# THE ASPEN CENTER FOR SOCIAL VALUES

Addressing Social Values through Thought and Action

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# En Route

# EN ROUTE
# The Journal of the Aspen Center for Social Values

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Alan Baker

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**Introduction and Historical Summary**

Perhaps one of the most central, vital, intractable and critical issues challenging the entire Jewish People today, no less than in the past, is the tragically recurring phenomenon of anti-Semitism.

Sadly and tragically, virtually from time immemorial and throughout history, anti-Semitism has been, and continues to be, a major, recurring phenomenon in the international and national psyche of the Jewish People as well as in the international community.

It continues to pose massive social and societal challenges that confront both the world and the Jewish People today, no less than in the past, and, to a certain extent, in light of the advance in high technology in the age of mass-media and the internet, it poses a greater threat today.

Since the year 250 of the Common Era, the Jewish People has seen the most treacherous, malicious and pernicious tragedies generated by anti-Semitism, including inquisitions, massacres, pogroms, expulsions, mass murders, repression, forced conversions, burning at the stake, dehumanization and genocide, to name but a few.

However, despite this, it is a sad but established fact that the international community has never criminalized acts and manifestations of anti-Semitism and rendered them as international crimes justiciable before international courts and tribunals, obliging all states to treat them as such. This means that, throughout history, perpetrators of anti-Semitism, whether heads of government and state or lower level operators, inciters, propagandists and murderers, have enjoyed impunity and have rarely been tried for their crimes.

## Why Has Anti-Semitism Never Been Universally Criminalized As An International Crime?

**Modern-Day Criminalization of the most Serious Crimes**

The fact that this is the case in the present era is all the more remarkable given the seriousness with which the international community has, since the Second World War, acted to internationally criminalize comparatively lesser acts such as piracy, hostage-taking, war crimes and genocide, all of which have been rendered justiciable before international criminal courts and tribunals.

It is even more remarkable today, when modern-day international society is more conscious of legalities and legitimacy, and has acted to establish individual criminal tribunals to deal with war criminals and the perpetrators of the worst excesses known to mankind, whether during the Second World War,[1] Rwanda,[2] Cambodia,[3] and Sierra Leone. [4]

Perhaps the most important development in recent history has been the establishment, in 1998 by the international community, of the International Criminal Court, intended to judge "the most serious crimes of concern to the international community as a whole." [5]

After Polish Jewish lawyer Raphael Lemkin coined the term "genocide" in his 1944 book, *Axis Rule in Occupied Europe*, in order to describe the Nazi policies of systematic murder, representatives of the Jewish People became actively involved in advancing the idea and concept of an overall international judicial instance to try international criminals and despots. Representatives of the State of Israel participated in the early meetings during the 1950's of various UN committees tasked with drafting a statute for such an international court. These discussions developed in the mid 1990's into a series of preparatory commissions to draft the ICC Statute, followed by the 1998 Rome Statute.

Surprisingly, acts and manifestations of anti-Semitism were not included in the listing of crimes in the ICC Statute, for which the ICC has jurisdiction. Evidently, acts and manifestations of anti-Semitism are not, and have never been considered of sufficient public gravity and of sufficient concern to the international community as a whole in order to warrant criminalization.

**The Jewish Communities and Organizations**

While the phenomenon of anti-Semitism and its results are universally researched, addressed, and even condemned by international and regional organizations, by Jewish community bodies throughout the world, and, even marginally and in a limited manner, in some UN resolutions and declarations, and have even been criminalized by certain

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states in their domestic legislation, no one has thought to take this one step further into the realm of universal criminal jurisdiction and justiciability.

With the plethora of material dealing with anti-Semitism, and in light of the dreadful tragedies that it has wrought on humanity for thousands of years, and especially in light of the recent re-awakening of anti-Semitism in its disguise as "anti-Israelism" or in its most modern version known as "BDS" (Boycott, Divestment and Sanctions), one might have expected that some effort would have been made by the international community to criminalize anti-Semitism and declare it to be an international crime. This should be done with a view to ensuring that perpetrators, inciters and all those involved in it would be dealt with as international criminals and not enjoy impunity.

Strangely, whether out of the fear of rejection or an overly exaggerated sense of "political correctness", no major Jewish community organization, nor even the State of Israel itself, has thought to take up the initiative to have anti-Semitism formerly and universally criminalized as an international crime.

**Criminalizing Anti-Semitism Today**

By its very nature, its long, bitter and never-ending history, and its propensity to constantly re-appear in modern forms and contexts, anti-Semitism has its own unique character. It cannot and should not be equated with, linked to, or treated as any other form of racial discrimination. It stands alone.

