly Hills, CA.: Sage, 1986); Conrad C. Fink, *Media Ethics* (Boston, Mass.: Allyn and Bacon, 1995), 2nd Edition, Appendix B, p. 309; Michael Schudson, *The Power of the News* (Cambridge, MA: Harvard University Press, 1995); Kristie Bunton, 'Social Responsibility in Covering Community: A Narrative Case Analysis', *Journal of Mass Media Ethics*, Vol. 13, No. 4 (1998), pp. 232–46.

39 See Theodore L. Glasser and James S. Ettema, 'Investigative Journalism and the Moral Order', *op. cit.* p. 10.

40 Thomas Gibbons, *Regulating the Media,* op. cit., pp. 107–8.

41 See J. C. Merrill, 'Is Ethical Journalism Simply Objective Reporting?', *Journalism Quarterly*, Vol. 62 (1985), pp. 391–3, at 391.

42 See J. C. Merrill, 'Good Reporting Can Be a Solution to Ethics Problem', *Journalism Educator* (Autumn 1987), pp. 27–29, at 27.

43 For a critical discussion of the Leninist view, see R. Cohen-Almagor, 'Foundations of Violence, Terror and War in the Writings of Marx, Engels, and Lenin', *Terrorism and Political Violence,* Vol. 3, No. 2 (1991), pp. 1–24.

44 For further deliberation on the concept of social responsibility, see Conrad C. Fink, *Media Ethics* op. cit., 2nd edn, chap. 5.

45 Alberta Court of Queen's Bench (1984), 19 C.C.C. (3d) 254, at 273.

46 Cf *R. v. Keegstra* [1990] S.C.J. No. 131, 763–9. See also Richard Moon, 'Drawing Lines in a Culture of Prejudice: *R. v. Keegstra* and the Restriction of Hate Propaganda', *U.B.C. L. Rev*. (1992), pp. 99–143; Mayo Moran, 'Talking

about Hate Speech: A Rhetorical Analysis of American and Canadian Approaches to the Regulation of Hate Speech', *Wisconsin L. Rev.*, No. 6 (1994), 1425–514, esp. p. 1493; Irwin Cotler, 'Holocaust Denial, Equality and Harm: Boundaries of Liberty and Tolerance in a Liberal Democracy', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).

47 *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (1966). Article 20 immediately follows Article 19 on freedom of expression, and the UN Human Rights Committee that monitors and adjudicates on compliance with and alleged violations of these rights takes the view that there is no inconsistency between the two Articles.

48 *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted by the United Nations in 1966 (Can. T.S. 1970, No. 28).

49 Robert G. Picard, 'News Coverage as the Contagion of Terrorism', in A. Odasuo Alali and Kenoye Kelvin Eke (eds), *Media Coverage of Terrorism* (Newbury Park, CA.: Sage, 1991), pp. 49–62; Gary Sick, 'Taking Vows: The Domestication of Policy-Making in Hostage Incidents', in Walter Reich (ed.), *Origins of Terrorism* (New York: Woodrow Wilson Center and Cambridge University Press, 1990), pp. 230–44; Gabriel Weimann and Conrad Winn, *The Theater of Terror* (New York: Longman, 1994), chap. 4.

50 As a general rule, the BBC World Service refrains from using the term 'terrorists', which is perceived to be too loaded and prefers to resort to more neutral terms, even when the brutality involved in the violent crime against innocent civilians is obscene.

51 Ronald Dworkin, 'Objectivity and Truth: You'd Better Believe It', *Philosophy and Public Affairs* (1996), pp. 87–139, at 92–8.

52 My views on the ways to fight terrorism are similar to those of Paul Wilkinson, *Terrorism v. Liberal Democracy – The Problems of Response*, Centre for Security and Conflict Studies, No. 67, January 1976.

53 R. Cohen-Almagor, 'Between Neutrality and Perfectionism', *The Canadian Journal of Law and Jurisprudence,* Vol. VII, No. 2 (1994), pp. 217–36.

54 In his comments on this paper, Dick Moon shares my concern about the tendency to report arguments and perspectives without critical evaluation. He writes that perhaps neutrality is the reason for this but wonders whether it can also be attributed to laziness and lack of knowledge on the part of newspapers. Professor Moon sees a growing trend of the media, at least in North America, to avoid analysis of complex public issues.

55 Section 26 of the Israel Broadcasting Ethics Code says, 'the ability to report news in a neutral and objective manner is one of the necessary professional virtues of the journalist. The reporter should avoid expressing his/her personal views'. But Section 35 prescribes qualifications to objective reporting. It holds that reporters need to remember that they broadcast to a particular audience with particular norms and values: 'It is not to be expected from this audience to be objective, or indifferent, to murder, anti-Semitism, Holocaust denial, bodies that wish to destroy Israel, or acts that desecrate synagogues and cemeteries'. See Nakdimon Rogel and Amit Shechter, *The Nekdi Document* (Israel Broadcasting Authority, July 1995), pp. 25–6 (Hebrew).

56 Members of the public journalism movement in North America may share this endorsement. The movement believes that journalists should actively help to make public life work, and in so doing strengthen the bonds

between journalism and the community to which it is addressed. It asks journalism to abandon a stance of detachment in order to actively reinvigorate public politics. Public journalism asks that journalists be more self-reflective about their own practices and assumptions, how stories are framed, how the audience is positioned, and what master narrative is being used. Accordingly, making public life work, rather than simply providing a balanced and objective flow of information, becomes journalism's primary legitimation. See Robert A. Hackett and Yuezhi Zhao, *Sustaining Democracy? Journalism and the Politics of Objectivity,* op. cit, pp. 200–6.

57 David E. Boeyink, 'A Defense of Advocacy in the Media, or Why Newspapers Should Not (Always) be Neutral Observers' (unpublished draft paper), p. 12.

58 Quite sensibly, the British Press Complaints Commission's Code of Practice speaks, *inter alia*, of accuracy (section 1), the distinction of comment, conjecture, and fact (Section 3), and of misrepresentation (Section 7). The word 'objectivity' is not mentioned even once in the Code.

5 Ethical Boundaries of Media Coverage

1 A draft of this essay was presented in summer 1998 at *The Jerusalem Conference in Canadian Studies*. I am grateful to attorneys Amir Zolty, Noam Solberg, Ilan Bombach, Annalisa Verza, and Liora Havilio for providing me with documents and court judgments, and to Aharon Barak, Michael Ben-Yair, Valerie Alia, and Cliff Christians for sending me their respective writings.

2 Anthony Skillen, 'Freedom of Speech', in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge: Cambridge University Press, 1982), pp. 139–59.

3 Ronald M. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977). R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: The University Press of Florida, 1994).

4 Persons, as moral agents, have their conceptions of the moral life, and accordingly determine what they deem to be the most valuable or best form of life worth leading. A conception of the good involves a mix of moral, philosophical, ideological, and religious notions, together with personal values that contain some picture of a worthy life. One's conception of the good does not have to be compatible with moral excellence. It does not mean a conception of justice. Leading a valuable life does not entail leading a moral life. The moral life may guide the valuable life, but it is equally plausible to think that the moral life may be subordinated to the valuable life. The assumption is that a conception of the good comprises a basic part of our overall moral scheme and that it is public in that it is something we advance as good for others as well as ourselves. Consequently we would want others to hold a conception for their sake. But when that desire is based on coercion, it cannot be said to be moral because people are no longer autonomous to decide on their way of life. They are then forced to follow a scheme, which they do not consider to be a conception of the good life. For further discussion, see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 134–5; R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance,* chap. 3.

5 R. Cohen-Almagor, 'Combating Right-Wing Political Extremism in Israel: Critical Appraisal', *Terrorism and Political Violence,* Vol. 9, No. 4 (1997), pp. 82–105.
6 James Bryce, *Modern Democracies* (London: Macmillan, 1921), Vol. I, p. 4.
7 A statement of journalistic principles by the Canadian Daily Newspaper Association holds: 'The newspaper has responsibilities to its readers, its shareholders, its employees and its advertisers. But the operation of a newspaper is in effect a public trust, no less binding because it is not formally conferred, and its overriding responsibility is to the society which protects and provides its freedom'. Royal Commission on Newspapers, 1981, 286; quoted in Carmen Cumming and Catherine McKercher, *The Canadian Reporter* (Toronto: Harcourt Brace, 1994). For further deliberation, see Jeffrey Olen, *Ethics in Journalism* (Englewood Cliffs, NJ: Prentice Hall, 1988), pp. 29–31.
8 Deni Elliott, 'Universal Values and Moral Development Theories', in Clifford Christians and Michael Traber (eds), *Communication Ethics and Universal Values* (Thousand Oaks, CA.: Sage, 1997), pp. 68–83.
9 See, for example, the struggle of the *Times-Picayune* in New Orleans against a bigot named David Duke who wished to become the governor of the state of Louisiana (20 October–17 November 1991 issues). See David E. Boeyink, 'Reporting on Political Extremists in the United States: The Unabomber, the Ku Klux Klan and the Militias', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).
10 For instance, the Radio/Television News Directors Association code begins with the unqualified statement: 'The responsibility of radio and television journalists is to gather and report information of importance and interest to the public accurately, honestly, and impartially.' For further discussion, see John McManus, 'Who's Responsible for Journalism?', *Journal of Mass Media Ethics,* Vol. 12, No. 1 (1997), pp. 1–5. My opinions are presented in *Chapter 4.*
11 See R. Cohen-Almagor, 'Boundaries of Freedom of Expression Before and After Prime Minister Rabin's Assassination', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance, op. cit.*
12 Earl Winkler, 'The Unbearable Lightness of Moral Principle: Moral Philosophy and Journalistic Ethics', in Valerie Alia, Brian Brenan and Barry Hoffmaster (eds), *Deadlines and Diversity* (Halifax: Fernwood, 1996), pp. 12–20.
13 Of course there are limits to what journalists could rightfully be expected to anticipate prior to the publication of news. Frequently issues are deemed to be relatively simple, hence journalists do not feel obliged to seriously contemplate possible consequences. Consider, for instance, the following: a person committed a felony and was taken to jail. A newspaper reports the story and after the publication that person's mother commits suicide. The editor cannot be expected to anticipate such a reaction and, in any event, could not perform his/her job adequately under threats of suicide if a given piece of news is to be reported.
14 Ronald M. Dworkin, *Taking Rights Seriously, op. cit.*
15 See also the Italian Carte di Parma (1992), and Carta dei Doveri del Giornalista (1993); Chapter E of the Guidelines of the Israeli Second

Television and Radio Authority (1994); Section 8 of the Professional Ethics Code of Israeli Journalism (affirmed on 16 May 1996).

