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### **Linda Briskman**

prof., Western Sydney University

ORCID: 0000-0002-5328-0339

### **Scott Poynting**

prof., Western Sydney University

ORCID: 0000-0002-0368-2751

## **SPEECH FOR JUSTICE FOR PALESTINIANS: A HUMAN RIGHTS CONUNDRUM**

### **Introduction**

The question of free speech is vigorously debated in Australia and globally. As academics, we are interested in limitations to free speech when it serves the interests of powerful dominant interests. We are also concerned about the concomitant right of academic freedom that purports to enable scholars to speak publicly and stridently about issues facing contemporary society, including those that are contested and where debates are heated. We do not limit our interest to the academic sphere as pervasive institutional barriers extend to other domains such as media and parliaments. Our paper specifically focuses on free-speech constriction in the Israel-Palestine conflict of ideas. We examine this constraint in three ways in the Australian context: academic freedom, media freedom and freedom of political representation and expression. We confine our exploration to an Australian perspective, while recognizing that similar patterns occur in other nations.

What makes Israel-Palestine a compelling exemplar is that what endures is not just active and polarized debates, but deliberate attempts by powerful sectors of societies to stifle the voices of those who dissent from dominant discourses. The irony is that the universally enshrined human right to free speech is removed from those who speak out for human rights. Our argument is that it is a travesty of justice that the human right to freedom of speech is condemned when speaking up for the human rights of Palestinians.

To provide necessary background, we begin with a brief examination of key points of the Conflict from an historical, political and ideological perspective before turning to a human rights framework. Preceding the three case studies that provide the core of this paper, we highlight some key features of the Boycott, Divestment and Sanctions (BDS) campaign against Israel as opposition to this campaign contextualizes the ongoing institutional thwarting of free speech.

### **Settler colonialism and the establishment of Israel**

Israel was formed in 1948 in the aftermath of the Holocaust in which six million European Jews were killed by the Nazis, in order to create a homeland for world Jewry to be safe from persecution and genocide. The formation of Israel resulted in the displacement and dispossession of more than half of Palestinian-Arab society, with estimates of around 750 thousands people. The destruction of their towns and villages was so extensive that the idea of a Palestinian return, discussed later, was rendered impractical<sup>1</sup> and subsequently prohibited for Palestinians.

Israel was created on the land of all historic Palestine except for the West Bank and Gaza, with the West Bank under the rule of Jordan, then known as Transjordan and Gaza under Egyptian military rule.<sup>2</sup> Following the Israeli occupation of 1967, arising from the Six Day War, the geo-political focus changed to almost full control by Israel despite the operation of the Palestinian Authority that has some delegations in the West Bank and Hamas in Gaza. Events during the 1947–1949 war<sup>3</sup> led to the creation of Diaspora Palestinians<sup>4</sup> encompassing those who left. In the aftermath of the 1967 War, Palestinians were once again displaced. Of about one million Palestinians in the West Bank and Gaza, approximately

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<sup>1</sup> I. Pappé, *Out of the Fame: The Struggle for Academic Freedom in Israel*, London 2010.

<sup>2</sup> V. Mason, The Liminality of Palestinian Refugees: Betwixt and Between Global Politics and International Law, “*Journal of Sociology*”, 8.11.2019, doi.org/10.1177/1440783319882539.

<sup>3</sup> For details of this Conflict and competing discourses, see: M. Berry, G. Philo, *Israel and Palestine: Competing histories*, Pluto Press, London 2006; I. Pappé, *The Ethnic Cleansing of Palestine*, Oneworld Publications, London 2006; and M. Bunton, *The Palestinian Israeli Conflict: A Very Short Introduction*, Oxford University Press, Oxford 2013.

<sup>4</sup> L. Veracini, *The Other Shift: Settler Colonialism, Israel and the Occupation*, “*Journal of Palestinian Studies*” 2013, Vol. 42, No. 2, s. 26–42.

200 thousands<sup>5</sup> or 300 thousands, as suggested by the US Department of State, either fled or were expelled by force from the territories newly occupied by Israel. The Palestinians who remained were placed under military rule, which involved extensive human rights violations<sup>6</sup>, including restrictions on both political and social rights.

The Occupation after 1967 resulted in the entrenchment of settler colonialism with Palestinian lands increasingly appropriated for Jewish settlements, deemed illegal under international law but supported beyond Israel's borders including now the United States which in 2019 reversed its previous position of settlement opposition. Settler colonialism manifests as a permanent project.

Arising from the establishment of the state of Israel in, there are now more than 7,25 million Palestinian refugees, who are denied the right of return. Palestinian refugees are “persons whose normal place of residence was Palestine during the period of 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict”.<sup>7</sup> They are scattered in Palestinian refugee camps in the Occupied Territories, as well as Jordan, Lebanon and Syria. The right of refugees to be repatriated to their homeland is recognized in refugee law and enshrined in UN General Assembly Resolution 194 of 1948 and reaffirmed in other international conventions, but the Right of Return remains denied to Palestinians.<sup>8</sup> Israel's first Prime Minister, David Ben-Gurion, introduced measures to prevent refugees from returning, including forcefully and violently, and property and land was confiscated. For Jews, the Law of Return of 1950 gives them the right to live in Israel and to be granted citizenship.

The settler colonial process of erasure and replacement continued with the demolition of towns and villages inhabited by Palestinians “and the system of de-Arabification and subsequent Judaisation of lands conquered by Israel”.<sup>9</sup> This has become named as ethnic cleansing of large tracts of territory, resulting in resentment and conflict up until the present time and with the existence of Palestinian villages now erased from public memory as those lands have been re-purposed in what is now Israel.<sup>10</sup> According to the Boycott, Divestment and Sanctions (BDS) movement, Israel's oppression of Palestinians meets the definition of the crime of Apartheid as set out in the 2002 Rome Statute of the International Criminal Court (see: <https://bdsmovement.net/colonialism-and-apartheid/summary>). This claim

<sup>5</sup> I. Pappé, *The Ethnic Cleansing of Palestine...*, *op. cit.*

<sup>6</sup> M. Berry, G. Philo, *Israel and Palestine: Competing Histories*, Pluto Press, London 2006, s. 59.