It cannot and should not be relegated to any type of listing of forms of racial discrimination and xenophobia, as some United Nations bodies would prefer, and as was in fact done at the infamous Durban UN anti-racism conference in 2001. Nor can anti-Semitism be equated or linked with other phenomena such as Islamophobia, or hatred of the Roma and other minorities, which emanate from an entirely different mindset and framework of historic and social considerations.

**A Draft International Convention on the Prevention and Punishment of the Crime of Anti-Semitism**

With a view to correcting what is clearly a vast international injustice, it is high time that the international community, individual states and Jewish Community organizations join forces to enact an international convention universally criminalizing Anti-Semitism within the world community.

Such convention, a draft of which has been prepared by the present author,[6] could follow the accepted format of other standard United Nations conventions, in the form of an "International Convention on the

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Prevention and Punishment of the Crime of Anti-Semitism".

This convention should comprise a detailed series of preambular paragraphs documenting the history of anti-Semitism. It should refer to relevant international instruments, statements by senior international figures and resolutions by relevant bodies. Such instruments, which clearly justify the need to criminalize anti-Semitism, include the International Convention on the Elimination of All Forms of Racial Discrimination, which mandates states to "*declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence and incitement to such acts against any race or group of persons of another color or ethnic origin,*" [7] UN General Assembly resolutions of 2005 and 2007 condemning genocide and Holocaust denial, and the Berlin Declaration by the Organization for Security and Cooperation in Europe (OSCE), which "*Recogniz[es] that Antisemitism…has assumed new forms and expressions, which, along with other forms of intolerance, pose a threat to democracy, the values of civilization and, therefore, to overall security*." [8]

It should include an all-embracing definition of the "international crime of acts and manifestations of anti-Semitism" and its component elements, based on the various definitions that have been adopted over the years by various groups and institutions, including the European Monitoring Center on Racism and Xenophobia (EUMC – FRA), the OSCE 2004 Berlin Declaration, US State Department (2005) and the 2014 report of the Global Anti-Semitism and the Coordination Forum for Countering Anti-Semitism (CFCA).

The basic criminal premise of this draft convention would be that any act or manifestation of anti-Semitism, by individuals or groups that results in, or is intended to result in, violence should be criminalized internationally.

As in similar criminalizing conventions, states party to this convention would be obligated to criminalize anti-Semitism in their own domestic law, and to prosecute perpetrators, or to extradite them, to cooperate and exchange information on perpetrators and actions taken, and make a commitment to institute appropriate national, educational programs to combat anti-Semitism.

The convention would establish an International Anti-Semitism Monitoring Forum for monitoring and coordinating actions by states and international organizations.

As with all international conventions, it will be necessary to launch the document in a series of conferences to be held in the UN and other

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international organizations and in select capitals, as well as muster the support and sponsorship of states and Jewish organizations. The aim would be to encourage select states to sponsor the draft convention and to present it to the appropriate UN bodies for processing as an international convention.

Perhaps the most difficult issue to be tackled during the processing of this draft convention would be the attempts by the international community to disguise what is clearly anti-Semitism in terms of what they claim to be "legitimate criticism of the actions and policies of the State of Israel" – i.e. "anti-Israelism" or "Israelophobia"

In order to deal with this popular and oft-used ploy, the text of the convention would distinguish between legitimate criticism, on the one hand, and those declarations, statements, accusations and allegations that specifically single-out only Israel without applying the same criteria equally to the actions and policies of other states. This clearly constitutes use of a classical double standard and openly discriminatory policy, and, as such, falls within any accepted definition of anti-Semitism.

In light of the unique and novel nature of this project of criminalizing anti-Semitism internationally and the complex legal and political ramifications of the subject matter, it is anticipated that such a draft convention will be the subject of considerable scrutiny.

It remains to be seen whether the leading Jewish community organizations, and those states and international bodies that claim to condemn anti-Semitism, will have the political and moral will to carry this through to fruition.

Time will tell.

1) Nuremburg Tribunal - http://legal.un.org/ilc/documentation/english/a_cn4_5.pdf or more recently in former Yugoslavia - http://www.icty.org.

2) http://www.unictr.org

3) https://www.globalpolicy.org/international-justice/international-criminal-tribunals-and-special-courts/special-tribunal-for-cambodia.html

4) http://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good

5) 1998 Rome Statute, preambular paragraphs and Article 5 http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

6) http://jcpa.org/article/draft-international-convention-on-the-prevention-and-punishment-of-the-crime-of-anti-semitism/

7) http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

8) http://www.osce.org/cio/31432?download=true

# Students For Justice In Palestine Promotes Hatred On College Campuses

Roz Rothstein and Max Samarov

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Students for Justice in Palestine (SJP) sells itself as a peaceful grassroots movement for justice and human rights. And though the group's real agenda is anti-justice, anti-human rights, and anti-peace, it has managed to grow from only one campus chapter in 2000 to around 100 chapters today. Its various chapters are ostensibly independent, but most of its campaigns are nearly identical to each other. SJP chapters across the country hold "Israel Apartheid Week" events, introduce anti-Israel divestment resolutions in student governments, and engage in other tactics that demonize the Jewish state, all while falsely claiming to embody progressive values. SJP chapters are also broadly unified around Boycott, Divestment, and Sanctions (BDS), a global propaganda movement that calls for the elimination of Israel and the violation of Jewish rights to self-determination. And while some chapters are less extreme and others are careful to wrap their extremism in appealing rhetoric, SJP chapters have consistently and repeatedly descended into outright intimidation, slander, and bigotry against Israel and pro-Israel students.

