

# Appendix: Perceptions of Media Coverage among the Israeli-Jewish Public: a Reflection of Existing Social Cleavages?<sup>1</sup>

(with Itzhak Yanovitzky)

## Introduction

In recent years we have witnessed growing criticism of the conduct of the mass media in Israel.<sup>2</sup> 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.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

These criticisms are not unique to Israel. Similar arguments are an integral part of public discourse in most democratic societies.<sup>8</sup> 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*.<sup>9</sup>

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,<sup>10</sup> (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,<sup>11</sup> the force that sets the public agenda,<sup>12</sup> the 'watchdogs' of government on behalf of the public,<sup>13</sup> important agents of political socialization,<sup>14</sup> an important mechanism of mobilization,<sup>15</sup> and the essential platform of participatory democracy.<sup>16</sup>

To a large extent, these functions of the media derive from the democratic thinking.<sup>17</sup> Democracy is founded on principles such as majority rule while respecting the rights of minorities;<sup>18</sup> representation;<sup>19</sup> participation;<sup>20</sup> open discussion of public matters;<sup>21</sup> tolerance,<sup>22</sup> and equal access to societal resources.<sup>23</sup> Despite differences between the popular perception and the elitist perception of democracy<sup>24</sup> and among the various definitions of participation in democratic procedures (passive versus active, mass versus representation, and so on),<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> Such an image is common among both journalists<sup>28</sup> and politicians,<sup>29</sup> and is increasingly evident in public attitudes.<sup>30</sup>

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.<sup>31</sup> These procedures, in turn, are not immune to pressures and manipulations exerted by politicians and bureaucrats, advertisers,<sup>32</sup> pressure groups,<sup>33</sup> publishers,<sup>34</sup> and media owners.<sup>35</sup>

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

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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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).<sup>41</sup> 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.<sup>42</sup> 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).<sup>43</sup>

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.<sup>44</sup> Younger people tend to be more cynical towards the conduct of the media, as they are towards other social institutions.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

## 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 ( $N=501$ )

	<i>Distribution (in percentages)</i>
<b>Sex</b>	
Men	46.0
Women	54.0
<b>Ethnic origin</b>	
Asian-African	33.1
European-American	36.6
Native Israeli	26.1
Immigrants from the former Soviet Union	4.2
<b>Religiousness</b>	
Secular	58.0
Traditional	29.2
Religious	12.8
<b>Age</b>	
18–34	48.2
35–54	37.2
55+	14.6
<b>Education</b>	
Less than high school	7.9
High school education (12 years)	40.9
Greater than high school	51.2
<b>Income*</b>	
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 overrepresented 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.<sup>49</sup>

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,<sup>50</sup> and state security – a highly sensitive issue in the Israeli culture.<sup>51</sup>

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 Oslo 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  $\pm 10$  (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

<i>Consideration</i>	<i>Cumulative percentage of all subjects</i>
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
<b>Number of respondents</b>	<b>449</b>

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).

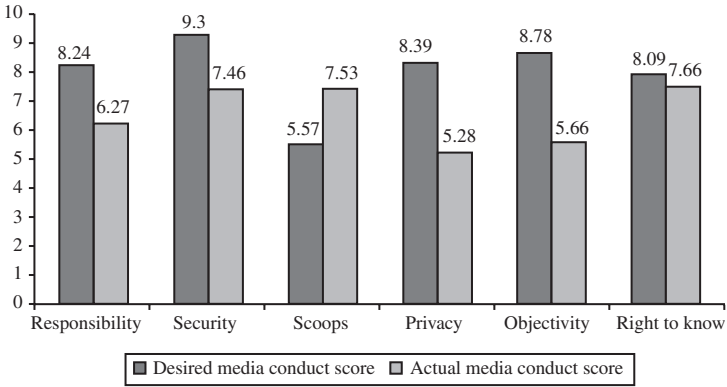


Figure A1 A comparison of average desired and current media conduct scores by six aspects of media conduct (N=493).

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 (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)

	<i>Objectivity</i>	<i>Privacy</i>	<i>Security</i>	<i>Responsibility</i>
Education	0.124 (0.30)	0.21* (0.32)	0.12** (0.31)	0.04 (0.30)
Religiousness	0.25* (0.26)	0.13* (0.28)	0.08* (0.27)	0.13* (0.26)
Age	-0.09 (0.13)	-0.17* (0.14)	-0.07 (0.14)	-0.05 (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 ( $\gamma=0.31$ ;  $p=0.002$ ).<sup>52</sup>

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 ( $\gamma=-0.32$ ;  $p=0.023$ ).<sup>53</sup>

## 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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<sup>57</sup> 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.<sup>58</sup> Yet in contrast to the argument that media coverage of terror attacks is excessive,<sup>59</sup> 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 Freedon, *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 Freedon 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 Vandever, '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 racist 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. Wolfe, '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, 'Challenges 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); Samuel 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 Wauwatosha 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 *Wauwatosia 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. Pro-life 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: Judicial 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.



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- 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: An Argument in Ethics, Medicine and Law* (forthcoming); Raphael Cohen-Almagor and Merav Shmueli, 'Can Life Be Evaluated? The Jewish Halachic 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 ombudspersons, 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 Sufirin 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 Professionnelle 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).
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- 71 *Ibid.*, p. 384.
- 72 *Ibid.*
- 73 Dan Caspi and Yehiel Limor, *The Mediators* (Tel Aviv: Am Oved, 1992), p. 17 (Hebrew).
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- 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 gratitude 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.
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- 7 Y. Mosko, 'The Charge Sheets: The Boundary of Listening-Ins', *Ha'ain Ha'shevieit*, Vol. 2 (1996), pp. 16–21 (Hebrew).
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*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.
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- 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).
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- 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.
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- 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/~wvwmr/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).

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- 51 See A. Yaniv (ed.), *National Security and Democracy in Israel* (Boulder and London: Lynne Rienner, 1993); M. Lissak (ed.), *Israeli Society and Its Defense Establishment* (London: Frank Cass, 1984).
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- 53 In order to calculate the correlation we reversed the scale of the variable that relates to imposing restrictions on free speech.
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