<sup>7</sup> United Nations Relief and Works Agency, *Palestinian Refugees*, <https://www.unrwa.org/palestine-refugees> [accessed: 8.12.2019].

<sup>8</sup> V. Mason, *The liminality of Palestinian refugees: Betwixt and between global politics and international law*, “Journal of Sociology”, 8.11.2019, doi.org/10.1177/1440783319882539.

<sup>9</sup> *Ibidem*, s. 14.

<sup>10</sup> D. Kennedy, *Decolonization: A Very Short Introduction*, Oxford University Press, New York 2016.

is strongly denied by the Zionist movement. Israel presents itself to the global community as a model liberal democracy, a view upheld by its supporters, mainly from the Global North.

## Human rights

International human rights standards provide a benchmark for interrogating the rights of Palestinians and the human rights violations that take place, most observable in the occupied territories of Gaza and the West Bank. Even a cursory examination of international norms demonstrates human rights violations against the Palestinians, rights which we briefly outline as preliminary to discussing how exacting it has become to act or speak out against these when freedom of speech is monitored, regulated formally and informally, and representing a right-denied.

The right to free speech is secured in Article 19 of the 1948 Universal Declaration of Human Rights (UDHR):

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The 1966 Covenant on Civil and Political Rights in Article 19, reinforces this right:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Human rights norms are insufficient in themselves and it is somewhat futile to have recourse to international law alone when this is flouted in the Israel-Palestine context. Examples of such flouting include not only the ban on the Right of Return and the growth of illegal Settlements, but day-by-day actions within the Occupied Territories such as limitations on the civil and political rights of freedom of movement, including confining the population of Gaza into what is increasingly denoted as an open air prison, and curtailing of economic and social rights to housing, water and medical care. Even more egregious are the disproportionate killings and other harms inflicted on Gaza residents in response to their resistance to the Occupation. This was manifestly so in the two *Intifadas* or uprisings in 1987 and 2000 and more recently, the Gaza Wars of 2008/2009 (Operation Cast Lead), 2012 (Operation Pillar of Defense) and 2014 (Operation Protective Edge).

It would be remiss not to mention civil society movements that speak out for the rights of Palestinians, often little known, as institutional supporters of

Palestinian rights rarely promote their activities. They include the Israeli Committee Against House Demolitions (ICAHD) based in Israel but with support in other countries and MashcomWatch, a volunteer organization of Israeli women who are peace activists and oppose the Occupation and the denial of Palestinian Human Rights. Globally, there exist civil society organizations that speak out for the rights of Palestinians, and alternative media plays a role including from within Israel where *Haaretz* is the most likely to present contrasting views to the negative Israeli stance on Palestinian rights. Another is *+972 magazine* and its sister site in Hebrew *Local Call. +972*. Although it is beyond the scope of this paper to provide extensive detail on such activities, what is relevant to the paper is that despite the fact that they are all very active, they are unlikely to be known in the mainstream of societies in the Global North, where they are rarely referred to in public proclamations.

In order to further problematize the free speech question, we offer some detail of the Boycott, Divestment and Sanctions (BDS) campaign against Israel, which has targeted many individuals and organizations. The BDS is the most prominent sphere in which restriction of free speech becomes normalized and provides a critical scaffold for the examples that will be the focus of our exploration.

### **Boycott, Divestments and Sanctions Campaign<sup>11</sup>**

The Boycott, Divestment, Sanctions (BDS) is a global non-violent movement that aims to end international support for Israel's oppression of Palestinians and to apply pressure on Israel to comply with international law. Inspired by the South African anti-apartheid movement, the BDS movement was established in 2005 by Palestinian civil society organizations. It has become an active social movement supported by a range of groups including unions, academic associations, faith groups and other grassroots rights-based and social justice movements. Its three key demands are:

1. Boycotts, involving withdrawal of support for groups complicit in Israel's sporting, cultural and academic institutions and from Israeli and international corporations that are engaged in violations of Palestinian human rights;
2. Divestment campaigns to urge organizations to withdraw investments from Israel; and
3. Sanctions campaigns that pressure governments to ban business with Israeli settlements, ending military trade and free trade agreements and to suspend Israel's membership in international forums, including UN bodies.

The BDS movement acts where governments and powerful groupings will not, to stand up against injustices and to realize the role of Palestinian civil society. In solidarity with the rights of Palestinians, the BDS, unlike other civil

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<sup>11</sup> For further details of the BDS movement see: <https://bdsmovement.net>.

society endeavors is relatively well known but mainly in oppositional discourse and reportage.

Despite the BDS movement being a form of peaceful protest and one that is gaining traction, it has incurred the wrath of the Israeli government and has led to its ban in some countries. The narrative around this is that criticisms of Israel states are antisemitic. While acknowledging and being deeply concerned that antisemitism is on the rise particularly in Poland, South Africa, Ukraine and Hungary as noted by the Anti-Defamation League<sup>12</sup>, we do not support the notion that the BDS is antisemitic and that this movement contributes to this rise. Suppressing BDS voices that speak out for Palestinian rights can be construed as stifling human rights campaigns. Academic boycotts are among those subject to virulent attacks. They are boycotts directed at Israeli institutions and not individuals and represent a component of targeting of pro-Palestinian academics world-wide.

Formal attempts to suppress support for BDS have met with some success. As pointed out by Human Rights Watch Germany Director Wenzel Michalski<sup>13</sup>, twenty-seven US states have passed laws or introduced policies that either engage in call for boycotts of Israel. Israel itself in 2018 amended its Law of Entry to ban those who call for boycotts of Israel. In Germany the Bundestag has passed a motion that presents boycotts of Israel as constituting antisemitism.