The following is an overview of SJP's toxic activities during the 2013-2014 academic year and the fall of 2014.

**Intimidation**

SJP chapters have engaged in many different types of intimidation over the last year:

- In February 2014 SJP violated the free speech rights of two Israelis at a pro-Israel event at Cal Poly Pomona. It brought professional anti-Israel activists and students from other schools to shout the speakers down, preventing them from making their presentations and robbing audience members of the opportunity to hear Israeli perspectives on the conflict.
- When SJP brought divestment campaigns to the University of Michigan and other campuses,

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numerous Jewish students and members of student governments were subjected to threats, hate speech, and other forms of intimidation.

- At UC Irvine and San Francisco State University (SFSU), SJP disrupted Israel Independence Day celebrations. Its members attempted to shout down pro-Israel student speakers at SFSU, physically pushed people away from informational booths, and assaulted three Jewish students at Irvine.
- UCLA's SJP chapter employed an especially sophisticated intimidation tactic, filing judicial complaints against two student senators who had gone on sponsored educational trips to Israel.
- Temple SJP is currently being investigated because a student associated with the group hit a pro-Israel student in the face during Welcome Week.
- SJP at Loyola University of Chicago is currently being investigated for harassing Hillel students and blocking their Birthright Israel informational table.

In all of these instances, SJP demonstrated its total disregard for freedom of speech, its eagerness to silence pro-Israel voices, and its desire to prevent uninformed students from hearing or seeing Israel's side of the story.

**Slander and Misinformation**

When SJP members shared their perspective, they made misleading and often slanderous claims about Israel and pro-Israel students:

- At campuses in California, SJP chapters set up mock "apartheid wall" displays with maps labeling all of Israel as "occupied territory."
- Many SJP chapters, including those at the University of Michigan, Northwestern, Northeastern, NYU, and UNC, put mock eviction notices in student dorms, aimed at shocking campus communities and spreading misinformation about Israeli policies in East Jerusalem and the West Bank. Many Jewish students reported feeling unsafe as a result, and SJP at Northeastern was suspended for violating school policy.
- At a UCLA SJP-sponsored event, BDS co-founder Omar Barghouti made statements denying Jewish peoplehood and accusing Israel of shooting Palestinian children for sport – a claim reminiscent of the anti-Semitic blood libels that led to violence against Jews in the Middle Ages.
- At the UCs, Cornell University, and elsewhere, SJP's divestment campaigns featured countless slanderous accusations against Israel, including "genocide," sterilization of Ethiopian women, and holding refugees in "concentration camps."

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Pro-Israel students who opposed BDS and stood up for Jewish self-determination were dehumanized and compared to supporters of slavery and South African apartheid.

- The worst tactic may have occurred at UCLA, where a Jewish student government candidate was subjected to a prolonged smear campaign, on social media and elsewhere, centered around baseless accusations of Islamophobia.
- At campuses across the country, SJP's messaging and menacing were synonymous with slander, misinformation and harassment.

**Bigotry**

As if intimidation and slander were not enough, some SJP activists engaged in overt bigotry against Israel and Jews:

- During the divestment campaign at UC Riverside, one of SJP's key leaders posted extremely hateful statements on social media, including, "Judaism is not the problem. Filthy Zionists are."
- At SFSU, the SJP-affiliated General Union of Palestinian Students (GUPS) held signs on campus that read, "My heroes have always killed colonizers." Shortly afterward, GUPS president Mohammad Hammad confirmed that the signs were referring to Israelis and even expressed support for genocide. He wrote that "Israelis ARE colonizers… And you know what else? My heroes HAVE always killed colonizers. I literally see nothing wrong with this and my only regret is that not all colonizers were killed."
- Lastly, at the end of the academic year, the SJP chapter at Vassar posted Nazi propaganda on one of its official social media accounts. The president of the university condemned SJP for its "racist, hateful speech" and initiated an investigation, forcing SJP to issue a public apology.

It is important to understand that not all of the activists who get involved with SJP are malicious. Many are well-meaning students who have simply been misled by emotionally manipulative propaganda. But that does not change the toxic impact that SJP's hateful campaigns have had on universities across the United States or diminish the fact that many SJP chapters are operating as hate groups. From intimidating Jewish and pro-Israel students to slandering Israel and posting bigoted content on social media, SJP is creating a hostile environment on campuses and undermining efforts to achieve civil discourse and mutual understanding regarding the Arab-Israeli conflict.