16 In a private discussion with a British academic, I harshly criticized the *Sun* daily tabloid for many publications, which I considered to be unethical. At that time I thought that equating ethical behaviour with professionalism could be of some value, therefore I claimed that this daily could not be considered as a professional newspaper. My colleague answered that the *Sun* is extremely professional because it succeeds in achieving its prime concern: sales. For many years the *Sun* has retained its place as the most popular newspaper in Great Britain. This conception, which equates professionalism with efficiency in marketing, is devoid of all ethical considerations. Subsequently this and similar views constituted a further good reason for me to avoid the journalism as professionalism/trade debate. What we do need to take into account are ethical considerations and responsibility to the public, and to the system that allows the working of free media. For further discussion, see Clifford Christians, 'Enforcing Media Codes', *Journal of Mass Media Ethics,* Vol. 1, No. 1 (Fall/Winter 1985–86), pp. 14–21; Richard Clutterbuck, *The Media and Political Violence* (London: Macmillan, 1983); and Tiina Laitila, 'Journalistic Codes of Ethics in Europe', *European Journal of Communication,* Vol. 10, No. 4 (1995), pp. 527–44.

17 Immanuel Kant, *Foundations of the Metaphysics of Morals*, trans.: Lewis White Beck (Indianapolis, Ind.: Bobbs-Merrill Educational Publishers, 1969, 2nd edn), esp. pp. 52–53. For further discussion, see J. Kemp, *The Philosophy of Kant* (Oxford: Oxford University Press, 1979); R. Cohen-Almagor, 'Between Neutrality and Perfectionism', *The Canadian Journal of Law and Jurisprudence,* Vol. VII, No. 2 (1994), pp. 217–36.

18 A good example would be the report by Ayala Hasson of the Israel Broadcast Authority [IBA/Channel one] on the nomination of Mr Ronny Bar-On to Attorney General. This Der'ei–Bar-On–Hasson affair almost terminated the premiership of Mr Benjamin Netanyahu less than a year after his election in 1996.

19 On 22 January 1997, a North Carolina jury awarded Food Lion $5.5 million in punitive damages against ABC without challenging the network's claims that the chain sold spoiled meat. The jury had found that ABC News had committed fraud, trespass, and breach of loyalty. See *Food Lion v. Capital Cities/ABC Inc.* 6:92CV00592 (M.D.N.C., 1 October 1996). For further discussion, see Russ W. Baker, 'Damning Undercover Tactics as "Fraud"', *Columbia Journalism Review*, Vol. 3 (March/April 1997), pp. 28–34.

20 According to the 1992 guidelines of the Society of Professional Journalists and the Poynter Institute for media studies, hidden cameras and other forms of misrepresentation should only be used when (a) the information obtained is of profound importance. It must be of vital public interest, such as revealing great 'system failure' at the highest levels, or it must prevent profound harm to individuals; (b) when all other alternatives for obtaining the same information have been exhausted; (c) when the journalists involved are willing to disclose the nature of the deception and the reason for it; (d) when the individuals involved and their news organization apply excellence, through outstanding craftsmanship as well as the commitment of time and funding needed to pursue the story fully; (e) when the harm

prevented by the information revealed through deception outweighs any harm caused by the act of deception; (f) when the journalists involved have conducted a meaningful, collaborative, and deliberative decisionmaking process. See Russ W. Baker, 'Truth, Lies and Videotape', *Columbia Journalism Review*, Vol. 32 (July/August 1993), pp. 25–8; Robert Lissit, 'Gotcha!', *American Journalism Review*, Vol. 17 (March 1995), pp. 16–21. Compare with the use of deceptive methods in psychology, Andrea Ortmann, and Ralph Hertwig, 'Is Deception Acceptable?', *American Psychologist* (July 1997), pp. 746–7.

21 In 1996, Charles Anson, Press Secretary to the Queen, complained that an analysis of the Queen's personal wealth and that of other members of the royal family included in a feature entitled 'The Rich 500' in the September 1995 issue of the magazine, *Business Age*, was inaccurate and misleading in breach of Clause 1 (Accuracy) and Clause 3 (Comment, conjecture and fact) of the Code of Practice. The Commission upheld the complaint, holding that the article presented speculation as established fact, and made a number of errors. PCC Report (April/May/June 1996) No. 34 (London).

22 Section 4 holds: 'Intrusions and enquiries into an individual's private life without his or her consent … are not generally acceptable and publication can only be justified when in the public interest.'

23 Section 6 (i) holds: 'Journalists or photographers making enquiries at hospitals or similar institutions should identify themselves to a responsible executive and obtain permission before entering non-public areas.'

24 Section 8 (i) and (ii) say: 'Journalists should neither obtain nor seek to obtain information or pictures through intimidation or harassment; unless their enquiries are in the public interest, journalists should not photograph individuals on private property … without their consent; should not persist in telephoning or questioning individuals after having been asked to desist; should not remain on their property after having been asked to leave and should not follow them.'

25 On 2 April 1995 the *News of the World* published a story covering the first three pages headlined 'Di's Sister in Booze and Bulimia Clinic … Royal Exclusive … Earl Spencer's ailing wife has secret therapy. … ' The *People* published a similar story while the *Daily Mirror* published a photograph taken without the permission of Lady Spencer walking in the grounds of the private addiction clinic.

26 PCC Report (March/April 1995) No. 29 (London).

27 Mr Robin Esser, consultant editor of the *Daily Mail,* argued that Princess Diana was obsessive about her image. It was not rare for her to phone the *Mail*'s Royal reporter several times a week, sometimes several times a day. Princess Diana had been on the phone with him regularly every week for the previous two to three years; interview with Mr Esser (20 October 1997). Mr Charles Moore, Editor of the *Daily Telegraph*, said that Princess Diana was regularly in touch with senior people at the paper, like himself, the Royal affairs reporter, and another senior member who is close to the Royal family; interview with Mr Moore on 21 October 1997.

28 For further discussion, see R. Cohen-Almagor, 'Why Tolerate? Reflections on the Millian Truth Principle', *Philosophia,* Vol. 25, Nos. 1–4 (1997), pp. 131–52.

29 Ronald D. Crelinsten, 'Victim's Perspectives', in David L. Paletz and Alex Schmid (eds), *Terrorism and the Media* (Newbury Park, CA: Sage, 1992), pp. 208–38. For further deliberation, see Linda N. Deitch, 'Breaking News: Proposing a Pooling Requirement for Media Coverage of Live Hostage Situations', *UCLA L. Rev.*, Vol. 47 (1999), esp. p. 253; R. Cohen-Almagor, 'The Terrorists' Best Ally: The Quebec Media Coverage of the FLQ Crisis in October 1970', *Canadian Journal of Communication*, Volume 25, No. 2 (2000).

30 It should be further noted that there have been cases of politicians interviewing 'off the record', making statements whose shock value caused journalists to go back on their word and publish the information.

31 Several years ago I recall that a British tabloid reported that a famous married footballer on the English national team had spent the night before an important game in his hotel room with three women from an escort service. The facts turned out to be that he spent time with a girl he had met at a bar; the time they spent together was at the bar and not in his room, and the game was not all that important. The correction, which was published at a later time, could not reverse the harm caused to the player's reputation.

32 William L. Rivers and Cleve Mathews, *Ethics for the Media* (Englewood Cliffs, New Jersey: Prentice Hall, 1988), p. 64. Other examples can be drawn from the stormy world of Israeli politics. After 4 November 1995, during the funeral of Prime Minister Yitzhak Rabin, the media reported that one million people came to The Knesset courtyard to pay their respects. This estimate seems to have been quite exaggerated. Later estimations mentioned approximately 30 000 people.

33 Howard Kurtz, 'Why the Press Is Always Right', *Columbia Journalism Review*, Vol. 32 (May–June 1993), pp. 33–5, at 34.

34 See the inquiry articles by Saul Peretz in the weekend supplements of *Yedioth Ahronoth*: 'Charity, Safed Municipality Style' (20 January 1995), pp. 14–15; 'Deputy Minister Micha Goldman's Primaries Fund' (24 February 1995); 'Charlie Biton and the Bribery Deal' (2 June 1995), p. 6; 'Weinstein Looks Out for His Friends' (21 July 1995), p. 22. Saul Peretz left *Yedioth Ahronoth* after the paper refused to print other articles that supposedly warned about corruption. The paper claimed that the reporter's actions were sometimes 'ruthless' and the articles were not worthy of publication. For further discussion see Saul Peretz, 'The Public's Right To Know', *Ma'ariv*, Weekend Supplement (14 February 1997), pp. 32–8, and the response of *Yedioth Ahronoth* on page 38.