These measures and criticisms from which they derive are unfounded. The BDS movement is based on international law and prohibits racism of any kind<sup>14</sup>. It aspires to basic equality for all people in Israel-Palestine, irrespective of race or religion. Those who speak out in support of the BDS and/or the rights of Palestinians become silenced by accusations of antisemitism. The legitimacy of the BDS movement was acknowledged in a 2019 report on antisemitism by the Special Rapporteur on Freedom of Religion or Belief Ahmed Shaheed. In his report, the Special Rapporteur referred to claims that the objectives, activities and effects of the BDS movement are antisemitic while noting that international law recognises boycotts as constituting appropriate forms of political expression and that non-violent expressions of support for boycotts are legitimate speech that warrants protection.<sup>15</sup>

<sup>12</sup> J. Maltz, *Poland, South Africa, Ukraine and Hungary top list of most anti-Semitic Countries, says ADL survey*, Haaretz, 21.11.2019, <https://www.haaretz.com/world-news/.premium-adl-report-poland-south-africa-ukraine-and-hungary-most-anti-semitic-countries-1.8156819> [accessed: 8.12.2019].

<sup>13</sup> W. Michalski, *Anti-boycott measure wrong way to combat Anti-Semitism*, 28.05.2019, <https://www.hrw.org/news/2019/05/28/anti-boycott-measure-wrong-way-combat-anti-semitism> [accessed: 8.12.2019].

<sup>14</sup> S. Rees, *Press Freedom: Sound and Fury Signifying Nothing*, "New Matilda", 25.09.2019, <https://newmatilda.com/2019/09/25/press-freedom-sound-and-fury-signifying-nothing> [accessed: 8.12.2019].

<sup>15</sup> United Nations, *Interim Report on Elimination of all Forms of Religious Intolerance*, presented to the 74<sup>th</sup> session of the General Assembly, 2019, [https://www.ohchr.org/Documents/Issues/Religion/A\\_74\\_47921ADV.pdf](https://www.ohchr.org/Documents/Issues/Religion/A_74_47921ADV.pdf) [accessed: 8.12.2019].

## Australia

The three exemplars below are instances that we draw upon to evidence our arguments. Each has global application.

1. Academic Freedom and the case of Sandra Nasr
2. Freedom of the Press and the case of Sophie McNeil
3. Freedom of Political Representation and Expression and the case of Melissa Parkes

### Academic freedom

In 2015 an Australian academic, Dr Sandra Nasr, posted an invited opinion piece on the Human Rights Blog of a highly regarded overseas university, dealing with dehumanization and the denial of Palestinian human rights by Israel.<sup>16</sup> The comment piece condemned the Israeli state for its colonizing project, arguing that this regime was justified by appeals to entitlement and superiority; this enraged Zionist activists but was in substance no different from observations routinely made by many Jewish intellectuals, from expatriate Israeli historians to Haaretz journalists. Dr Nasr was immediately denounced as a supposed “anti-Semite”, in a virulent and concerted global campaign of bullying, which began with demands for her dismissal from, or disciplining by, her university, and for scrutiny and curtailment of her teaching and research. There was an official complaint of academic misconduct for the posting of the blog; the ensuing investigation was confidential but suffice to say that the charge came to naught. The university was quickly prevailed upon to apologize. This is not an unusual pattern of events, but the course of the campaign is instructive for us here: not only because the trigger issue was an argument over human rights (and who can and cannot have them), but because the rights of the academic and a number of others – to freedom of political expression, to academic freedom, and in some respects to privacy – were deliberately and mischievously infringed, over a period of years.

Zionist lobbyists next sought to attack Dr Nasr over her doctoral thesis, which had been submitted and passed some five years before the controversial blog. She was traduced over the mere title of the thesis and its presumed contents, since its contents were not available to her detractors, the script having been embargoed by the author, as is her right, and as is often done by doctorands for the protection of informants. The title mentioned Israeli state terrorism, a subject upon which the author had published, and this topic was of itself declared by critics from the pro-Israel lobby to be a manifestation of supposed anti-Semitism.

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<sup>16</sup> The authors have no wish to compound the suffering of our colleague by naming her here, but the facts in the following account are all on the public record, and we identify her in this article with her permission.

Dr Nasr's detractors sought an opportunity to go beyond the harassment of this academic, and to go after the university where the PhD was completed, in a "fishing" exercise to expose and denounce possibly the supervisors of the PhD, and certainly its examiners.

A nominal state community organization, in fact incorporated in another state under the umbrella of a national body prone to Zionist interventions, applied for a copy of the thesis script under the Freedom of Information (FOI) laws of the relevant state (higher education is under state, rather than federal, jurisdiction in Australia). Five years having elapsed since its completion, the university eventually acceded to this, though without the acknowledgements section which named people who may have been subjected to harassment or threat. This did not satisfy the applicant, who also sought, through FOI, copies of examiners' reports, which are, by worldwide convention, confidential. The reasons for this convention are obvious: examiners need to be able to exercise their scholarly judgments frankly and without fear or favor. They do so in good faith, as a contribution to the community of scholars; their reports are not written for the public at large. Examiners undergo a robust approval process regarding their qualifications to examine the thesis in question, and any potential conflicts of interest. The university's review of these procedures, in response to what amounted to a vexatious complaint, re-confirmed due process and internationally agreed standards. Notwithstanding the University's official review, and despite internationally accepted custom and practice in PhD examination, the Information Commissioner released in full the reports of the examiners, complete with their identities, which were then predictably used by the FOI applicant to smear the candidate, the examiners and the University. The applicant publicly insinuated in the national media, without any grounds whatever, that there were shortcomings in the examination<sup>17</sup>, and asserted falsely and maliciously in a complaint to the Tertiary Education Quality and Standards Agency, that there were "improprieties – which collectively constitute a lack of integrity [...] crude prejudice and lack of scholarly rigor of the thesis [...] apparent conflicts of interest by the two examiners; and the university's action in covering up the matter".<sup>18</sup>

The university had properly resisted the FOI application, which was eventually taken through a long appeals process that succeeded on some legal technicalities (to do with the payment of an honorarium to examiners, officially rendering them "employees" of the university concerned) which would not be available in most FOI regimes internationally. The process was abused to seek ammunition for politically motivated attacks on academics. The effect on academic freedom is intentionally chilling.