The proper response to SJP will vary from case to case, but it is clear that more must be done to prevent anti-Israel hate from becoming mainstream. Jewish and pro-Israel students can use

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the worst incidents as opportunities to educate their peers about what distinguishes legitimate criticism from bigotry, academic debate from slander, and peaceful protest from intimidation.

The reality is that if we do not stand up for ourselves as a community, neither student nor administration leaders are likely to seriously address our concerns. Indeed, many universities have taken a relatively "hands off" approach to the issue, allowing SJP to keep pushing the boundaries of acceptable discourse. The only way this will change is if those who truly support peace, justice, and human rights in the Middle East work together to overcome SJP's destructive agenda.

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# Anti-Israel BDS Movement Is Fashionable In Academia, But Far From Invincible

Roberta P. Seid

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While the global anti-Israel Boycott, Divestment, and Sanctions (BDS) campaign has officially hit America's scholarly associations over the last two years, even considering academic boycotts is a dramatic rupture with the past.

In 2005, the prestigious American Association of University Professors (AAUP) wrote that it "condemned any such boycotts as prima facie violations of academic freedom." This bedrock principle was so valued that the AAUP opposed academic boycotts of apartheid South Africa. Three-hundred university presidents signed aletter in 2007 declaring that academic boycotts are "utterly antithetical to the fundamental values of the academy, where we will not hold intellectual exchange hostage to the political disagreements of the moment."

That consensus, however, began to crack in 2013. Anti-Israel animus started becoming academically fashionable with the rise of post-colonial, critical studies theory, and Israel's self-defense after the eruption of the second Palestinian intifada (uprising) in 2000 stoked these views.

In 2009, an American faculty arm of BDS was formed: the U.S. Campaign for the Academic and Cultural Boycott of Israel (USCACBI), which shares extremist agenda of the BDS movement—defaming Israel and advocating policies that would lead to the elimination of the Jewish state. USCACBI refurbishes old Arab arguments against Israel's establishment, but reframes them in contemporary paradigms of social justice. USCABI activists have worked patiently and methodically to mobilize support. They even supply templates for anti-Israel resolutions, which is why so many of the recent divestment resolutions proposed in student governments resemble one another. BDS activists try to make the resolutions seem relevant to academia under the pretext that Israel impedes

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Palestinian higher education.

The first association to succumb to this pressure was the small Association of Asian-American Studies (AAAS), which voted unanimously for an academic boycott of Israel in April 2013. That resolution was presented at the tail end of the AAAS conference, when many attendees had already left—a tactic frequently used by BDS activists. Only 10 percent of AAAS members voted, but USCACBI trumpeted the victory.

This breach was followed by a more significant one. In October 2013, the AAUP's annual journal was devoted to academic boycotts of Israel, with all but one contribution advocating that step. Contributors included prominent USCACBI members and boycott advocates such as Omar Barghouti, co-founder of the BDS movement. Scholars opposed to boycotts were able to publish rebuttals, but the formerly inviolable principle had been assailed.

This trend escalated in December 2013, when the American Studies Association (ASA)—an established, moderately sized organization of 4,000 members—voted for an academic boycott of Israel. The backlash was immense, as more than 250 university presidents condemned the ASA's vote, as did major academic organizations. During the same month, the small Native American and Indigenous Studies Association followed suit with a pro-boycott declaration.

The strong reaction against BDS had a chilling effect. Only one association voted for an academic boycott in 2014: the new and marginal Critical Ethnic Studies Association. But the anti-Israel activists simply adopted more incremental tactics.

The well-established Modern Language Association (MLA) debated a resolution in 2014 condemning Israel for allegedly impeding Palestinian education in the West Bank, but did not call for a boycott. When the general MLA membership voted, the resolution failed. In January 2015, the MLA decided not to consider boycotts until 2017.

In November 2014, the National Women Studies Association issued a statement of support for BDS and condemnation of Israel, but not a boycott resolution. In December 2014, the Middle East Studies Association, long a bastion of anti-Israel views, tentatively opened the door for academic boycotts with a resolution affirming the right to advocate for them—a dramatic break from its 2005 resolution, which stated that it is "thoroughly objectionable… to refrain from any and all scholarly interaction with the entire professional staff… because of the policies of the state in which they are situated."

Anti-Israel activists in the American Anthropological Association (AAA)

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also took this slower approach. They didn't introduce a boycott resolution, but organized five panel discussions supporting BDS and only one panel opposing it. One discussion included BDS leaders as well as the president of the anti-Zionist group Jewish Voice for Peace. A resolution that condemned some of Israel's policies, but opposed academic boycotts of Israel, was soundly defeated by a vote of 653-28 at the AAA business meeting.