35 Stephen D. Reese, 'The News Paradigm and the Ideology of Objectivity: A Socialist at the Wall Street Journal', *Critical Studies in Mass Communication,* Vol. 7 (1990), pp. 390–409, at 390.

36 A talk given at a forum on Media and Terror, held at the Department of Communication, University of Haifa (30 April 1996). For further discussion, see Alex P. Schmid, 'Terrorism and the Media: The Ethics of Publicity,' *Terrorism and Political Violence*, Vol. 1, No. 4 (1989), pp. 539–65, at 559.

37 Janet Cooke, 'Jimmy's World', *Washington Post* (28 September 1980), A1.

38 Tom Goldstein, *The News at Any Cost* (New York: Simon and Schuster, 1987), pp. 215–21; Janet Cooke, 'Jimmy's World', *Washington Post* (28 September 1980), p. A1; Bill Green, 'The Confession', *Washington Post*

*(*19 April 1981), pp. A12–A14; Philip Meyer, *Ethical Journalism* (New York: Longman, 1987), pp. 9, 58.

39 In a 'Letter from Barcelona', Alastair Reid of *The New Yorker* described Spaniards sitting in 'a small, flyblown bar', openly jeering at a television speech by Francisco Franco. In fact, the bar no longer existed. This fabricated scene, and several other instances in which Reid acknowledged that he might have modified events and facts, were disclosed in June 1984 in a page one story of the *Wall Street Journal*. See David L. Eason, 'On Journalistic Authority: The Janet Cooke Scandal', *Critical Studies in Mass Communication,* Vol. 3 (1986), pp. 429–47; Edmund B. Lambeth, *Committed Journalism* (Bloomington and Indianapolis: Indiana University Press, 1992), pp. 25, 27. Also see David Shaw, ' "Docudramas. Faction. Nonfiction novels. Composites. Gonzo journalism. New Journalism. The blurring of fact and fiction… worries me. A lot" ', *The Bulletin*, No. 643 (July–August 1981), pp. 3–6.

40 These allegations were made regarding Israeli TV Channel 1's treatment of the Der'ei–Bar-On–Hasson affair mentioned previously, allegations that were refuted by both Attorney General Elyakim Rubinstein, and State-Attorney Edna Arbel.

41 See Judge Ben-Zimra's severe criticism of a news item broadcast by IBA's Channel One in 405/95 *CLAL v. The Broadcasting Authority* (The Jerusalem Magistrate's Court, 16 January 1996). Some codes of ethics address this issue. For instance, Section 3 of the Italian Carta dell'informazione e della programmazione a garanzia degli utenti e degli operatori del servizio pubblico – Rai (December 1995) requires the avoidance of sensationalism.

42 On 19 October 1994, a No. 5 bus was attacked by terrorists on Dizengoff Street in Tel Aviv. The media started to broadcast unedited pictures immediately from the scene. Some people learned about the death of their loved ones from the television. This kind of irresponsible coverage happened again at the site of the crash of two Israel Defence Forces helicopters carrying 72 soldiers in early February 1997, when live footage included a soldier's personal bag with the owner's name clearly visible.

43 Gary Sick, 'Taking Vows: The Domestication of Policy-Making in Hostage Incidents', in Walter Reich (ed.), *Origins of Terrorism* (New York: Woodrow Wilson Center and Cambridge University Press, 1990), pp. 230–44, at 242.

44 Lord Chalfont, 'The Price of Sympathy', in Benjamin Netanyahu (ed.), *Terrorism: How the West Can Win* (New York: Farrar, Straus, Giroux, 1986), pp. 126–9, at 128. See also the 1988 British Ministerial directives to the BBC and the Independent Broadcasting Authority (IBA) to refrain from broadcasting interviews with members of terrorist organizations as defined in the Prevention of Terrorism legislation.

45 See the recommendations of the Davey Committee. Special Senate Committee on Mass Media, *The Uncertain Mirror,* Vol. I (Davey Committee), p. 127.

46 See Royal Commission on Newspapers (Hull, Quebec, Canada: Ministry of Supply and Services, 1981), (Kent Commission), pp. 227–33, 237–45.

47 Of course, we cannot expect small dailies with a staff of only a few reporters to hire an ombudsman, hence the emphasis on large media organizations. In North America there are only 42 ombudspeople, most of them in newspapers. The *Washington Post* model is conceived to be the best. The *Post* ombudsperson is not an employee of the newspaper. He/she has a two-year contract, which can be renewed once for a total of four years. The ombudsperson is

free to investigate any matter deemed relevant. Once a week he/she publishes an unedited column on a specific topic. If there are extensive complaints about the paper's coverage, he/she undertakes a comprehensive investigation. Discussions with Joann Byrd, former ombuds person of the *Post* (17–22 June 1996). For further deliberation, see the 'Terms of Reference for the Ombudsman Office', Canadian Broadcasting Corporation Board Manual.

48 Following Princess Diana's funeral, the *Guardian* contemplated the idea of appointing an 'external' ombudsperson, in addition to the Readers Editor. In the *Guardian* system, the Readers Editor is the first person to whom complaints are referred. He/she will either adjudicate, and if he/she thinks it is a substantial complaint he/she will ask the reporter for response. The Editor cannot tell the Readers Editor what he/she should write. He/she cannot be sacked by the Editor. At the same time the Readers Editor is a staff member. According to the proposal, the external ombudsperson will be paid by the Guardian Group but will not be a staff member. He/she will be able to write everything that he/she wants and according to the planned scheme the *Guardian* will publish his/her item in a prominent place in the paper. Interview with Mr Alan Rusbridger, Editor of *The Guardian* (28 October 1997).

49 One British freelance journalist said that his main concern was to make a living, to support himself and his family. He was assigned to cover a local election, and the editor who hired his services wanted to help the candidacy of a friend who ran for office for the Tories. The freelance journalist was asked to research the level of support which each candidate enjoyed within the constituency, and when the figures did not flatter the editor's friend he was ordered to revise them 'which', he admits, 'was quite disappointing behaviour'. The freelance journalist's main concern was to make a living, so he did not like the fact that someone fiddled with the figures, but co-operated and said nothing in protest. Testimony during 21st Century Trust Seminar on 'The Media and the Public Interest in the Information Age' (London, 12 October 1997).

50 Section IA(g) of the Quebec Press Council's *The Rights and Responsibilities of the Press* (second edition, 1987) holds: 'Journalists and the media must be assured that sources will remain confidential if the freedom of the press and the right to information are to be respected'.

51 See Code of Practice Committee revised draft code (The Newspaper Publishers Association Ltd., 1997).

52 According to the Quebec Charter of Rights and Freedoms (8), everyone is entitled to full and equal recognition and exercise of personal rights and freedoms without distinction as to race, colour, sex including sexual orientation, marital status, pregnancy and so on. Discrimination results from compromising or removing this right. See Quebec Press Council's *The Rights and Responsibilities of the Press* (second edition, 1987), IIB(a).

53 Alicia C. Shepard, 'Legislating Ethics', *American Journalism Review*, Vol. 16 (January–February 1994), pp. 37–41.

54 The *Daily Mail* incorporated the Code of Practice into its journalists' contracts, and there were cases in which journalists were dismissed when in breach of the Code. In one incident a reporter was dismissed because he did not identify himself as a journalist. Interview with Mr Robin Esser, consultant editor of the *Daily Mail* (20 October 1997).

55 I am grateful to Mr Charles Moore, Editor of the *Daily Telegraph*, for this idea. Interview with Mr Moore (21 October 1997).
56 Mr Shimon Peres's Opening Address, *Ethics, Law and Communication in an Era of Political Violence and Extremism: An Examination of the Boundaries of Liberty and Tolerance in Liberal Democracies,* International Conference, University of Haifa (28 January 1997).
57 Clifford Christians, 'Self-Regulation: A Critical Role for Codes of Ethics', in Everette E. Dennis, Donald M. Gillmor and Theodore L. Glasser (eds), *Media Freedom and Accountability* (New York: Greenwood Press, 1989), pp. 35–53.
58 For further discussion, see *Report of the Committee on Privacy and Related Matters* (London: Her Majesty's Stationary Office, June 1990), Cm 1102; Aharon Barak, 'The Tradition of Freedom of Expression in Israel and Its Problems', *Justice*, Vol. 9 (June 1996), pp. 3–10.
59 Clause 12 of the PCC Code of Practice holds that children aged under 16 should not be interviewed or photographed on subjects involving their personal welfare without the consent of a parent or other adult responsible for them. For further discussion, see Lord Wakeham's speech at St. Bride's Institute (23 August 1995), in *Moving Ahead* (Press Complaints Commission, 1995).