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<sup>17</sup> J. Oriel, *It is pretty simple: Louis Farrakhan really hates Jews*, "The Australian", 10.06.2018.

<sup>18</sup> Hillman, cited in: P. Taylor, *Anti-Semitism protests "an attempt to silence me", says academic*, "The Australian", 13.06.2018.



It did not stop there. The same institutional complainant that had mounted the fruitless FOI fishing expedition, then pursued attempts through her university and the press to silence Dr Nasr on questions of Palestine, which if successful would make it very difficult for her to continue her teaching in Middle East politics and history. The purpose of the exercise was bare harassment, its function was bullying. This sort of egregious attack on academic freedom exacts an awful toll on the health and wellbeing of those victimized – and that price tag punishment is clearly the intention: to deter others from exercising academic freedom (the thesis, the teaching) or freedom of political expression (the blog) in ways opposed by the bullies.

### **Freedom of the media**

We now turn our attention to similarly motivated attempts by the Israel lobby to impugn the integrity and professionalism of a journalist whom they saw as too sympathetic to Palestinian causes. Unlike attacks on academic freedom over Palestine issues, these attacks did not include demands for the sacking of the journalist concerned, rather the strident declaration that she should never have been appointed by the public broadcaster in the first place. The interventions were a clear attempt to impede the freedom to investigate and report fearlessly upon the Middle East by imposing self-censorship on journalists and media managers in avoidance of further and similar attacks.

Multiple award-winning Australian journalist, Sophie McNeill, had raised the ire of the Zionist lobbyists well before she was appointed in 2015 as the Middle East Correspondent for the Australian Broadcasting Corporation (ABC), based in Jerusalem. In 2009 she had made a television documentary for the *Dateline* program on Australia's Special Broadcasting Service (SBS), in which she reported the story of a Palestinian man being evicted by armed Jewish "settlers" from his own home in East Jerusalem to which he held the court-upheld title and where he had lived for 38 years.<sup>19</sup> John Lyons, who reported the same events contemporaneously as Middle East correspondent for *The Australian*, recounts how both McNeill and he experienced attempts to have their reporting undermined by untruthful approaches to their editor and executive producer respectively, by an officer of the Israeli Embassy in Canberra.<sup>20</sup>

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<sup>19</sup> S. McNeill, *Hot Property*, "Dateline". Special Broadcasting Service, November 1.11.2009, <https://www.sbs.com.au/dateline/story/watch/id/600247/n/Hot-Property> [accessed: 8.12.2019]; J. Lyons, S. Le Clezio, *Balcony Over Jerusalem*, HarperCollins Publishers, Sydney 2017, s. 92–96.

<sup>20</sup> J. Lyons, S. Le Clezio, *op. cit.*, s. 95–96.

The Australia/Israel and Jewish Affairs Council (AIJAC) put together a condemnatory dossier on McNeill, posted it on their website<sup>21</sup>, and referred its contents to the board of the ABC. The ABC stood by their journalist; the Corporation answered every point asserted by AIJAC, having put each of them in turn to the reporter, after an investigation of over three weeks.<sup>22</sup> Accusations included that McNeill had shared a platform with activists advocating Boycott, Divestments and Sanctions (BDS) against Israel, and had written sympathetically about children in a cancer ward in Gaza.<sup>23</sup> AIJAC complaints also included that she had acknowledged the teaching of a Middle East Politics lecturer at university, that she had been mentored by Robert Fisk after arrival in the Middle East, and that she had (as a teenage documentary-maker working on East Timor) been influenced by the work of John Pilger.<sup>24</sup> ABC Managing Director Mark Scott refused to be bullied by the lobby group: “Here is a professional journalist like Sophie McNeill subjected to a whole lot of attacks which in my view were trying to taint her by association”.<sup>25</sup> Scott placed on record that “I have seen similar dossiers to the one created on Sophie McNeill on other journalists”, and named four highly respected Australian journalists, and referred also to cases of attacks on UK journalists. He observed, further, that “The US reporter, Jodi Rudoren, was targeted when she was appointed Jerusalem bureau chief for the *New York Times* in 2012 and accused of being biased against Israel and unsuitable for the post”.<sup>26</sup> Scott concluded that McNeill “will be under even closer scrutiny now” and that the AIJAC “pre-emptive attack” was a “shot across the bows”. He added that “fair, impartial, accurate and balanced coverage from McNeill will not guarantee her immunity from ongoing criticism”.<sup>27</sup> This was prescient.

In November 2015, conservative Senator Eric Abetz attacked Sophie McNeill in the Australian Parliament in exactly the same terms as the AIJAC dossier, during his accusatory questioning of ABC chief Mark Scott before the Senate Estimates Committee. He suggested that the ABC should have researched McNeill’s “attitudes” before appointing her. Scott responded that McNeill was “an accomplished journalist with an extensive history of reportage from the region and was appointed on merit”. He added that “she was subjected to a rigorous appointment selection process and they did discuss at length her experience as a reporter in the Middle East. [...] She has lived in Jerusalem and Beirut, filed from

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<sup>21</sup> A. Shapiro, *Should the ABC have given advocacy journalist Sophie McNeill the keys to its Jerusalem bureau?*, AIJAC, 13.03.2015, <https://aijac.org.au/update/should-the-abc-have-given-advocacy-journalist-so/> [accessed: 8.12.2019].

<sup>22</sup> J. Lyons, S. Le Clezio, *op. cit.*, s. 284.

<sup>23</sup> *Ibidem*, s. 283.