In January 2015, knowing that a boycott resolution would not pass, BDS advocates at the well-established American Historical Association presented a diluted resolution condemning Israel for impeding Palestinian education, using the same false accusations as the MLA resolution. In the typical manipulative fashion of BDS, they presented the resolution at the last minute and moved for the rules of order to be suspended. The ploy failed in a 144-55 vote.

The American Library Association will debate a resolution for divestment from companies that assist Israel's self-defense at its mid-winter meeting at the end of January. Even the ASA had to walk back its boycott measure. When it held its convention in 2014 in Los Angeles, the American Center for Law and Justice warned the hotel hosting the ASA's gathering could be liable for violating California anti-discrimination laws. The ASA then conceded that even Prime Minister Benjamin Netanyahu could attend, as long as he did not officially represent the Israeli government.

Several conclusions can be drawn from these events. First, BDS is well-organized and well-orchestrated. BDS activists often belong to several different academic organizations, and they push their agenda in each one. They also put on one-sided panels featuring major BDS activists who are not scholars in the association's field.

Second, these resolutions degrade academia. They do not meet elementary scholarly standards. They are cookie-cutters of one another, repeating the same false claims and suspect sources. It is extremely disappointing to see scholars supposedly trained to weigh evidence and examine context stoop to supporting what amounts to little more than propaganda. In passing these resolutions, they sacrifice their scholarly and moral standing. But we have seen it happen before: academics provided justification for the anti-Semitism of the Nazi regime.

Third, BDS does have momentum. Being anti-Israel is fashionable in academia, and many scholars sincerely worry about the Israeli-Palestinian conflict. Young and even well-established scholars need courage to stand against the anti-Israel consensus, and can risk losing promotions, career opportunities, and respectability if they

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speak against this prevailing zeitgeist.

Fourth, the BDS movement can be halted. Many academics worry about the politicization of their scholarly associations, which were founded to deal with matters of concern in their fields and not to make pronouncements on international affairs. Furthermore, most attendees of annual conventions are simply not interested in the Israeli-Palestinian conflict. They attend the conventions to present papers, to keep up in their field, and to network. When a core of scholars mobilizes and resists the hijacking of their organizations by anti-Israel ideologues, they can prevail, as they did at the American Historical Association.

The debate on academic associations and Israel is not being held in a vacuum. It is part of a concerted effort by the BDS movement to erode American public support for Israel—despite the fact that a majority of Palestinians oppose BDS. Scholars need to mobilize to resist the hijacking of their associations by ideologues, to preserve their intellectual integrity, and to fight bigotry. Fortunately, many are beginning to do so. We need more to join the battle.

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# The Future Of Assisted Dying In The UK

Claudia Carr

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**Introduction**

It is a rare occasion, indeed, when the law in England and Wales bases its proposed legislation on the law in the US, but, in the case of the Assisted Dying Bill that was introduced in the House of Lords in 2013, that is precisely what the British Parliament has done. The Assisted Dying Bill is based closely on Oregon's Death with Dignity Act that was enacted in 1997 rather than the wider and arguably more liberal legislation of some European countries such as Belgium and the Netherlands.

Although the Bill's progress has stalled following the dissolution of Parliament pending the General Election, the Assisted Dying Bill proposes to introduce physician assisted suicide in England and Wales. This article will critically evaluate the provisions of the Bill and explore the ethical issues that are likely to determine the future passage of the Bill.

**Assisted Suicide**

Although the offense of suicide in England and Wales was decriminalised by the Suicide Act of 1961, assisted suicide, defined as assisting or encouraging a suicide (section 2A as amended), remains an offense punishable by 14 years imprisonment. In reality, the law has gained greater clarity as a result of the case of *R (Purdy) v DPP 2009 UKHL 45* wherein the House of Lords ordered the Director of Public Prosecution (DPP) to promulgate a policy which would outline the circumstances when the DPP would be likely to prosecute such a case. The effect of the introduction of the prosecutorial policy is that compassionately commissioned assisted suicide of a competent adult patient who has expressed a wish to end his or her life at a time of his or her choosing is unlikely to be prosecuted. The emphasis here is on the family member or close family friend who assists his or her loved one to end his or her life; it does not extend to the medical professional who cares for the patient.

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However, it is unsatisfactory for the courts to decide matters of public policy, just as much as the current law should not remain defined by the hands of the DPP. Moreover, legislation in favour of assisted suicide has become more popular following a series of 'right to die' cases involving (amongst other arguments) the compatibility of Article 8 of the Human Rights Act (the right to a private and family life) and the Suicide Act of 1961. In a more recent Supreme Court case *(R (on the application of Nicklinson and other) v Ministry of Justice et al 2014 UKCS 38)*, it was held that a decision on whether the current law was incompatible with Article 8 was a question for Parliament to decide, not the courts. It added that, should Parliament not address the question, the courts might very well, on another occasion, make their own declaration of incompatibility.

