

Free to Kvetch: An Analysis of Freedom of Speech and Academic Freedom in the State of Israel

Author's Statement:

I wrote this paper as a summative project for *66-141: DC Grand Challenge Seminar: Freedom of Speech & Academic Freedom* in December 2023 with Dean Richard Scheines and Associate Dean Sharon Carver. The class focused on exploring interdisciplinary approaches at the individual and institutional level to balance freedom of speech with the development of a respectful community in the United States. For the final paper, I was challenged to use this same approach to evaluate this delicate balance between freedom and inclusivity in Israel. As a Jewish student at Carnegie Mellon, I was horrified by the attack on Israeli civilians on October 7, 2023, and the devastating war in Gaza that ensued. As tension between hurt Israeli and Palestinian supporting students rose, I watched the unfolding speech war take over campus as students hurled insults and slander at each other. I cannot imagine the tension in Israeli and Palestinian societies, where every person is attempting to cope with grief, loss, and war. I hope in this essay to establish light for a brighter nation in such a dark time, continuing humanity's shared path out of slavery to freedom, out of conflict to coexistence, out of suffering to joy.

-Peter

Freedom of speech and academic freedom are two of the most fundamental values of liberalism. Freedom of speech, as enshrined in the First Amendment to the US Constitution and numerous other documents governing billions of people, has played a fundamental role in expanding civil rights and liberties and freeing people from autocracy. Academic freedom, while frequently overlooked when analyzing free speech, has also played a critical role in the liberty movement, and has contributed greatly to human technological progress, which has lifted billions of people out of poverty.

However, access to these freedoms varies greatly across the world. Some governments universally protect these freedoms, whereas other countries actively suppress speech and punish individuals who oppose the government or even an idea. Israel lies at a crossroads in between, simultaneously exhibiting many qualities similar to Western bastions of free speech and many qualities common to absolutist autocracies. In this paper, I will analyze Israel's unique societal and governmental structure to determine unique challenges to free speech and academic freedom in developing democracies and utilize Israel's multiculturalism to gain insight into how to balance free speech and societal inclusivity in divided society.

In this analysis, I will first give a brief overview of the country's history and utilize indexes to contextualize Israel's freedoms and government operations compared to other countries. Then, to determine the challenges to free speech and academic freedom, I will synthesize research regarding both Israeli policy and actual events. For this synthesis, I will take a multidisciplinary approach, utilizing aspects of Israeli history, culture, and philosophy to gain a holistic understanding of the challenges to free speech and academic freedom. Then, I will delve

into the demographics of Israel and the frequent societal conflict and tension in order to draw conclusions about the relationship between demographics and societal acceptance of free speech and academic freedom. To conclude, I'll give a summative overview and recommendation for the future of free speech and academic freedom in Israel.

Israeli Society: Conflict and Freedom

Israel, formally the State of Israel, is a country in the Levant bordering Lebanon to the north, Syria and Jordan to the east, the Red Sea to the south, Egypt to the Southwest, and the Mediterranean Sea to the west. Israel is also bordered by the UN Observer State of Palestine, in the areas of Gaza and the West Bank, also called Judea and Samaria. Israel has unique religious demographics compared to the rest of the world, with 73.5% of the population identifying as Jewish, 18.1% as Muslim, 1.9% Christian, 1.6% Druze, and 4.9% other or nonreligious, making it the only predominantly Jewish state in the world (Central Intelligence Agency [CIA], 2023).

The current regime in Israel was founded in 1948 as a parliamentary democracy and has been in frequent conflict with its neighboring states, most notably in the 1948 War for Independence, the 1967 Six Days War, the 1973 Yom Kippur War, and the 2023 ongoing Israel– Hamas War, with notable peace deals organized with Egypt at the Camp David Accords (1978), with Palestine during the Oslo Accords (1993), and with the United Arab Emirates, Morocco, and Sudan at the Abraham Accords of 2020 and 2021 (CIA, 2023). Throughout much of Israel's history, extremist Islamic terrorist groups such as Hezbollah and Hamas have repeatedly attacked Israel and targeted Israeli civilians (The Security Barrier, 2016). The First and Second Intifada during the late 1980's and the early 2000's were violent terrorist attacks on Israeli civilians, with suicide bombers blowing up public areas such as bus stops and coffee

shops with the intent of killing as many Israelis as possible. This led to Israeli Prime Minister Rabin to vastly strengthen Israeli security, building a massive border fence, and controlling checkpoints in and out of Israel.