<sup>24</sup> A. Shapiro, *op. cit.*

<sup>25</sup> Quoted in: J. Lyons, S. Le Clezio, *op. cit.*, s. 284.

<sup>26</sup> *Ibidem*, s. 285.

<sup>27</sup> *Ibidem*.

Lebanon, Afghanistan, Gaza, Pakistan and Kurdistan for SBS”. Scott observed that, “There has been a barrage of complaints from some sectors about Ms McNeill”. He noted that McNeill had twice been awarded young journalist of the year, won a Walkley (Australia’s premier journalism prize) for reporting in 2010 and had filed from all over the world’.<sup>28</sup>

In September 2017, and again a week later in October, Labor Party MP and ardent advocate for Israel, Michael Danby, took out paid advertisements in the newspaper “Jewish News”, accusing McNeill of alleged bias. Journalists recorded that such advertisements were unprecedented.<sup>29</sup> Danby admitted that these ads were at least partly paid for by taxpayer funds, out of the allowance for his electorate office: an irony given his long-term attacks on the public broadcaster (ABC) for using public monies for unacceptable advocacy.<sup>30</sup> Former ABC Middle East correspondent, Peter Cave, identified Michael Danby as the “vanguard” of attack dossiers on journalists, like AIJAC’s, and told Media Watch<sup>31</sup>:

Danby has been a serial complainant since the late 1980s, trying to force censorship on every ABC correspondent who’s ever been posted to the Middle East. Peter George was the first, and every correspondent ever since has copped complaints from Danby. His complaints are half-truths and ill based.

This gist of his complaint in this instance was that McNeill had given more air-time to a report on the expulsion of a Palestinian family than to the fatal stabbing of three members of an Israeli Jewish family, which had been reported by the ABC in the context of increased violence in which four Palestinians were killed.<sup>32</sup> ABC Director of News, Gaven Morris, responded, “Contrary to Mr Danby’s assertion, Ms McNeill gave due prominence to the fatal stabbing attack of the three Israelis with stories on television, radio, [ABC] News Digital and Twitter. [...] The coverage included graphic accounts of the attack from witnesses and first responders”.<sup>33</sup> An ABC official statement affirmed: “The ABC has complete confidence in the professionalism of Ms McNeill [...] her work has been demonstrably accurate and impartial”.<sup>34</sup>

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<sup>28</sup> A. Meade, *Eric Abetz attacks ABC reporter Sophie McNeill over Middle East reporting*, “The Guardian. Australia edition”, 1.12.2015. <https://www.theguardian.com/media/2015/dec/01/eric-abetz-attacks-abc-reporter-sophie-mcneill-over-middle-east-reporting> [accessed: 8.12.2019].

<sup>29</sup> *ABC defends correspondent from Federal MP’s attack ads*, Media Watch, 9.10.2017, <https://www.abc.net.au/mediawatch/episodes/abc-defends-correspondent-from-federal-mps-attack-ads/9972464> [accessed: 8.12.2019].

<sup>30</sup> A. Meade, *ABC’s Sophie McNeill accused of anti-Israel bias in ad by Labor MP*, “The Guardian”, 4.10.2017, <https://www.theguardian.com/media/2017/oct/04/abcs-sophie-mcneill-accused-of-anti-israel-bias-in-ad-by-labor-mp> [accessed: 8.12.2019].

<sup>31</sup> *ABC defends correspondent...*, *op. cit.*

<sup>32</sup> *Ibidem.*

<sup>33</sup> A. Meade, *ABC’s Sophie McNeill...*, *op. cit.*

<sup>34</sup> Quoted in: *ABC defends correspondent...*, *op. cit.*

We conclude our discussion of this case by quoting AIJAC director Colin Rubenstein, who suggests that his pressure group is being singled out in a discriminatory way for their tactics. With breathtaking lack of reflexivity, perhaps chutzpah, he implores: “I would call on those who oppose our views [...] to engage with different views in a democratic, tolerant and constructive spirit, rather than demand [...] that those who disagree [...] be silenced or suppressed”.<sup>35</sup>

### Freedom of political representation and expression

The Honorable Melissa Parke was elected to the Australian Parliament’s House of Representatives in the 2007 federal election as the Member for Fremantle in Western Australia, and was twice re-elected to that seat, which she represented as Labor Party MP until 2016. She held three ministerial appointments under Labor governments. In 2012, Parke nominated “the promotion of human rights” as one of the “key things” she had focused on as a parliamentarian.<sup>36</sup> Prior to her parliamentary service, Parke was a senior international lawyer for the United Nations for eight years. She served two and a half years of this as a human rights lawyer in Gaza. Her “strong sense of the power imbalance that exists over there” gave her understanding, and hence sympathy, she has stated.<sup>37</sup> Parke became a long-standing member of Parliamentary Friends of Palestine.

In October of 2014, the International Year of Solidarity with the Palestinian People, Melissa Parke presented to Parliament a petition on behalf of University of Wollongong academic and former Israeli Defence Force soldier Marcelo Svirsky “to draw the attention of the House to the plight of the Palestinian people and requesting the government to honor its obligations under international law”.<sup>38</sup> The petition called upon the Australian Government to support Boycott, Divestment and Sanctions (BDS) against »states, institutions and companies – Australian, Israeli or other – that are involved in the perpetuation of apartheid and discriminatory Israeli policies including the occupation of the West Bank, East Jerusalem and Gaza”.<sup>39</sup>

Of course, this brought down the wrath of the Israel lobby, which strenuously objects to support for BDS and arguments that Israel practices apartheid,

<sup>35</sup> Rubenstein quoted in: A. Meade, *Pro-Israel advocates in Australia targeted three journalists, new book claims*, “The Guardian. Australia edition”, 29.07.2017, <https://www.theguardian.com/media/2017/jul/29/pro-israel-advocates-in-australia-targeted-three-journalists-new-book-claims> [accessed: 8.12.2019].