**Assisted Dying**

The Assisted Dying Bill is the 5th such Bill to come before Parliament in the past 10 years, but the current climate in which the Bill is presented gives it a real hope of becoming law. The reason for this is twofold. Firstly, the Bill has been presented amid a series of high profile court cases, and secondly, a 2015 Populous Poll of 5,000 people carried out by the national campaign organization, Dignity in Dying, showed that 82% of the public supported the Assisted Dying Bill. Supported by a number of high-profile personalities, including Professor Stephen Hawking, the world's leading theoretical physicist, there seems to be a genuine appetite to permit the vociferous few the right to determine for themselves the manner and time of their deaths.

The Bill refers to 'Dying' rather than 'Suicide', a term I continue to use throughout this article. While the offense is one of assisted suicide, the terminology intriguingly differs in the Bill. The House of Lords debated this at length, but the term 'assisted dying' remains. Critics argue that the term 'suicide' should be used to convey the fact that helping another to die remains criminal and that this term should not be wrapped up in anything other than transparency. Proponents reject this approach, rejecting the term 'suicide' as now being more associated with acts of terror than with compassion, care and a search for dignity at the end of one's life. One chooses to die with capacity and a settled intent to end his or her life due to the condition from which he or she suffers. Arguably, it is not suicide, as the person would doubtless prefer to live rather than die, but not in the situation in which he or she now lives.

The Assisted Dying Bill will permit a competent adult, who suffers from an irreversible terminal condition and who has expressed a clear, voluntary and settled decision that he or she wishes to

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end his or her life, assistance with dying. There is no requirement that the person be suffering pain, simply a terminal illness. A medical professional will be able to provide lethal medication for the person, but the final act must rest with the person's choosing to end his or her own life, and he or she must be able to self-administer the lethal medication in some way.

In reality, given the wording of the Bill, assisted dying will only be available for those who have some level of mobility and who can, to some extent, self-administer. In providing the option to some to end their life, it effectively discriminates against those with the more serious conditions, who are entirely dependent upon others for help and, in doing so, implies that a person with some physical ability is more worthy of being given the 'right to die' than those whose conditions are such that they would require complete assistance to end their lives.

While the Bill will allow people who suffer from debilitating and devastating conditions the autonomy to determine for themselves the point at which they wish to end their lives, it is morally unacceptable that, if the State permits assisted dying for a person with some degree of mobility, it will deny it to others with none. The consequence may be that the person who suffers from a progressive degenerative condition may choose to end his or her life at a time earlier than he or she otherwise would and at a stage at which his or her condition is such that he or she is still able to do so.

The Bill raises a number of other issues and this article simply seeks to highlight a couple of areas which could be considered problematic. It is my position that, rather than emphasize obstacles to permit assisted suicide, it is more constructive to explore ways to resolve them in order to permit compassionate legislation to be passed.

The Bill only applies to terminally ill people with fewer than six months to live. It is well known that it is notoriously difficult to predict, with any degree of certainty, a person's prognosis of death. Indeed, The Royal College of Physicians observed in 2004 that "prognosticating may be better when somebody is within the last two or three weeks of their life … when they are six or eight months away from it, it is actually pretty desperately hopeless as an accurate factor."

While prediction of life expectancy is problematic, the House of Lords (where the Bill was introduced by Lord Falconer) recently agreed to introduce an amendment to the Bill to include the safeguard of judicial oversight. Cases which involve a person's clear, settled and informed decision to control the manner and time of his or her death will now go before a Judge.

Although the mere fact that a patient

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will need to take his or her case before the court (for which legal funding will be available) is an affront to autonomy in itself, it will enable the court to determine the patient's state of affairs with as much accuracy as possible by way of independent expert evidence on the patient's prognosis. Moreover, the judge will also be able to determine whether the person has capacity to make the decision that he or she wishes to end his or her life at a time of his or her choosing and, with the help of expert reports, distinguish capacity from possible depression which could obscure issues of capacity.

Opponents of the introduction of physician assisted suicide argue the perils of slippery slope; they fear that, with the introduction of PAS, euthanasia will inevitably follow. However, Oregon's DWDA of 1997 annual report confirms that in 2014, 105 people chose to end their lives, a mere fraction of the population of nearly 4 million. The typical person who chooses to end his or her life is not the exploited and vulnerable patient who is uninformed but more likely to be male than female. The person is more likely to be white and aged between 65 -74, well-educated and suffering from a cancer or similar related terminal illness. The statistics illustrate that the most common ground for choosing when to end their own lives was a loss of autonomy and being unable to live their lives in a way that they valued. The DWDA, as the name suggests, is a suitable role model for potential legislation in England and Wales. Although 60% of those prescribed with medication to end their own lives did not take it, the mere fact that it was available may have been sufficient for the patients to consider their options on a regular basis, a genuine reflection of their autonomy.