Additionally, the Israeli government has also been involved with numerous international controversies and tragedies in other surrounding states. The Mossad, Israel's foreign intelligence agency, have committed extrajudicial crimes all over the world. Some examples including abducting enemy of the state Adolf Eichmann from Argentina, breaking into a hotel in London to install spyware on a Syrian official's computer, bombing and destroying a Syrian nuclear reactor and research facility, and assassinating Hezbollah cofounder Imad Mughniyeh in Damascus, Syria (Unpacked, 2019). Furthermore, there have been numerous allegations against the Israeli military regarding war crimes and the inhumane treatment of civilians in Gaza during the Gaza wars in 2014 and 2023 (Ellicott, 2023; "Israel/Palestine: UN Report", 2015).

Despite these unique challenges, Israel is a fairly prosperous and free country for its citizens. Cato Institute's Human Freedom Index ranks Israel highly with very strong protections of religious practice and monetary policy (Vasquez et al., 2023). Israel scored 77/100 by the Freedom House's Freedom in the World Index, with 100 being most free, due to a strong electoral process and moderately strong civil liberties and rule of law (Freedom House, 2023). The Heritage Foundation ranks Israel "moderately free" regarding economic freedom due to a regulatory framework that promotes entrepreneurship (Heritage Foundation, 2023). Lastly and most importantly, Israel has a free and fair multiparty electoral democracy, and it is considered a flawed democracy by the Economist Intelligence Unit (The Economist, 2022).

Corruption also remains a challenge for Israel, with the current Prime Minister Benjamin Netanyahu facing serious corruption charges (Transparency International, 2022). In 2019,

Netanyahu sat on trial for charges of accepting bribes and giving political favors (Wootliff, 2019). Specifically, Netanyahu is charged with offering perks to Israeli news publisher Bezeq for favorable media representation and accepting 700,000 INS worth of luxury gifts to extend a tax benefit to Hollywood producer Arnon Milchan (Wootliff, 2019). This trial is ongoing into 2024. Another notable corruption trial occurred in 1999, when former Director General Shimon Sheves was charged with taking multimillion dollar bribes and profiting millions from corrupt business dealings (Dunn, 1999).

By far, the largest social and cultural cleavage in Israel is ethno-religious. The largest, most public conflict is between Israeli Jews and Israeli or Palestinian Arabs. Due to the history of extremist Islamic terrorism, Israel has taken measures to restrict the movement of all people traveling in Israel, which has had a disproportionate effect on Palestinians working in Israel. Due to the frequent wars, peace agreements, and land treaties in the short history of the current regime of Israel, a large number of Jews and Muslims indigenous to the region weren't born in the state of Israel. Many Jews and Muslims were forced to flee their homes due to war or agreement, with hundreds of thousands of individuals getting displaced during the Israeli War for Independence all the way up to the Israeli government forcibly relocating all Jewish families living in Gaza to within the current borders of Israel (Britannica, 2023; Sorek, 2023). There are also other religions in Israel, including Baha'i, Druze, and Christian, which are underrepresented in the Knesset. This all leads to religious tension between the ethno-religious groups in Israel.

However, there are also many other, frequent social conflicts in Israel. A major cleavage is between Haredim and Hilonim, or conflict between ultra-religious Jews and secular or traditional Jews. Haredi Jews have much more restrictive views on the roles of men

and women in society, and have protested Hiloni women for exercising their freedoms such as praying at the Western Wall, which is under Haredi interpretation only for men (Horenstein, 2023).

Furthermore, Haredim have more children than Hilonim, pay less taxes, and are exempt from the otherwise mandatory military service requirement, which stirs tension with Hilonim feeling they are paying for the Haredim.