<sup>36</sup> G. Robinson, *In Conversation: Melissa Parke full transcript*, “The Conversation”, 6.12.2012, <http://theconversation.com/in-conversation-melissa-parke-full-transcript-11190> [accessed: 8.12.2019].

<sup>37</sup> *Ibidem*.

<sup>38</sup> Commonwealth of Australia, *Parliamentary Debates*, [Hansard] House of Representatives, Adjournment Petition: Middle East, 27.10.2014, 12072.

<sup>39</sup> *Ibidem*.

and routinely labels these as “anti-Semitic”. Reacting in an attack piece opinion column in the “Sydney Morning Herald”, Peter Wertheim and Alex Ryvchin, respectively executive director and public affairs director of the Executive Council of Australian Jewry, began weirdly by associating Parke with the placing of a pig’s head in the kosher section of a South African supermarket, since they claim that both were in support of BDS.<sup>40</sup> This crude propaganda device was followed by several attempts at ascribing guilt by association with two authorities she had quoted in her speech to Parliament, who were themselves dishonestly smeared by Wertheim and Ryvchin. Richard Falk, Emeritus Professor of International Law at Princeton University, was untruthfully traduced by being accused of alleging US state complicity in the 9/11 terrorist attacks. These charges had long since, on the public record, been refuted chapter and verse by Falk<sup>41</sup>, though the preposterous word-twisting has been repeated again and again as if it were accepted fact. It is noteworthy that the false claims were first raised while Falk was UN Special Rapporteur on Human Rights in the Palestinian Territories, in which role he was dutifully critical of Israel’s contraventions of international law. Wertheim and Ryvchin demeaned both Falk and Parke as “self-appointed advocates for human rights”; in fact, both were quite literally appointed by the UN as advocates for human rights. Both are labelled as afflicted by “psychosis” associated with BDS. Wertheim and Ryvchin denounce Parke’s “public endorsement of a campaign that is at best dishonest and at worst racist” in a way that deliberately taints her with dishonesty and racism, while adding for good measure that it will “disgust all people of goodwill”<sup>42</sup>; these are the language and strategies of bare propaganda.

Undeterred by these attacks, the Member for Fremantle rose in Parliament just over a month later, on 1<sup>st</sup> December 2014 on the occasion of the International Day of Solidarity with the Palestinian People, to second a bipartisan motion calling upon the Australian government to recognize the State of Palestine.<sup>43</sup> In her speech, Parke referred to the entrenchment of apartheid within the Israeli state. This observation would continue to draw fire from the Israel lobby, and as we shall see, would do so again in 2019.

Colin Rubenstein, executive director of AIJAC, called the motion “an annual ritual for the usual suspects, part of a small minority of MPs [...] to make

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<sup>40</sup> P. Wertheim, A. Ryvchin, *Labor MP Melissa Parke’s support of BDS movement an appalling indictment*, “Sydney Morning Herald”, 7.11.2014, <https://www.smh.com.au/opinion/labor-mp-melissa-parkes-support-of-bds-movement-an-appalling-indictment-20141107-11ifue.html> [accessed: 8.12.2019].

<sup>41</sup> C. Lynch, *Richard Falk: I’m not a 9/11 conspiracy theorist*, “Foreign Policy”, 28.01.2011, <https://foreignpolicy.com/2011/01/28/richard-falk-im-not-a-911-conspiracy-theorist/> [accessed: 8.12.2019].

<sup>42</sup> P. Wertheim, A. Ryvchin, *op. cit.*

<sup>43</sup> Commonwealth of Australia, *Parliamentary Debates*, [Hansard] House of Representatives, 1.12.2014, 13785.

one-sided speeches demonizing Israel”.<sup>44</sup> That same week, however, France, Sweden, Spain, the United Kingdom, and the Republic of Ireland, all passed similar resolutions.

In 2015, Parke once more called in Parliament for the recognition of Palestine, alluding to the 135 countries that already recognize Palestine as a state<sup>45</sup>, and advertng to the problems of increasing illegal settlements, the blockade of Gaza, and the overt anti-Arab racism of Prime Minister Netanyahu, who had warned of “Arabs voting in droves”. Referring to Fremantle Branch motion before the Western Australian Labor State Executive in October 2015, also for the recognition of Palestine (now Labor Party policy), Ted Lapkin<sup>46</sup> of the Zionist Federation of Australia wrote: “This motion is entirely consistent with Parke’s sordid history of peddling the worst type of anti-Zionist invective, using the bully pulpit of parliament to accuse Israel of »apartheid« while expressing support for BDS”. He assured: “Israel’s many friends within the ALP are aware of the danger posed by fringe dwellers like Melissa Parke”, then he exhorted: “And if there’s any way our community can help pro-Israel elements within Labor to fight the anti-Zionist contagion, we should be willing to lend a hand”. In 2019, they did, as we shall see.

In 2016, Melissa Parke addressed the House of Representatives<sup>47</sup> about human (political and civil) rights in Israel, and also about the criminalization of BDS in western allies of Israel. Elected member of the Palestinian Legislative Council, Khalida Jarrar, had been sentenced to fifteen months imprisonment, in what Human Rights Watch had called a “case rife with due process violations”, with Amnesty International observing that Khalida Jarrar’s “detention, the proceedings against her and her sentence appear to be punitive measures used to suppress her right to free and peaceful expression”. Parke pointed out that “Palestinians do not have access to the regular Israeli court system – only the military courts, which do not apply the rule of law or natural justice”, and she called upon the Australian government to make representations on this matter concerning the unjust detention of fellow parliamentarians.<sup>48</sup> In the same speech, she raised the issue of the increasing criminalization of activism against the Israeli occupation, and especially of BDS, including in the UK, France, Canada and the US, as well as in Israel.

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<sup>44</sup> D. Goldberg, *Australian Parliament debates recognition of Palestine*, Haaretz, 3.12.2014, <https://www.haaretz.com/jewish/australian-parliament-debates-recognition-of-palestine-1.5340107> [accessed: 8.12.2019].