6 Media Coverage of Suicide: Comparative Analysis

1 See Elizabeth B. Ziesenis, 'Suicide Coverage in Newspapers: An Ethical Consideration', *Journal of Mass Media Ethics*, Vol. 6, No. 4 (1991), pp. 234–44, esp. 235; Conrad C. Fink, *Media Ethics* (Boston, MA.: Allyn and Bacon, 1995), 2nd edn, p. 53.
2 Elizabeth B. Ziesenis, 'Suicide Coverage in Newspapers: An Ethical Consideration', p. 236. See also Ronald W. Maris, Alan L. Berman, John T. Maltsberger, and Robert I. Yufit (eds), *Assessment and Prediction of Suicide* (New York: Guilford Press, 1991); David Lester (ed.), *Current Concepts of Suicide* (New York: Charles Press, 1990); David P. Phillips and Daniel J. Paight, 'The Impact of Televised Movies about Suicide', *New England Journal of Medicine,* Vol. 317 (March 1987), pp. 809–11; Ronald Kessler and Horst Stipp, 'The Impact of Fictional Television Suicide Stories on U.S. Fatalities: A Replication', *American Journal of Sociology*, Vol. 90 (July 1984), pp. 151–67; David P. Phillips, 'The Impact of Fiction Television Stories on American Adult Fatalities: New Evidence on the Effect of the Mass Media on Violence', *American Journal of Sociology*, Vol. 87 (March 1982), pp. 1340–59; Kenneth Bollen and David P. Phillips, 'Imitative Suicides: A National Study of the Effect of Television News Stories', *American Sociological Review*, Vol. 47 (December 1982), pp. 802–9; David P. Phillips, 'The Influence of Suggestion on Suicide: Substantive and Theoretical Implications of the Werther Effect', *American Sociological Review*, Vol. 39 (June 1974), pp. 340–54.
3 David P. Phillips, 'Airplane Accidents, Murder, and the Mass Media: Towards a Theory of Imitation and Suggestion', *Social Forces*, Vol. 58, No. 4 (June 1980), p. 1016. For a critical study of the contagion literature, especially on the relationships between terrorism and the media, see Robert G. Picard, 'News Coverage as the contagion of Terrorism', in A. Odasuo Alali and

Kenoye Kelvin Eke (eds), *Media Coverage of Terrorism* (Newbury Park, CA: Sage, 1991), pp. 49–62. See also Hans-Bernd Brosius and Gabriel Weimann, 'The Contagiousness of Mass-mediated Terrorism', *European Journal of Communication*, Vol. 6 (1991), pp. 63–75.

4 Nick Russell, *Morals and the Media* (Vancouver: UBC Press, 1995), p. 84; David P. Phillips and L. L. Carstensen, 'The Effect of Suicide Stories on Various Demographic Groups, 1968–1985', *Suicide and Life-Threatening Behavior*, Vol. 18 (Spring 1988), pp. 100–14; David P. Phillips and L. L. Carstensen, 'Clustering of Teenage Suicides After Television News Stories about Suicide', *New England Journal of Medicine*, Vol. 315 (1986), pp. 685–9.

5 Elizabeth B. Ziesenis, 'Suicide Coverage in Newspapers: An Ethical Consideration', op. cit., pp. 239, 242. See also *Report of the Secretary's Task Force on Youth Suicide* (Washington, DC: U.S. Government Printing Office, 1989).

6 Gratitude is expressed to the Canadian government for its research grant.

7 Discussion with M. David Lepofsky, Toronto (23 August 1995).

8 Electronic message on 30 August 1997, in response to my letter of 17 July 1997.

9 Gratitude is expressed to the Canadian government and the Israel Association for Canadian Studies for their generous support.

10 CBC, *Journalistic Standards and Practices* (Canadian Broadcasting Corporation, 1993).

11 *Globe and Mail Style Book* (Toronto, 1994).

12 Interview with Mr Michel Roy and Mr Robert Maltais, Montreal (18 September 1998).

13 Interview with Mr Mel Sufrin, Toronto (6 October 1998).

14 Peter Buckley (ed.), *CP Stylebook: A Guide for Writers and Editors* (Toronto: the Canadian Press, 1997), p. 69.

15 Interview with Mr Michel Roy, Montreal (18 September 1998).

16 Interview with Professor Enn Raudsepp, Department of Journalism, Concordia University, Montreal (22 September 1998).

17 Interview with Professor G. Stuart Adam, Vice-President (Academic), and former Director of the School of Journalism and Communication, Carleton University, Ottawa (29 September 1998).

18 Interview with Professor Christopher Dornan, Ottawa (29 September 1998).

19 Interview with Mr Henry Aubin, Montreal (18 September 1998).

20 Interview with Mr Michel Roy, President, and Mr Robert Maltais, Secretary General, Conseil de Presse du Quebec, Montreal (18 September 1998).

21 Interview with Mr Gord Sinclair, CJD, Montreal (17 September 1998).

22 Interview with Mr Al MacKay, Cable Public Affairs Channel, Ottawa (28 September 1998).

23 Interview with Mr Michael C. Auger, *Le Journal de Montreal* (21 September 1998).

24 Discussion with M. David Lepofsky, Toronto (23 August 1995).

25 Discussion with M. David Lepofsky, Toronto (3 October 1998).

26 World Report, Passages, *Globe and Mail* (20 July 1998), Metro, p. A10.

27 Interview with Professor Fred Fletcher, Head of the Mass Media Program, York University, Ontario (5 October 1998).

28 Interview with Mr Michel Roy, Montreal (18 September 1998).

29 Interview with Mr Michael C. Auger, *Le Journal de Montreal* (21 September 1998).
30 Quebec Press Council, *The Rights and Responsibilities of the Press*, a revised edition of the original text which was published in French in October 1983, p. 15.
31 National Report Quebec, 'Wanted man found hanged', *Globe and Mail* (31 July 1998), Metro, p. A8.
32 Michael Rubinkam, 'Jobless and deserted, mom shoots triplets, then commits suicide', *Globe and Mail* (16 September 1998), National, p. A24.
33 Nick Russell, *Morals and the Media*, op. cit., pp. 84, 129.
34 Interview with Mr Michael C. Auger, *Le Journal de Montreal* (21 September 1998).
35 Interview with Mr Edward Greenspon, Ottawa (25 September 1998).
36 Interview with Mr Mel Sufrin, Toronto (6 October 1998).
37 Interview with Mr Arch Mackenzie, Ottawa (24 September 1998).
38 'Manitoba Sioux chief sends plea for help. Suicides making band "another Davis Inlet" ', *Globe and Mail* (27 July 1998), National, p. A5.
39 Discussion with Professor Bernard M. Dickens, Faculty of Law, University of Toronto (3 October 1998).
40 'Quebec fighting high suicide rate: Government sets aside additional $700,000 for prevention programs, public education', *Globe and Mail* (3 February 1998), Metro, p. A8.
41 Interview with Mr Henry Aubin, Montreal (18 September 1998).
42 Advertising Special Report, 'Ignoring mental health of children can be disastrous. For Canadian teens, the rate of suicide soared 400 per cent in the past 30 years', *Globe and Mail* (15 June 1998), Metro, p. C4.
43 'Quebec fighting high suicide rate', op. cit., *Globe and Mail* (3 February 1998).
44 Interview with Mr Henry Aubin, Montreal (18 September 1998). Mr Aubin, however, admitted that his paper, the *Gazette*, did romanticize one suicide story of two teenagers. But except for that incident, the paper's policy was not to provide too many details.
45 Interviews with Professor Ramsay Cook, General Editor, *Dictionary of Canadian Biography*, University of Toronto (1 October 1998); Professor Wayne Sumner, Department of Philosophy, University of Toronto (1 October 1998); Mr Fil Fraser, C.M., President and Chief Executive Officer, VISION TV Canada's faith network (2 October 1998); Professor Bernard M. Dickens, Faculty of Law, University of Toronto (3 October 1998); Professor Fred Fletcher, Head of the Mass Media Program, York University (5 October 1998).
46 Jan Wong, 'The choirboy who thought he fell from grace. For the other boys called into the principal's office over a yearbook prank, it was just a minor scrape. But Kenneth AuYeung had never been in trouble before', *Globe and Mail* (31 January 1998), Metro, p. A15; Virginia Galt, 'No "immediate action" in student's suicide. Sexual impropriety ruled out at school', *Globe and Mail* (28 February 1998), Metro, p. A9; Sara Jean Green, 'Principal testifies in student's suicide. Would have called parents, official says', *Globe and Mail* (27 June 1998), Metro, p. A10; Alan Taylor, 'Personal responsibility', *Globe and Mail* (27 August 1998), Metro, p. A18; Sara Jean Green, 'Principal exonerated in student's suicide. Official "acted in good judgment", did not breach school policy in death of Kenneth AuYeung, Toronto board rules', *Globe and Mail* (22 August 1998), Metro, p. A8.

47 Jill Mahoney, '"Bridge of death" a magnet for jumpers. Fence, phones sought for viaduct', *Globe and Mail* (23 February 1998), Metro, p. A1.
48 Jill Mahoney, '"Bridge of death" a magnet for jumpers. Fence, phones sought for viaduct', *Globe and Mail* (23 February 1998), Metro, p. A1.
49 Inquest recommendation, files compiled by the Ontario Press Council for its Annual Meeting (16 October 1998).
50 Ibid.
51 R.S.C. 1985, c. C-46.
52 *Sue Rodriguez v. The Attorney General of Canada*, File No. 23476 (September 1993). For critical discussion, see Lorraine Eisenstat Weinrib, 'The Body and the Body Politic: Assisted Suicide under the *Canadian Charter of Rights and Freedoms*', *McGill Law Journal*, Vol. 39 (1994), pp. 619–44. See also R. Cohen-Almagor, 'Reflections on the Intriguing Issue of the Right to Die in Dignity', *Israel Law Review*, Vol. 29, No. 4 (1995), pp. 677–701; *The Right to Die in Dignity (*forthcoming).
53 See Eric M. Meslin and John Senn, 'A Discussion of the *Rodriguez* Decision', *Ethical Effects*, Vol. 1, No. 4 (Winter 1993); Eike-Henner Kluge, 'Doctors, Death and Sue Rodriguez', *Canadian Medical Association Journal,* Vol. 148, No. 6 (1993), pp. 1015–17; Margaret A. Somerville, '"Death Talk" in Canada: the *Rodriguez* Case', *McGill Law Journal*, Vol. 39 (1994), pp. 602–17.
54 Margaret A. Somerville, 'Euthanasia in the Media: Journalists' Values, Media Ethics and "Public Square" Messages', *Humane Health Care International*, Vol. 13, No. 1 (Spring 1997), pp. 17–20.
55 Province of British Columbia, Ministry of Attorney General, B. C. Coroners Service, 'Judgment of Inquiry into the death of Susan Jane Rodriguez' (12 February 1994). I thank Chief Coroner J. V. Cain for sending me the report.
56 See the story of Mr Doerksen who helped his 78-year-old wife commit suicide. 'Minister won't stay charges', *Globe and Mail* (29 August 1998), Metro, p. A4.
57 S. Fine and A. Mitchell, 'Why a suicide plan became a spectacle', *Globe and Mail* (4 November 1993), A1, A5; Nick Russell, *Morals and the Media*, op. cit., p. 81.
58 Todd Lewan, 'The tragedy of police-assisted suicide', *Globe and Mail* (2 May 1998), Metro, p. D4.
59 I thankfully acknowledge the generous assistance of the British Council.
60 Interview with Mr Charles Moore, London (21 October 1997).
61 Interview with Mr Charles Moore, London (21 October 1997).
62 Interview with Mr Alan Rusbridger, London (28 October 1997). Mr Rusbridger added that the *Guardian* thinks carefully about publishing distressing photos. For instance, the paper has an unwritten policy to publish photos of cars after accidents but not if there are people inside.
63 Interview with Mr Godfrey Hodgson, Oxford (14 October 1997).
64 Interview with Mr Martin Bell MP, House of Commons, London (20 October 1997). Mr Bell added that the media apply voluntary restriction on reporting when a person is kidnapped. Then the media abide by the police directives. The media also accept a degree of regulation and censorship in times of war. He testified that during the Gulf War he served as a reporter and there was blanket censorship that no one disputed.
65 Interview with Ms Hill and Mr Steel, London (29 October 1997).