In Theory: Israeli Free Speech and Academic Freedom Policy

Free Speech Policy

The First Amendment to the United States Constitution states “Congress shall make no law ... abridging the freedom of speech,” and this clause has for the entire history of the American regime endured as the highest law protecting speech of all kinds in the United States (National Constitution Center, n.d.). Israel does not have this same constitutional protection, as, for one, Israel doesn’t have a constitution. In fact, there is no law in Israel that guarantees freedom of speech to residents and/or protected speech from government scrutiny.

Similarly to the United States and the United Kingdom, Israel uses a common law system. Common law systems are based on precedent and previous judicial decisions, rather than codified law systems that only rule based on current legislation. Similarly to the US, most individual rights are defended by the judiciary via this common law practice. The Basic Laws of Israel are quasi–constitutional laws with the highest jurisdiction in the country and can only be changed by a supermajority vote in the Israeli legislature (the Knesset).

The closest policy Israel has to a governmental protection of free speech is the Basic Law for Human Dignity and Liberty. While notably excluding a specific clause protecting free speech and expression as seen in the United States, provision 4 of the Basic Law (after

translation) states that “every human being is entitled to protection of his life, body, and dignity” (Knesset, 2017). In common law tradition, the Supreme Court of Israel has ruled that free speech is included within the bounds of human dignity.

However, this judicial protection of free speech has come under threat since the beginning of 2023. Beginning in January 2023, Prime Minister and head of the Likud Party Benjamin Netanyahu has been pushing for judicial reforms that would remove the checking power the judiciary has over the legislature, which would ultimately centralize power (Kingsley & Kershner, 2023). One of the primary targets was the “Standard of Reasonableness,” which is a common law practice that gave courts the ability to rule on vague cases (Sokol, 2023). The Standard of Reasonableness was most frequently used to overturn legislation that “disproportionately focuse[d] on political interests” (Sokol, 2023). Since the 1990s, the Israeli courts have used the Standard of Reasonableness to interpret “dignity” in the Basic Law for Human Dignity and Liberty to protect free speech (Cole, 2023). The Standard of Reasonableness was repealed July 24, 2023 (The Israel Democracy Institute, n.d.). However, in January 2024, the Supreme Court ruled 8–7 in *Movement for Quality Government in Israel v. The Knesset* that the amendment to the Basic Laws which repealed the Standard of Reasonableness as void, thus removing any legislation prohibiting the common law practice (The Floersheimer Center for Constitutional Democracy, 2024). Therefore, with more challenges to the Standard of Reasonableness expected, it is uncertain what the legislative future for freedom of speech will be in Israel.

Academic Freedom Policy

According to the Academic Freedom Index published by the Institute of Political Science at the Friedrich Alexander University, Israel ranks in the top 10% for countries based

on strong academic freedom traditions and a strong academic freedom culture at universities. However, there is no codified civil law that protects academic freedom at universities and few have the kind of explicit academic freedom protections that we see at many universities in the United States. Rather, there is a greater expectation of ethical conduct placed on individual professors and students, but this will be explored more in the next section.

Especially since the start of Netanyahu's sixth term (2022) as Prime Minister of Israel, the Knesset under Netanyahu's direction has passed a series of laws impacting freedom of speech in Israel that have had a direct impact on campus expression. Some of these laws have specifically targeted college students, suppressing their freedoms to research and express their positions. As a prime example, the *Nakba* is a Palestinian holiday, and *nakba* directly translates to "catastrophe" from Arabic, which commemorates the Palestinian refugees who died or were displaced from their homes during the 1948 Israeli War for Independence. In 2022, two weeks after the *Nakba*, the Knesset passed a law prohibiting the waving of non-Israeli flags on publicly funded institutions. The passing of this law, supported almost exclusively by the Jewish members of the Knesset, was seen as a direct reaction to the *Nakba* celebrations (Sorek, 2023).