<sup>45</sup> Commonwealth of Australia, *Parliamentary Debates*, [Hansard] House of Representatives, 25.03.2015, 3418.

<sup>46</sup> T. Lapkin, *Nightmare on Whitehall Street*, Zionist Federation of Australia, 27.10.2015, <http://www.zfa.com.au/nightmare-on-whitehall-street> [accessed: 8.12.2019].

<sup>47</sup> Commonwealth of Australia, *Parliamentary Debates Constituency Statements*, [Hansard] House of Representatives, 16.03.2016, 3423.

<sup>48</sup> *Ibidem*.

It is clear that, throughout her parliamentary career, Melissa Parke MP repeatedly raised issues of Palestinian human rights, and did so on a factual basis and with reference to acknowledged international authorities and respected NGOs. This brought her into conflict with the Israel lobby in Australia, in its staunch determination to defend Israel right or wrong and was eventually to provoke their intervention in a successful campaign to prevent Parke from being re-elected to the Australian parliament in 2019.

In the 2016 election, Parke did not recontest. In December 2017, Parke was appointed by the UN High Commissioner for Human Rights to serve on a group of eminent international and regional experts, mandated by a UN Human Rights Council resolution, to investigate human rights violations in Yemen.<sup>49</sup>

For the 2019 federal election, Labor was reckoned to have a chance of winning the Western Australian seat of Curtin away from the conservative coalition. It was the electorate of the retiring Liberal Minister for Foreign Affairs, Julie Bishop. Melissa Parke was preselected as the ‘star’ Labor candidate for the seat.<sup>50</sup> Not surprisingly, she came under virulent attack from the Israel lobby. A speech that she made at a Labor Friends of Palestine launch event was widely reported and misrepresented as anti-Semitic. She had said that Australia should recognize Palestine: a position she had advanced repeatedly in Parliament, as we have seen. She asserted that the Israel lobby has too much influence in Australian politics. She recounted incidents of grievous human rights violations against Palestinians at Israeli check points. She commented that Israel’s treatment of Palestinians was “worse than the South African system of apartheid”<sup>51</sup>: a comparison she had raised in Parliament, though with less hyperbole. She observed that, “The homemade rockets fired indiscriminately from Gaza towards and into Israel, are absolutely unacceptable and illegal under international law, but there is no doubt that they are a reaction to and a consequence of decades of brutal occupation. [...] They are no match for the combined power of an elite and well-resourced army, navy and air force”. Whatever one makes of the rightness of that rocket reaction, which Parke adjudged to be unacceptable as well as illegal, the argument about its causation and chronology is unexceptionable. The Israel lobby did not try to rebut it; they instead vilified Parke as “anti-Semitic”. They labelled her as “extreme and divisive”. They intervened directly with the Labor Party: “EJAC (Executive

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<sup>49</sup> United Nations Human Rights Office of the High Commissioner, *Yemen: Zeid Appoints Group of Eminent International and Regional Experts*, 4.12.2017, <https://www.ohchr.org/en/News-Events/Pages/DisplayNews.aspx?NewsID=22483> [accessed: 8.12.2019].

<sup>50</sup> N. Hondros, *Melissa Parke quits as Labor’s Curtin “star candidate” over Israel remarks*, “Sydney Morning Herald”, 12.04.2019, <https://www.smh.com.au/federal-election-2019/melissa-parke-quits-as-labor-s-curtin-star-candidate-over-israel-remarks-20190412-p51dqz.html> [accessed: 8.12.2019].

<sup>51</sup> *Labor candidate Melissa Parke pulls out of Curtin contest over Israel comments*, “The Guardian”, 13.04.2019, <https://www.theguardian.com/australia-news/2019/apr/13/labor-candidate-melissa-parke-pulls-out-of-curtin-contest-over-israel-comments> [accessed: 8.12.2019].

Council of Australian Jewry) chief executive Alex Ryvchin said he had conveyed his concerns about Ms Parke to several Labor figures”, according to Nathan Hondros, who broke the story in “WA Today”<sup>52</sup>.

“We have seen in other countries what happens when political parties turn a blind eye towards fanatics and conspiracy theorists in their ranks. It is incumbent on the ALP leadership to ensure Australia does not follow the same route”, warned AIJAC executive director Colin Rubenstein, who described Parke’s speech as “nothing more than a laundry list of slanders, including discredited conspiracy theories and downright falsification”<sup>53</sup>. The “anti-Semitism” turns out to have been nothing more than support for BDS, which is anti-Semitic because the Israel lobby says so – as does Julie Bishop, who once argued that the Israeli settlements on the West Bank were legal<sup>54</sup>.

The Labor Party was presented with a list of questions about Parke’s speech on 12 April. Within hours, Parke had withdrawn her candidature, saying that she did not want the controversy to be a distraction from Labor’s campaign<sup>55</sup>. It is apparent from the party leader Bill Shorten and the Shadow Treasurer both immediately carefully distancing themselves from her views, that she was pushed out, or “dumped”, as Hondros<sup>56</sup> puts it.

Rubenstein had not specified, let alone demonstrated, any of the slanders, conspiracy theories or falsifications of which he accused Parke. That fell to Michael Danby MP – the same who had paid for attack ads against Sophie McNeill – to spell out. In her much-maligned speech, Parke had instanced her vivid memories of a pregnant Palestinian woman being forced to drink a bottle of bleach at a Gaza checkpoint<sup>57</sup>. Danby condemns this as an anti-Semitic “medieval trope”, that has angered “people”<sup>58</sup>. He gives no indication of the particular trope, apart from mentioning Jews poisoning Palestinians. This would seem to refer to the

<sup>52</sup> N. Hondros, *Jewish advocates label WA Labor’s star pick for Curtin “extreme and divisive”*, “WA Today”, 10.04.2019, <https://www.watoday.com.au/politics/western-australia/jewish-advocates-label-wa-labor-s-star-pick-for-curtin-extreme-and-divisive-20190409-p51cgm.html> [accessed: 8.12.2019].