66 BBC, *Producers' Guidelines* (November 1996), p. 71.
67 Moshe Ronen, *Media Ethics* (Tel Aviv: Miskal, 1998), Vol. II, p. 682 (Hebrew).
68 Gabriel Weimann and Gideon Fishman, 'Reconstructing Suicide: Reporting Suicide in the Israeli Press', *Journalism and Mass Communication Quarterly*, Vol. 72, No. 3 (1995), pp. 553–4.
69 Ibid.
70 Gideon Fishman and Gabriel Weimann, 'Motives to Commit Suicide: Statistical versus Mass-Mediated Reality', *Archives of Suicide Research,* Vol. 3 (1997), pp. 199–212, esp. 209; G. Weimann and G. Fishman, 'Reconstructing Suicide: Reporting Suicide in the Israeli Press', p. 555.
71 Moshe Ronen, *Media Ethics*, op. cit., Vol. I, pp. 283–4. Weimann and Fishman found that suicides of soldiers were more likely to be reported by the press than civilian suicides. See 'Reconstructing Suicide', op. cit., p. 554.
72 Israel Press Council, *Information Sheets*, No. 50 (Tel Aviv, June 1986), pp. 22–4 (Hebrew).
73 Moshe Ronen, *Media Ethics,* op. cit., Vol. II, p. 682.
74 David Regev, 'A 15 year-old boy hanged himself in his room during his brother's circumcision', *Yedioth Ahronoth* (3 January 1998), pp. 12–13 (Hebrew).
75 Sarit Rosenbloom, 'Every day five people attempt suicide in Israel', *Yedioth Ahronoth* (23 March 1999), p. 12 (Hebrew).
76 Interviews with Professor Enn Raudsepp, Montreal (22 September 1998); Professor Wayne Sumner, Department of Philosophy, University of Toronto (1 October 1998); Mr Ronald Cohen, National Chair, Canadian Broadcast Standards Council (23 September 1998).
77 Ronald Dworkin, 'Liberalism', in *A Matter of Principle* (Oxford: Clarendon Press, 1985), pp. 181–204; *idem*, *Taking Rights Seriously* (London: Duckworth, 1976); Raphael Cohen-Almagor, 'Between Neutrality and Perfectionism', *The Canadian Journal of Law and Jurisprudence*, Vol. VII, No. 2 (1994), pp. 217–36. *idem* (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).
78 Statement of Principles for Canadian Daily Newspapers, Canadian Daily Newspapers Publishers Association, adopted in April 1977. Quoted in Nick Russell, *Morals and the Media,* op. cit., p. 199.

7 The Work of the Press Councils in Great Britain, Canada, and Israel: a Comparative Appraisal

1 George Murray, *The Press and the Public* (Carbondale and Edwardsville: Southern Illinois University Press, 1972), pp. 27–8.
2 Kenneth Morgan, 'The British Press Council Experience', in Richard T. Kaplar (ed.), *Beyond the Courtroom* (Washington, D.C.: The Media Institute, 1990), p. 131; Home Office, *Report of the Committee on Privacy and Related Matters* (London: Her Majesty's Stationary Office, June 1990), Cm 1102, p. 58; George Murray, *The Press and the Public,* op. cit., p. 66.
3 Louis Blom-Cooper, 'Freedom and Responsibility: The Future of Press Regulation in Britain', *Index on Censorship*, Vol. 21, No. 3 (March 1992), p. 2.

4 Personal letter of Mr Kenneth Morgan (17 June 1996), former Director of the Press Council and for one year, 1991–92 (the first year of establishment), Director of the Press Complaints Commission.
5 Geoffrey Robertson, *People Against the Press* (London: Quartet Books, 1983), p. 11; Thomas Gibbons, *Regulating the Media* (London: Sweet and Maxwell, 1998), 2nd edn, p. 275; George Murray, *The Press and the Public,* op. cit., pp. 87–9.
6 Special Senate Committee on Mass Media, *The Uncertain Mirror* (Ottawa: Information Canada, 1970), Vol. I (Davey Committee), pp. 114–15. For further discussion, see George Murray, *The Press and the Public,* op. cit., chap. 9, pp. 117–39 and pp. 157–9.
7 Interviews with Mr Morgan (3 September 1997); Professor Hugh Stephenson, former Head of the Department of Journalism, City University, London (1 October 1997), and with Mr Charles Moore, Editor of the *Daily Telegraph* (21 October 1997).
8 Interview with Mr Morgan (3 September 1997).
9 Discussions with Dr Geoffrey Marshall, Provost of Queen's College, Oxford (29 August, 25 September, 31 October 1997).
10 Interviews with Ms Janet Anderson, press officer of the Press Complaints Commission (23 September 1997) and Professor Hugh Stephenson (1 October 1997).
11 *Report of the Committee on Privacy* (The Younger Committee) (1972), Cmmd. 5012, para. 135.
12 Geoffrey Robertson, *People Against the Press*, op. cit., p. 13.
13 Geoffrey Robertson, *People Against the Press*, pp. 17–18.
14 Home Office, *Report of the Committee on Privacy and Related Matters* (London: Her Majesty's Stationary Office, June 1990), Cm 1102, pp. 59–60.
15 Home Office, *Report of the Committee on Privacy and Related Matters* (June 1990), Cm 1102, p. 60.
16 Kenneth Morgan, 'The Coming of the Codes', in *Is de klant of de krant koning* (Utrecht: Otto Cramwinckel Uitgever, 1990), p. 58.
17 Home Office, *Report of the Committee on Privacy and Related Matters* (June 1990), Cm 1102, p. 60. See also Martin Bulmer and Jennifer Bell, 'The Press and Personal Privacy – Has It Gone Too Far?', *Political Quarterly*, Vol. 56, No. 5 (1985), p. 19.
18 Interview with Mr Kenneth Morgan (3 September 1997).
19 Martin Bulmer and Jennifer Bell, 'The Press and Personal Privacy', op. cit., pp. 17–18.
20 I am grateful to Ms Janet Anderson, press officer of the Press Complaints Commission, for the information (interview on 23 September 1997).
21 The bills were introduced by John Brown MP and Tony Worthington MP respectively. For further deliberation, see Louis Blom-Cooper, 'Freedom and Responsibility: The Future of Press Regulation in Britain', op. cit., pp. 4–5.
22 I am grateful to Hugh Stephenson for clarifying this issue with me (electronic message sent on 10 March 1999).
23 Home Office, *Report of the Committee on Privacy and Related Matters* (June 1990), Cm 1102. Sir David Calcutt Report, p. 77.
24 Home Office, *Report of the Committee on Privacy and Related Matters* (June 1990), Cm 1102. Sir David Calcutt Report, p. 73.

25 Interview with Mr Kenneth Morgan (3 September 1997).
26 Press Complaints Commission, *Report No. 36* (October–November–December 1996), p. 3.
27 Sir David Calcutt, *Review of Press Self-Regulation* (London: Her Majesty's Stationary Office, January 1993), Cm 2135, p. xi.
28 Ibid., at xiv.
29 Ibid., p. 63.
30 Thomas Gibbons, *Regulating the Media,* op. cit., p. 281.
31 Hugh Stephenson says that, to the best of his knowledge, the issue was never tested and it is hard to see how a person could have been stopped. He explains that, in taking on a complaint, the old Press Council required complainants to accept an undertaking (the waiver) that they were not intending to go to court. If they did not, the Press Council would not take their complaint. Electronic message sent by Professor Stephenson (10 March 1999).
32 Interview with Ms Janet Anderson (23 September 1997).
33 Interview with Ms Janet Anderson (23 September 1997).
34 Press Complaints Commission Press Release (8 June 1992).
35 Press Complaints Commission Press Release, 'This agreed statement between Lord McGregor and Mirror Group Newspapers … ' (10 November 1993).
36 The PCC is funded by the press. To have a façade of independence, another body was established for finance and budgeting called The Press Standards Board of Finance. But it is only a façade.
37 Interview with Mr Charles Moore, Editor of the *Daily Telegraph* (21 October 1997).
38 Immediately after the death of Princess Diana I requested an interview with Sir David Calcutt. In a letter dated 6 October 1997 Sir David refused my request, saying that he had to move to other things, and that he had 'not been able to maintain the close interest [in the press] which I once took'.
39 Alison Boshoff, 'Curbs on Press to Protect Princes', *Daily Telegraph* (8 September 1997), p. 1.
40 Steve Oram, 'Memorandum re Consultation on Revised Draft Code' (24 October 1997).
41 Interview with Mr Robin Esser (21 October 1997).
42 Interview with Martin Bell MP, House of Commons (20 October 1997).
43 *Guardian* (12 November 1997).
44 Special Senate Committee on Mass Media, *The Uncertain Mirror,* Vol. I (Davey Committee), p. 111.
45 *Report* of the Davey Committee, pp. 117–18.
46 Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy* (Ministry of Supply and Services, 1991), Vol. 1, pp. 475–6. The Kent Commission concluded that the Alberta Press Council is, at most, a pale imitation of the model envisaged by the Davey Committee. See Royal Commission on Newspapers, *Report* (Hull, Quebec: Ministry of Supply and Services, 1981), (Kent Commission), p. 226; see also pp. 147–50. For a general discussion, see David Bruce Raddick, *Press Councils in Canada: Their Founding, Function and Future* (MA Thesis, School of Journalism, Michigan State University, 1976).