In Practice: Israeli Free Speech and Academic Freedom

Free Speech

Whereas Israeli courts use common law traditions to protect free speech legally, Israeli long standing social norms and traditions have developed and protected a robust free speech culture and promoted tolerance for controversial opinions. Israelis exercise their free speech rights to protest on numerous matters, from protests directly opposing the Israeli military to expressing their grievances with employers about being laid off, just as frequently as you would

see in the United States and other countries with established free speech laws and/or traditions (“Dozens of Arab Israelis”, 2023; “Workers Barricade Selves”, 1986). However, given the racial and religious tension in Israeli society, there is a lesser degree of social tolerance for speech regarding these touchy subjects as evidenced by legislation banning unpopular viewpoints, which leads to lessened discussion on these important issues (“Israel: Netanyahu vows”, 2024). One direct effect of this social aversion to discuss racial and religious politics is that political parties in Israel generally form around religious or ethnic cleavages, and many people simply vote for the politician who aligns with their own racial/ethnic background or religion.

Israel is a parliamentary democracy, with 12 major parties holding seats in the 120 seat Knesset, of which 9 additional parties exist as subparties of coalition parties. These parties represent a very wide range of viewpoints and ideas, from parties primarily representing ethnic groups (Ashkenazi, Syrian Druze), religious groups (conservative Haredi), economic groups (communist party of Israel), or issue-groups (anti-immigrant/anti-Arab), and/or some combination of all of these ideas. This creates a very diverse political landscape.

However, there are some topics that are explicitly forbidden for a political party to have, which include denying Israel’s Jewish character, inciting racism, or opposing democracy (Freedom House, 2023). Compounding this, many Israeli political parties write in their party constitutions strict policy positions that they are unwilling to cooperate at all on. Netanyahu’s party, Likud, states in its first party platform that they will never consider a proposition that gives up administration over Israeli land (Jewish Virtual Library, n.d.). This leads to a lot of gridlock and the promotion of extremist parties and party platforms. While Israeli Arabs represent nearly 20% of the population of Israel and a sizable number of seats in the Knesset,

no ruling coalition in Israel included an Arab party until 2021 (Freedom House, 2023). Even when the ruling coalition included an Arab party, few policy positions supported by the Arab issue group party were ever made into law.

Reporters Without Borders curates an index ranking freedom of the press and safety for journalists in various countries and Israel scored the highest ranking in the Middle East region with 57.57 out of 100 possible points (ranked 86th in the population of 180 countries), but there are still large areas for improvement. There are a variety of news sources in Israel appealing to a wide range of audiences, from the centrist *Israel Hayom* to the left leaning *Haaretz*, to partisan sources for minority groups including Yiddish, Russian, and Arabic speaking communities (Reporters Without Borders [RSF], 2023). However, the news sources are tightly bound to politics, with corrupt owners of private media using their platform to pressure politicians into passing favorable policies, and politicians controlling the appointments to the public media to only hire political cronies (RSF, 2023). This creates serious concerns about the independence of the media.

Social and political protection for journalists in Israel is minimal. Firstly, there is no legislative protection for journalists, so the government can classify topics as “security risks” and prohibit journalists from covering the story, and even charge journalists with criminal defamation for “insulting a public official” (RSF, 2023). Additionally, Arab journalists face discrimination and intimidation from Israelis especially when covering stories related to the Israel Palestine ongoing conflict, let alone the associated physical risks to reporting in an active warzone (RSF, 2023). Israel’s press freedom has declined two years in a row according to Reporters Without Borders.

The actual practice of freedom of speech during wartime in Israel is incredibly complex.

While many individuals seek to limit hateful speech during a time where they are most vulnerable, many others push the limits of freedom of speech allowed under common law. In 2014 during the Gaza War, the Israeli government issued a plan to draft ultra-Orthodox Jews into the Israeli military (Sobelman, 2014). This plan was incredibly controversial as fighting in war conflicted with their religious beliefs. Violent protests across Israel ensued, with thousands of Orthodox Jews blocking intersections, lighting fires, and resisting the police (Sobelman, 2014). However, many Israelis have also sought methods to limit free speech, particularly for those who support anti-Israeli positions and rhetoric.

Another major concern for free speech in Israel is that the free speech culture erodes during wartime. While Israel during peace is very cosmopolitan and tolerant, during war Israeli society frequently shuts down and becomes intolerant. This is very human, as all Israelis are concerned for the wellbeing of family members and friends — Israeli or Palestinian — who serve or get trapped in conflict, and it is understandable that people are more willing to restrict speech that further hurts them. Unity governments are typically formed in the Knesset during war, such as occurred after the October 7, 2023 terror attack (Chowers, 2023; Knesset, 2022). During war, the government more frequently attacks the press that criticizes the government's actions and may even forcibly regulate it (Vasquez et al., 2023). In April 2024, the Knesset “passed a law allowing the government to close down foreign news outlets viewed as threatening state security,” which has been seen as a targeted attack to shut down prominent Qatari news source Al Jazeera (“Israel: Netanyahu vows”, 2024).