<sup>53</sup> *Melissa Parke quits race for Curtin amid controversy*, “The West Australian”, April 12.04.2019, <https://thewest.com.au/politics/federal-election-2019/melissa-parke-quits-race-for-curtin-amid-controversy-ng-b881167668z> [accessed: 8.12.2019].

<sup>54</sup> B. Saul, *Settlements illegal under what law? Take your pick, Minister*, “The Conversation”, 24.01.2014, <http://theconversation.com/settlements-illegal-under-what-law-take-your-pick-minister-22341> [accessed: 8.12.2019].

<sup>55</sup> N. Hondros, *Melissa Parke quits...*, *op. cit.*

<sup>56</sup> *Idem*, *Why was a WA Labor candidate dumped over a marginal seat in Melbourne and a Middle East conflict*, “WA Today”, 16.04.2019, <https://www.watoday.com.au/politics/western-australia/why-was-a-wa-labor-candidate-dumped-over-a-marginal-seat-in-melbourne-and-a-middle-east-conflict-20190415-p51eg1.html> [accessed: 8.12.2019].

<sup>57</sup> *Idem*, *Melissa Parke quits...*

<sup>58</sup> P. Taylor, *Parke’s bleach story a “medieval trope” against Jews*, “The Australian”, 15.04.2019, <https://www.theaustralian.com.au/nation/parkes-bleach-story-a-medieval-trope-against-jews/news-story/17d17ca131f4f39919db2c63e4b437e8> [accessed: 8.12.2019].



anti-Jewish myths and inventions about well-poisonings in Europe in the Middle Ages, which led to numerous pogroms. Parke infers that “there was a suggestion she had made up the story of the woman at the checkpoint”<sup>59</sup>.

Yet the documentary record shows that there was indeed such an incident of a pregnant Palestinian woman in 2003 being forced at a Gaza checkpoint in 2003 to drink from a bottle she was carrying that contained bleach for boat cleaning. Paige Taylor’s report in “The Australian” names the woman as Fatima Mohammed Ahmed al-Najjar and the date as February 10, 2003, and the checkpoint as al-Tuffah. The account is published in a report by the Palestinian Centre for Human Rights entitled *Suffering in Isolation*. The occurrence is substantively corroborated by “American-born Israeli academic Steve Plaut [who] later wrote about the incident in the Israel National News, saying guards were on alert at the time for people smuggling bottles of poison”<sup>60</sup>. In fact, the atrocious human rights abuse had been reported in the *Melbourne Age*, in 2003.

The military charge sheet said the incident occurred four months ago in the Gaza Strip when the soldier pointed her assault rifle at the Palestinian woman, shouted at her and demanded she drink from a bottle she was holding.

Military sources said the soldier was arrested over the incident, and that the Palestinian woman received treatment in a Gaza hospital<sup>61</sup>.

Thus, a real human rights offence by the Israeli military in 2003, when Parke was there on the ground in Gaza, is turned into the offence of medieval anti-Semitic tropery by the (“self-proclaimed”) human rights advocate.

Colin Rubenstein and AIJAC hear such tropes ringing out insistently:

For Jews, accusations of being “powerful”, and having our alleged influence questioned and treated as illegitimate, sounds warning bells. Antisemitic tropes are often threaded throughout anti-Israel propaganda — and one of the most common and dangerous is the insistence that Israel would never get away with its supposedly egregious sins if not for the illegitimate power of the Jewish lobby<sup>62</sup>.

## Conclusion

The case studies presented in the paper provide evidence that that the right to freedom of speech is undermined when speaking up for the human rights of Palestinians subjected to state violence. Legitimate criticism of the Israeli state

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<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

<sup>61</sup> *Soldier “made woman drink cleaning fluid”*, “The Age”, 23.06.2003, <https://www.theage.com.au/world/soldier-made-woman-drink-cleaning-fluid-20030623-gdvxap.html> [accessed: 8.12.2019].

<sup>62</sup> C. Rubenstein, *Dangerous Israel obsession in the ALP*, AIJAC, 24.04.2019, <https://aijac.org.au/op-ed/dangerous-israel-obsessions-in-the-alp> [accessed: 8.12.2019].

in Australia has been subject to targeted verbal attacks across the institutional settings of academia, media and parliament. Human rights advocates in these settings have their interventions disparaged and treated as illegitimate and, where possible, silenced, while the lobby groups that do so express outrage that their power to delegitimize and suppress is interrogated.

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## Speech for Justice for Palestinians: A Human Rights Conundrum

Freedom of speech as an important human right is diminished when speaking out for Palestinian rights. The paper examines this assertion through three case examples from Australia. These are academic freedom, media freedom and freedom of political representation and expression. To provide context to the free speech debates, an overview is presented of the conflict as well as an outline of the Boycott, Divestments and Sanctions campaign.

**Key words:** Israel, Palestine, freedom of speech, BDS, academic freedom, media freedom, freedom of political representation

## **Wezwanie o sprawiedliwość dla Palestyńczyków: zagadka dla norm praw człowieka**

Wolność słowa jako ważne prawo człowieka zostaje ograniczona, gdy przemawia się za prawami Palestyńczyków. W artykule przeanalizowano powyższe twierdzenie na podstawie trzech przykładów przypadków z Australii. Są to: wolność akademicka, wolność mediów oraz wolność reprezentacji politycznej i wypowiedzi. W celu zapewnienia kontekstu debatom na temat wolności słowa przedstawiono przegląd konfliktu, a także zarys bojkotu oraz kampanii sankcji.

**Słowa kluczowe:** Izrael, Palestyna, wolność słowa, bojkot, desinwestycje, sankcje (BDS), wolność akademicka, wolność mediów, wolność politycznej reprezentacji