47 On the Quebec Press Council, see David Pritchard, 'The Role of News Councils in a System of Media *Accountability*: Le Conseil de Quebec at Age 16' (paper prepared for presentation to the annual meeting of the Canadian Communication Association, Victoria, BC, 1 June 1990); *idem,* 'Media Accountability in Action: How the Quebec Press Council Handles Disputes' (draft paper).
48 In June 1983 the British Columbia Press Council was formed.
49 Following the recommendations of the Kent Commission, in 1982 the government drafted a Canadian Newspaper Act that was in line with a policy decision to regulate aspects of the newspaper industry. Both the policy and the draft legislation were quickly abandoned, not only because of opposition from the industry, but also because the proposed Act was probably unconstitutional in the light of the Charter's protection of freedom of the press. See Arthur Siegel, *Politics and the Media in Canada* (Toronto: McGraw-Hill Ryerson, 1996), 2nd edn, p. 250.
50 *Report* of the Kent Commission, pp. 151–2.
51 Ibid., p. 152.
52 Interview with Mr Eddie Greenspon, Ottawa (25 September 1998).
53 *Report* of the Kent Commission, p. 152. See also Tom Kent, 'The Time and Significance of the Kent Commission', in Helen Holmes and David Taras (eds), *Media, Power and Policy in Canada* (Toronto: Harcourt Brace Jovanovich, 1992), pp. 21–39.
54 Maude Barlow and James Winter, *The Big Black Book* (Toronto: Stoddart, 1997), p. 122.
55 Some councils have additional funding. For instance, the Quebec Press Council was donated $1 million by a private foundation.
56 This is the opinion of Professors Enn Raudsepp, Department of Journalism, Concordia University (interview on 22 September 1998), and G. Stuart Adam, Vice-President (Academic) of Carleton University, and formerly Director of the School of Journalism and Communication at Carleton, Ottawa (interview on 29 September 1998). Mr Michel Roy, President of the Quebec Press Council, admitted that 'the public does not know about our existence. We should be more known' (interview on 18 September 1998).
57 Four people work in the administration of the Quebec Press Council, including the Secretary-General. They receive salaries. The President receives only a small salary for expenses. Interview with Mr Robert Maltais, Secretary-General, Conseil de Presse du Quebec (18 September 1998). Two people receive full salaries in the Ontario Press Council, the Secretary-General and his secretary. Interview with Mr Mel Sufrin, Executive Secretary of the Ontario Press Council (6 October 1998). Two people receive part-time salaries in the Israel Press Council, the Secretary-General and his secretary. The previous Secretary-General of the Council was a volunteer. Discussions with Mr Bezalel Eyal, Secretary-General of the Council (25 November 1998, 27 December 1998), and Professor Amos Shapira, Deputy President of the Council (13 December 1998).
58 In 1997, the Ontario Press Council received 119 complaints. Only ten of them were adjudicated, four were upheld, three upheld in part, and six were dismissed, one with reservations. Interview with Mr Mel Sufrin, Executive Secretary of the Ontario Press Council (6 October 1998); *Annual Report, 1997* (Toronto: The Ontario Press Council), p. 9.

59 Mr Mel Sufrin told me that he was happy with the powers granted to the Council. The papers were quite co-operative, so there was no need to have more powers. Interview on 6 October 1998.
60 Mr Henry Aubin, senior columnist, member of the Editorial Board of the Montreal *Gazette,* and member of the Quebec Press Council Board of Directors, said that the Press Council's adjudication is a slow process. It takes a year, sometimes eighteen months. Interview on 18 September 1998.
61 Interview with Mr Michel Roy (18 September 1998).
62 Interview with Mr Michael C. Auger, political columnist, *Le Journal de Montreal,* and President of La Federation Professionale des Journalistes (21 September 1998).
63 David Pritchard, 'The Role of News Councils in a System of Media Accountability: Le Conseil de Quebec at Age 16', op. cit., 1 June 1990, pp. 18–19.
64 This is Mr Graham Fraser's opinion (interview on 28 September 1998). Mr Fraser is senior political reporter (parliamentary correspondent) for the *Globe and Mail* and former Ottawa bureau chief and former Washington correspondent for the *Globe and Mail*.
65 Interview with Professor Enn Raudsepp, Concordia University (22 September 1998).
66 Uri Paz, *Inspection of the Media: The Relationship between the Press Council and the Public,* MA Thesis, Institute of Communication, the Hebrew University, Jerusalem (May 1987), pp. 43–4 (Hebrew).
67 Ibid., p. 46.
68 Ibid., p. 48.
69 Ibid., pp. 48–9. See also Moshe Zack, 'The Press Council After Six Years', *The Journalists Yearbook* (1969), p. 336 (Hebrew).
70 Yitzhak Olshan, *Judgments and Discussions* (Jerusalem and Tel Aviv: Schocken, 1978), p. 383 (Hebrew).
71 Ibid., p. 384.
72 Ibid.
73 Dan Caspi and Yehiel Limor, *The Mediators* (Tel Aviv: Am Oved, 1992), p. 17 (Hebrew).
74 Israel Press Council, 'Ad Hoc Committee, Conclusion and Recommendations' (27 October 1998) (Hebrew).
75 Israel Press Council, *Israel Press Council By-Laws, Professional Ethics Code of the Press* (updated to 1 July 1996), p. 5 (Hebrew).
76 Moshe Ronen, *Media Ethics* (Tel Aviv: Yedioth Ahronoth, 1998), Vol. II, pp. 697–8 (Hebrew).
77 Interview with Professor Yitzhak Zamir, now Justice of the Israel Supreme Court (3 January 1999).
78 Hadas Manor, 'The Flickering of a Dying Candle?', *The Journalists Yearbook* (1993), p. 64 (Hebrew).
79 Interview with Justice Zamir (3 January 1999).
80 Interview with Justice Zamir (3 January 1999). The impotence of the Council prompted Moshe Negbi to resign from this body. See his criticism in Hadas Manor, 'The Flickering of a Dying Candle?', op. cit., p. 63.
81 Israel Press Council, *Israel Press Council By-Laws, Professional Ethics Code of the Press* (updated to 1 July 1996), pp. 15–18 (Hebrew).

82 The *Press Council By-Laws* states that this authority is reserved for the President of the Council or a person nominated by the President. Justice Yitzhak Zamir and Attorney Haim Zadok, past presidents of the Council, principally refrained from interfering in the dealings with complaints (interviews on 31 December 1998; 3 January 1999).
83 Israel Press Council, *Israel Press Council By-Laws, Professional Ethics Code of the Press* (updated to 1 July 1996), pp. 11–12 (Hebrew).
84 Ibid.
85 Israel Press Council, *Ethics Tribunal, Select Decisions and Judgments* (16 September 1996) (Hebrew), p. 5.
86 Israel Press Council, *Israel Press Council By-Laws, Professional Ethics Code of the Press* (updated to 1 July 1996), p. 12 (Hebrew).
87 Interview with President Zadok of the Press Council (31 December 1998).
88 Interviews with Attorney Slonim (20 December 1998), and Secretary-General Eyal (27 December 1998).
89 Statistics compiled by the Press Council. I thank Secretary-General Eyal for the information.
90 Interview with Secretary-General Eyal (27 December 1998).
91 Discussion with Secretary-General Eyal (25 November 1998).
92 For further criticism of the Israel Press Council, see Dan Caspi and Yehiel Limor, *The Mediators* (Tel Aviv: Am Oved, 1992), pp. 185–6, 207–12 (Hebrew).
93 Interview with President Zadok (31 December 1998).
94 Interview with Professor Shapira (13 December 1998).
95 Interview with Justice Zamir (3 January 1999).
96 Interview with Mr Bezalel Eyal (27 December 1998).
97 *Report of the Public Committee on Press Laws*, presented to the Minister of Justice and Minister of the Interior (September 1997), p. 62 (Hebrew).
98 Ibid., pp. 62–3.
99 Four members of the Committee backed the decision. One member, Professor Zeev Segal, thought that the recommended legislation might hinder the work of the Press Council and its independent discretion to formulate ethical norms as it sees fit. Ibid., p. 63.
100 Ibid.
101 Interview with Attorney Slonim (20 December 1998).
102 Interview with Secretary-General Eyal (27 December 1998).
103 Interview with President Zadok (31 December 1998).
104 Interview with Justice Zamir (3 January 1999).
105 Interview with Mr Anthony Smith (16 October 1997). Mr Smith is the President of Magdalen College, Oxford. Among his many capacities, Mr Smith was the Director of the British Film Institute for 10 years.
106 Interviews with Mr Anthony Smith (16 October 1997); Mr Charles Moore (21 October 1997), and Justice Yitzhak Zamir (3 January 1999).
107 This is the suggestion of Mr Martin Bell, MP. Interview in the House of Commons (21 October 1997).
108 In one of my interviews, an authority on one of the press councils told me that on occasion the journalists exerted pressures on him to represent their interests better. He said that he needed to remind them that he also represents the editors and publishers. I reminded him, in turn, that the Council is comprised also of a third, no-less important component: the

public. Indeed, I often felt that decisionmakers on the press councils are preoccupied with the needs and interests of the press industry and less so with those of the public.