Those who oppose potential legislation in this jurisdiction argue that the elderly, ill or disabled will regard something that may be an option as an obligation, a way of relieving emotional or financial burdens from their loved ones. In doing so, opponents argue that the noisy few who advocate assisted dying will outweigh the silence of the vulnerable majority. One must accept that this is a real and genuine concern but there is little evidence from Oregon that this is in fact the case, and, although public policy should not be molded by a minority, it should not ignore the minority either, where the effect of the denial to afford them the dignity to end their lives at the times of their choosing is forcing them to live lives of little value and dignity.

I maintain that it is possible to engage with both camps, to permit assisted dying to the estimated 30-40 people in the UK per year who may want to exercise their right to do so and to provide the protection to the

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vulnerable by way of judicial oversight by allowing the court to ensure that the person before them has capacity and has not been coerced or subjected to undue influence by an unscrupulous family member. The courts in England and Wales have considerable experience in handling complex issues such as withholding and withdrawing medical treatment from patients in both persistent vegetative states and minimally conscious states and they will, with appropriate additional training, be well equipped to hear 'right to die' cases.

For those readers less familiar with the demographics of the United Kingdom, we are largely a secular, multi-cultural and cosmopolitan country with the Church of England as its religious figure. It therefore comes as no surprise that there is general popular support for the introduction of assisted dying wherein focus is on the person's autonomy and his or her inalienable right to determine his or her life's path for himself or herself. Of course, there are also many opponents who fear what the introduction of assisted suicide may bring, whether that is the risk to the vulnerable that would follow or the fear of the 'slippery slope'.

The British Medical Association opposes all forms of assisted dying and explicitly states that it 'supports the current legal framework, which allows compassionate and ethical care for the dying and supports the establishment of a comprehensive, high quality palliative care service available to all, to enable patients to die with dignity'. Only a small minority of doctors support assisted dying, the implication of which is that, if assisted dying were permitted, patients would have to 'shop' around for sympathetic doctors whose professional name would then become synonymous with those who chose to end their lives.

**Assisted suicide and Jewish law**

Although some Reform rabbis in the UK publicly support assisted dying, the position of the Orthodox rabbis is against one person assisting another to end his or her life. Their reasoning is that autonomy does not bear the same relevance in the Jewish tradition; also, the focus is not on the quality of life of the person but on the life of the person itself, (that is not to say that quality of life is entirely irrelevant, but it is not the subject matter of this article). While, in secular society, such an act would generally be viewed as one of great compassion, in Judaism assisting a person to die in this way (together with the person who chooses to end his or her life) would be violating one of the most basic tenets in Jewish law, namely, that one may not murder. On the contrary, one must do everything to attempt to preserve a life, setting aside almost all Jewish laws and even violating the

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Sabbath. Therefore from an Orthodox Jewish perspective, wherein the focus is on a person's duties and not rights, the secular view is understood as being one that discriminates against the less abled. They share the view with other opponents of assisted suicide that the legislation conveys that those who suffer from disabilities are considered to have a life not worth living, a view which is not ethically acceptable.

It is my understanding that Judaism states that a person must do everything possible to protect one's own life, as our body is not our own but belongs to God who has given life to us to live to the fullest. Elliot Dorff, chairman of the Rabbinical Assembly's Committee on Jewish Law and Standards, explains that Judaism 'requires us to evaluate our lives in light of the ultimate value in us because we were created in God's image'. Hence, the value of a person's life is not dependent on our ability to conduct business, rise to pinnacles of success or obtain public status, but on the image of God that is contained within us.

If and when assisted suicide is legalized in England and Wales, the final act would be on the part of the person who chooses to end his or her own life and not the medical professional. The lethal drugs would have been prepared for the person to administer intravenously or orally. Given that the act that causes death is the patient's and not the medical professional's, how does this impact his or her responsibility?

The writer does not purport to be an expert in Jewish law but understands that the prohibition of putting a 'stumbling block before the blind' (Leviticus 19.14) is interpreted beyond its literal meaning to include facilitating unethical acts as well as forbidding the purely physical act of tripping a person. According to Maimonides (Sefer Ha Mitzvot, Negative Commandment 299) the prohibition refers not only to providing bad advice but also includes assisting someone to commit a sin. Since suicide is not permitted in Jewish law, it would appear that assisting a suicide would fall into this category. However, the Talmud also introduces the idea that the prohibition does not apply if the person who is about to commit a transgression can do so without assistance. If we apply this logic, then it may follow that if the person who wishes to end his or her life cannot do so 'without great effort', then it is forbidden to make it easier for him to do so, yet it does not apply if the person about to transgress can do so easily. Given that an assisted suicide, by its very definition, necessarily involves some degree of assistance, even when the final act of administration of the lethal drugs is not the medical professional's, it would appear that the person who assists a suicide in Jewish law transgresses the prohibition of

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'putting a stumbling block before the blind'.