Academic Freedom

As mentioned, academic freedom in Israel is not protected by law and is not protected by university policy either. Most universities in Israel contain codes of professional conduct,

but don't specifically outline nor protect the academic freedom rights of professors or students. Without the guarantee of academic freedom, the quality of research and inquiry suffers, with researchers encouraged to study noncontroversial, often non-novel concepts rather than experiment and produce knowledge that could potentially get censored. The Weizmann Institute of Science, a graduate school in Rehovot, maintains a *Code of Ethical Conduct*, which contains provisions for conflicts of interest, equality and nondiscrimination, and academic integrity. The existence of this code, in place of more robust and explicit free speech protections, places the burden on the academic members of the university to avoid and report conflicts of interest, treat everyone equally, and maintain academic integrity (Weizmann Institute of Science, n.d.). Academic inquiry is conducted in a similar manner, with the expectation falling on the individual to conduct their work in good faith and practice, while balancing the concern of political consequences for their publications.

Challenges to academic freedom in Israel are frequently flagrant challenges against individuals to assert the government's authority. In February 2023, Tel Aviv University President Ariel Porat issued a statement regarding Netanyahu's planned judicial reforms, condemning the plans as authoritarian, after which the Israeli Council of Higher Education asked Porat to respond to student complaints about his comments. However, Porat refused, citing academic freedom as his only justification (Kadari-Ovadia, 2023). The Israeli Council for Higher Education backed down and didn't further insist that Porat answer criticisms. Still, the story made national headlines and was heavily discussed in Israeli academic circles. This case demonstrates that the Israeli government interferes with colleges and attempts to influence the universities into treating the government positively, but professors and scholars still can and do push back on this government influence to retain some degree of autonomy.

Since the beginning of Netanyahu's sixth term as prime minister in 2022, there have been increased calls for codified academic freedom laws or policies in Israel and at Israeli universities. These efforts have increased following Netanyahu's judicial reforms, which threaten the common law backing of academic freedom. With the fear that the social sciences would become politicized, such as in Hungary and Russia where certain disciplines are completely banned (gender studies is banned in Russia), Professor Yuval Noah Harari and others have called for more vigorous protections, further demonstrating the rather strong free speech culture in Israel (Harari, 2023). Additionally, with growing internal and international dissatisfaction with Netanyahu's handling of the 2023 Israel– Hamas War, professors need codified academic freedom laws to protect their criticisms of the government.

Demographic Division

Israel is one of the most demographically unique countries in the world. Sitting at the crossroads of the world, Israeli culture is shaped by African, Asian, European, and Arabic influences. Zionism has brought Jews from all over the world back to Israel, bringing in influences from Morocco, Algeria, Yemen, Iran, Germany, France, Poland, Ukraine, Russia, China, India, Malaysia, the United States, Colombia, Mexico, and many other nations. These groups, alongside the Muslims, Christians, Druze, and Baha'i living in Israel have created a multicultural culture with great levels of innovation and cooperation at times, and great levels of animosity and strife at others.

Despite this immense diversity, numerous coinciding religious, ethnic, and economic cleavages have fueled division and hatred within the Israeli nation. This situation has led to the proliferation of issue–group based politics, where groups of individuals vote for platforms based on one specific issue, thereby isolating groups into an us vs. them struggle and limiting

the chance to find common ground. This internal division and lack of social cohesion has led to the proliferation of controversial policies that restrict individual movement and speech in exchange for government safety and control. In order to heal its wounds and achieve its mission of a freer, safer, happier, and more prosperous nation, Israel must allow speech in every context.

Israel needs to enshrine in a Basic Law minority protections in order to maintain the Israeli culture of innovation and cooperation during all times, and the first element must be a universal protection of speech and academic freedom.

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