109 The Israel Press Council decided (on 13 December 1998) that members of the plenary could serve a maximum of three consecutive terms of three years each and then retire so as to allow the introduction of new members. Professor Asa Kasher strongly disagreed with this motion, saying that the Press Council should be viewed as a professional body on which ethics professionals should sit as long as they express willingness to continue their voluntary work.

110 Interview with Mr Stephen Whittle, Director of the Broadcasting Standards Commission (9 October 1997). For further deliberation, see Broadcasting Standards Council, *A Code of Practice* (London, February 1994, 2nd edn); Broadcasting Standards Council, *Complaints Bulletin,* No. 54 (25 July 1995).

Appendix Perceptions of Media Coverage among the Israeli-Jewish Public: a Reflection of Existing Social Cleavages? (with Itzhak Yanovitzky)

1 The authors express grattude to the Research Authority at University of Haifa for its financial support in conducting the public poll.

2 Our use of the term 'media' is quite consciously inclusive although it does not distinguish various media of communication and various genres. This is because the public and media professionals alike often resort to this term. Note that frequently the use of the term 'media' in the public discussion actually refers more to the press.

3 N. Barnea, 'Long Live the Hostile Press', *Ha'ain Ha'shevieit*, Vol. 1 (1996), p. 2; U. Benziman, 'Revenge Emotions', *Ha'ain Ha'shevieit*, Vol. 3 (1996), p. 2 (both in Hebrew).

4 D. Caspi and Y. Limor, *The Mediators: The Media in Israel 1948–1990* (Tel Aviv: Am Oved, 1992) (Hebrew).

5 T. Liebes, 'Television Disaster Marathons: A Danger for Democratic Process?', paper presented at the *International Symposium in Honour of Elihu Katz* (Jerusalem, May 1996).

6 R. Cohen-Almagor, 'Boundaries of Freedom of Expression in Mass Communication', *Kesher*, Vol. 22 (1997), pp. 9–19 (Hebrew).

7 Y. Mosko, 'The Charge Sheets: The Boundary of Listening-Ins', *Ha'ain Ha'shevieit,* Vol. 2 (1996), pp. 16–21 (Hebrew).

8 J. W. Carey, 'The Press, Public Opinion, and Public Discourse', in T. L. Glasser and C. T. Salmon (eds), *Public Opinion and the Communication of Consent* (New York: Guilford Press, 1995), pp. 373–402.

9 For further discussion, see A. C. Gunther, 'Biased Press or Biased Public?: Attitudes toward Media Coverage of Social Groups', *Public Opinion Quarterly*, Vol. 56 (1992), pp. 147–67; Asher Arian, Gabriel Weimann and Gad Wolfsfeld, 'Balance in Election Coverage', in A. Arian and M. Shamir (eds),

The Israeli Elections 1996 (New York: City University of New York Press, 1998); G. Weimann and G. Wolfsfeld, 'The Coverage of the Election Campaign on Television', *Ha'ain Ha'shevieit*, Vol. 5 (1996), pp. 20–2 (Hebrew).

10 Ideally, it would have been better to include all segments of the Israeli population in the poll. We had to limit the public poll to the Jewish public mainly for economic reasons. If we had included the Palestinian population (Christians and Muslims), the Bedouin, and the Druze, the survey would have become far too costly. We may note that it is also quite difficult to access some of these communities, and for these reasons most public polls that are conducted in Israel are limited to the Jewish public.

11 R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, (Gainesville, FL.: University Press of Florida, 1994), chap. 12; S. Chaffee and S. Frank, 'How Americans Get Political Information: Print versus Broadcast News', *Annals of the American Academy of Political and Social Sciences*, Vol. 546 (1996), pp. 48–58.

12 M. McCombs, L. Danielian and W. Wanta, 'Issues in the News and the Public Agenda: The Agenda-setting Tradition', in T. L. Glasser and C. T. Salmon (eds), *Public Opinion and the Communication of Consent* (New York: Guilford Press, 1995), pp. 281–300.

13 J. W. Carey, 'The Press, Public Opinion and Public Discourse', op. cit., pp. 373–402. See also Justice Yitzhak Zamir's judgment in Further Appeal (F.A.) 7325/95 *Yedioth Ahronoth v. Yoseph Kraus*, Israel Supreme Court of Justice (29 June 1998) (Hebrew).

14 D. H. Weaver, 'What Voters Learn from Media', *Annals of the American Academy of Political and Social Sciences*, Vol. 546 (1996), pp. 34–47.

15 E. Katz, 'And Deliver Us from Segmentation', *Annals of the American Academy of Political and Social Sciences,* Vol. 546 (1996), pp. 22–33.

16 A. Barak, 'The Tradition of Freedom of Speech in Israel and Its Problems', *Mishpatim*, Vol. 27 (October 1996), pp. 223–48 (Hebrew).

17 J. D. Peters, 'Historical Tensions in the Concept of Public Opinion', in T. L. Glasser and C. T. Salmon (eds), *Public Opinion and the Communication of Consent,* op. cit., pp. 3–32.

18 P. Jones, 'Intense Preferences, Strong Beliefs and Democratic Decision Making', *Political Studies*, Vol. 36 (1988), pp. 7–29.

19 S. L. Feld and B. Grofman, 'On the Possibility of Faithfully Representative Committees', *American Political Science Review*, Vol. 80 (1986), pp. 863–79.

20 C. Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1979); Richard Dagger, *Civic Virtues* (New York: Oxford University Press, 1997), esp. chap. 9.

21 J. R. Pennock and J. W. Chapman (eds), *Liberal Democracy* (New York and London: New York University Press, 1983).

22 R. M. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977); R. M. Dworkin, *A Matter of Principle* (Oxford: Clarendon Press, 1985); R. Cohen-Almagor, 'Liberalism, and the Limits of Pluralism', *Terrorism and Political Violence,* Vol. 7 (1995), pp. 25–48; F. Schauer, 'The Cost of Communicative Tolerance', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000).

23 C. C. Euchner, *Extraordinary Politics* (Boulder, CO: Westview, 1996).

24 E. Etzioni-Halevi, 'Elite Power, Manipulation and Corruption: A Demo-elite Perspective', *Government and Opposition,* Vol. 24 (1989), pp. 215–31; J. S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven and London: Yale University Press, 1995).
25 M. Stiefel and M. Wolfe, *A Voice for the Excluded* (London and New Jersey: Zed Books, 1994).
26 J. D. Peters, 'Historical Tensions in the Concept of Public Opinion', in T. L. Glasser and C. T. Salmon (eds), *Public Opinion and the Communication of Consent*, op. cit., pp. 3–32; J. W. Carey, 'The Press, Public Opinion, and Public Discourse', op. cit., pp. 373–402.
27 G. Boyce, 'The Fourth Estate: The Reappraisal of a Concept', in George Boyce, James Curran and Pauline Wingate (eds), *Newspaper History from the 17th Century to the Present* (London: Sage, 1980), pp. 19–40; J. Halteng and R. Nelson, *The Fourth Estate* (New York: Harper and Row, 1971); J. W. Carey, 'The Press, Public Opinion, and Public Discourse', op. cit., G. Weimann, ' "Theatre of Terror": Hard Challenge for Democracy', in R. Cohen-Almagor (ed.), *Basic Issues in Israeli Democracy* (Tel Aviv: Sifriat Poalim, 1999) (Hebrew).
28 M. Fishman, *Manufacturing the News* (Austin, Texas and London: University of Texas Press, 1980).
29 J. H. Altschull, *Agents of Power: The Media and Public Policy* (White Plains, NY: Longman Publishers, 1994), 2nd edn.; The Right Honourable Brain Mulroney, public speech delivered at Columbia University, New York (20 March 1995). Gratitude is granted to Mr Mulroney for sending us a copy of his speech.
30 J. W. Carey, 'The Press, Public Opinion, and Public Discourse', op. cit., pp. 373–402.
31 G. Tuchman, *Making News: A Study in the Construction of Reality* (New York: The Free Press, 1978). See also chap. 4.
32 M. Fishman, *Manufacturing the News,* op. cit.
33 T. Gitlin, *The Whole World is Watching* (Berkeley, CA: University of California Press, 1980); W. Gamson, The *Strategy of Social Protest* (Belmont, CA: Wadsworth Publishing, 1990).
34 E. C. Baker, *Advertising and a Democratic Press* (Princeton: Princeton University Press, 1994).
35 Walter Tarnopolsky, Colin Wright, Gerald A. Beaudoin, and Edith Cody-Rice, *Newspapers and the Law,* Canadian Royal Commission on Newspapers, Vol. 3 (1981); Ben H. Bagdikian, *The Media Monopoly* (Boston, MA.: Beacon Press, 1983); Joyce Nelson, *Sultans of Sleaze* (Monroe, Maine: Common Courage Press, 1989); Edward S. Herman and Noam Chomsky, *Manufacturing Consent* (London: Vintage, 1994); *Media Ownership, The Government's Proposals,* Presented to Parliament by the Secretary of State for National Heritage by Command of Her Majesty (London, May 1995), Cm. 2872; Michael Dorland (ed.), *The Cultural Industries in Canada* (Toronto: James Lorimer & Co., 1996); Robert G. Picard, 'The Experience of the United States and Its Implications for Canadian Policy', in *La Concentration dans les medias,* Numero 1 (Quebec: Universite Laval, Centre detudes sur les medias, December 1996); Maude Barlow and James Winter, *The Big Black Book* (Toronto: Stoddart, 1997); James

Winter, *Democracy's Oxygen: How Corporations Control the News* (Montreal: Black Rose Books, 1997); Dwayne Winseck, *Reconvergence: A Political Economy of Telecommunications in Canada* (Cresskill, New Jersey: Hampton Press, 1998); http://www.geocities.com/CapitolHill/Lobby/2500/newspprs.htm; http://www.web.net/coc/black.html; http://www.media-awareness.ca/eng/issues/mediaown/conrad.htm

36 J. N. Cappella and K. H. Jamieson, 'News Frames, Political Cynicism, and Media Cynicism', *Annals of the American Academy of Political and Social Sciences*, Vol. 546 (1996), pp. 71–84.

37 T. Liebes and E. Katz, *The Export of Meaning* (New York: Oxford University Press, 1990).

38 G. Weimann, 'The Conduct of the Israeli Press after Rabin's Assassination', in D. Caspi (ed.), *Communication and Democracy in Israel* (Tel Aviv: The Van Leer Jerusalem Institute and Hakibbutz Hammeuchad, 1997), pp. 223–36 (Hebrew).

39 In March 1998, Ekos Research Associates held a public poll on 'Trust in Occupations'. Journalists and reporters were ranked 11 out of the 17 professions mentioned in the poll (31 per cent), just above federal public servants and lawyers, with 30 per cent. We thank Mr. Patrick Beauchamp, Director of Qualitative Research, for providing us with the poll results. According to the Angus Reid polling firm, two out of three Canadians think the media are guilty of sensationalizing scandals, and more than one third (35 per cent) have actually boycotted certain media because of their extensive intrusive reporting. Almost two thirds (65 per cent) feel reporting delves too deeply into the personal lives of public figures. Cf. 'Most of us feel reporters pry too much into lives of public figures', *Globe and Mail* (10 October 1998), p. C3. See also Gina Lubrano, 'Newspapers, credibility and the public', *The San Diego Union-Tribune* (21 December 1998); Tim Jones, 'public wants more, and less, from media', *Chicago Tribune* (16 December 1998); Humphrey Taylor, 'Lawyers and Law Firms Plumb the Depths of Public Opinion', *The Harris Poll*, No. 37 (11 August 1997); Humphrey Taylor, 'Dramatic Increase in Confidence in Leadership of Nation's Major Institutions', *The Harris Poll*, No. 8 (11 February 1998); Humphrey Taylor, 'Doctors' Prestige Rises Sharply', *The Harris Poll*, No. 31 (17 June 1998); 'What Do the People Want from the Press?', in http: //www.cmpa.com/Mediamon/mm0506.htm; Steven R. Van Hook, 'Public Perception & Expectations of the News Media', in http://www.west.net/~wwmr/mediapap.htm; http://www.pollingreport.com/institut.htm

40 E. Yuchtman-Yaar, 'The Israeli Public and Its Institutions', *Israeli Democracy* (1989), pp. 7–11.

41 E. Yuchtman-Yaar, 'Education, Science and Other Beliefs in the Eyes of the Israeli Public', *Ha'aretz* (*Be'shaar* Supplement, 14 April 1999, Hebrew).

42 T. Liebes and R. Ribak, 'Democracy at Risk: The Reflection of Political Alienation in Attitudes toward the Media', *Communication Theory*, Vol. 1 (1991), pp. 239–52. See also Yeshayahu Ben-Porat, 'The Israeli in His Own Eyes: What Is Allowed and What Is Prohibited', *Yedioth Ahronoth* (1 August 1986), Saturday Supplement, pp. 1–2 (Hebrew). Journalists received the third lowest rating (21/100), above politicians (15/100) and business people (14/100).

43 S. Smooha, *Israel, Pluralism and Conflict* (London: Routledge and Kegan Paul, 1978); R. Cohen-Almagor, 'Cultural Pluralism and the Israeli Nation-Building Ideology', *International Journal of Middle East Studies*, Vol. 27 (1995), pp. 461–84; M. Lissak, 'Dominant Political Culture and Political Mutations in Israel', in R. Cohen-Almagor (ed.), *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin* (London: Ashgate Publishing Ltd., 2000).

44 'The Israeli Student as a One-dimensional Person', interview with Professor Zvi Rosen, *Skill* (Tel Aviv University student newspaper) (May 1984), pp. 16–17 (Hebrew).

45 Yaron London, 'Half of the Youth Favours Transfer', *Yedioth Ahronoth* (29 May 1990) (Shavu'ut Supplement), pp. 2–5 (Hebrew).

46 See Yitzhak Ben-Horin, 'Democracy Goes Down', *Ma'ariv* (10 February 1990); Amos Nevo, 'Religious-Secular: Could It Be Otherwise?', *Yedioth Ahronoth* (20 June 1986) (Saturday Supplement), pp. 1–3. See also Yochanan Peres and Ephraim Yuchtman-Yaar, *Between Consent and Dissent: Democracy and Peace in the Israeli Mind* (Jerusalem: The Israel Democracy Institute, 1998), esp. pp. 29–32; Sam Lehman-Wilzig, 'Israeli Democracy: How Democratic? How Liberal?', in R. Cohen-Almagor (ed.), *Basic Issues in Liberal Democracy,* op. cit., pp. 275–6 (all in Hebrew).

47 E. Yuchtman-Yaar, research conducted in conjunction with 'Education, Science and Other Beliefs in the Eyes of the Israeli Public', *Ha'aretz* (*Be'shaar* Supplement, 14 April 1999, Hebrew). We are grateful to Professor Yuchtman-Yaar for this useful information.

48 '25% of the Youth till the Age 18 Have Anti-democratic Worldview', *Yedioth Ahronoth* (19 September 1984), p. 1 (Hebrew); R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance,* op. cit., chap. 9; *idem,* 'Cultural Pluralism and the Israeli Nation-Building Ideology', op. cit., Vol. 27 (1995) pp. 461–84. See also T. Herman and E. Yuchtman-Yaar, 'Is There a Mandate for Peace? Public Perceptions and the Peace Process', in D. Caspi (ed.), *Communication and Democracy in Israel*, op. cit., pp. 191–222 (Hebrew).

49 A. C. Gunther, 'Biased Press or Biased Public?: Attitudes toward Media Coverage of Social Groups', *Public Opinion Quarterly*, Vol. 56 (1992), pp. 147–67; T. Liebes and R. Ribak, 'Democracy at Risk: The Reflection of Political Alienation in Attitudes toward the Media', op-cit., pp. 239–52. See also J. N. Cappella and K. H. Jamieson, *Spiral of Cynicism: The Press and the Public Good* (New York: Oxford University Press, 1997).

50 See Edmund B. Lambeth, *Committed Journalism* (Bloomington, Ind.: Indiana University Press, 1986); David M. O'Brien, *The Public's Right to Know* (New York: Praeger, 1981); Jerome Barron, *Freedom of the Press for Whom?: The Rise of Access to Mass Media* (Bloomington, Ind.: Indiana University Press, 1973); *The Israeli Journalists' Professional Code of Ethics* (approved on 16 May 1996) (Hebrew). See also *Report of the Public Commission on Press Laws* (September 1997, Hebrew).

51 See A. Yaniv (ed.), *National Security and Democracy in Israel* (Boulder and London: Lynne Reinner, 1993); M. Lissak (ed.), *Israeli Society and Its Defense Establishment* (London: Frank Cass, 1984).

52 In order to calculate the correlation we reversed the scale of the variable that relates to the need for ethical rules.

53 In order to calculate the correlation we reversed the scale of the variable that relates to imposing restrictions on free speech.
54 J. N. Cappella and K. H. Jamieson, 'News Frames, Political Cynicism, and Media Cynicism', *Annals of the American Academy of Political and Social Sciences*, Vol. 546 (1996), pp. 71–84.
55 For instance, in recent years we could mention the extensive media coverage of the Derei affair (a prominent corrupt politician), the Ze'elim B affair (misconduct in military training operation resulting in the death of soldiers), the killing of Egyptian POWs during the 1973 Yom Kippur 1973 War, the revelation about the danger of Dimona nuclear waste, the revelation of silicon in milk products produced by Tnuva dairy company, and the Bar-On affair involving the nomination of an ill-suited lawyer, Ronny Bar-On, to the office of Attorney-General.
56 E. Yuchtman-Yaar, 'The Israeli Public and Its Institutions', *Israeli Democracy* (1989), pp. 7–11; T. Liebes and R. Ribak, 'Democracy at Risk: The Reflection of Political Alienation in Attitudes toward the Media', op. cit., pp. 239–52.
57 D. Horowitz and M. Lissak, *Hardships in Utopia: Israel Overloaded Society* (Tel Aviv: Am Oved, 1990); M. Lissak, 'Uniqueness and Normality in the Relationship between Military and Government in Israel', in R. Cohen-Almagor (ed.), *Basic Issues in Israeli Democracy*, op. cit., (both in Hebrew).
58 E. Yuchtman-Yaar, 'Who's Afraid of a Free Press?', *Israeli Democracy* (1990), pp. 19–21.
59 T. Liebes, 'Television Disaster Marathons: A Danger for Democratic Process?', paper presented in International Symposium in Honour of Elihu Katz (Jerusalem, May 1996).

Index

Index of Court Cases