From this reasoning, it would appear that an Orthodox Jewish doctor would not be able to partake in an assisted suicide. This should not be an issue, however if the Assisted Dying Bill passes, however, since provisions of the bill permit doctors to conscientiously object to playing a role in a patient's 'right' to die at a time of his or her choosing. This section would apply to religious objection or an objection of any kind, whether religiously motivated or not.

**Conclusion**

This article is meant only to convey the complexity surrounding assisted dying and that the State should only interfere in a person's life choices where harm can be caused to others. However, to deny a person his or her right to die at a time and method of his or her choosing is both oppressive and tyrannical. Where legislation can be drafted to adequately protect the vulnerable, elderly and infirm, this should be explored and, with adequate judicial oversight, be enacted. It may take a leap of faith on the part of a brave Parliament, but it is a leap that is needed, even if it only serves the determined few. Those who have strong religious convictions should always be respected, but they should not stand in the way of compassionate ground-breaking legislation.

# Between Man And His Tradition

Malka Fleischmann

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There are two statements in the Mishnaic tractate *Avot (Ethics of Our Fathers)*, which address the distinction between the needs of the individual and his community. The first, found in the very first statement of the second chapter, states, "Which is the right path for man to choose for himself? Whatever is harmonious for the one who does it, and harmonious for mankind." The other statement, which is the fourth of that same chapter, states, "Make that His will should be your will, so that He should make your will to be as His will. Nullify your will before His will, so that He should nullify the will of others before your will."

The two statements provide methods for decision-making that share similar potential pitfalls. According to the first, the right path for an individual to pursue is the one that is harmonious for him and society at large. What happens, then, when the individual's needs are at odds with society's? How should a person address that tension? In a similar vein, the second statement, somewhat circuitously, advocates for aligning one's own will with God's so that God may favor the will of the individual. What happens, then, when a person cannot align his will with God's? In broader terms, according to both statements, the ideal path for the individual to follow is the one that aligns with others' desires, needs or expectations, whether they are God's or other people's. Does man's life, then, suffer if and when he cannot force this alignment? Moreover, and practically speaking, how can a person make decisions that respond to and resonate with his own needs and sensibilities without dishonoring his tradition and the ideals and inclinations of his community?

An examination of the relevant rabbinic commentary and Biblical narrative reveals that, ultimately, the very thing that produces tensions in the life of the individual—the community—is the very thing that allows him to assert his needs and be expressive about his individuality.

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The very thing that seems to oppose individuality is also its liberator.

In his collection of responsa, *Mishneh Sochir*, Rabbi Yissachar Shlomo Teichtal analyzes the first of the two statements, "Which is the right path for man to choose…", explaining that choosing the right path actually comprises two separate, albeit related, decisions. Recognizing the existence of good and bad paths, man must first choose the good path and then, having made that initial choice, man must navigate the more complex set of options with which it's paved. Along this good path, explains Rabbi Teichtal, there are two types of righteous people—those who isolate themselves and spend their days learning in solitude, and those who integrate themselves into society and exchange knowledge with others.

While Rabbi Teichtal's explanation of the rabbinic maxim promotes an initial choice of good, thereafter it allows the individual some freedom in exploring his unique talents and inclinations. Multiple avenues towards righteousness legitimize the person who is inclined towards taking responsibility for his community to be socially active, while also allowing the person who is more internally focused to remain more muted. Of course, this analysis speaks to a general orientation towards choosing one's path in life, rather than offering tools to weigh one's needs against society's interests in particular scenarios. Nonetheless, Rabbi Teichtal's perspective widens the space within which a person makes decisions about his role in society, allowing him to determine how prominent an actor he will be and how much responsibility he will bear.

In his commentary on *Avot*, the 13th century rabbi and ethicist Yonah of Gerona explains that the harmonious path for the individual is the one that "prepares a pure heart and renews a proper spirit within him." He further explains that this path's being "harmonious for mankind" denotes its capacity to engender profound generosity within the individual, ensuring that he is agreeable and well behaved with others. Of course, the notions of a "pure heart," a "proper spirit" and good behavior might be subjectively interpreted in a number of ways, but his commentary nonetheless focuses attention on the individual. Presumably, by leading the individual to a place at which he is accepted and valued by society owing to his generous nature, this "right path" is necessarily harmonious for the individual. Simply put, by defining the harmony afforded by the "right path" in terms of the individual and his integration into society, Rabbi Yonah circumvents the tension between what is best for the individual and what is best for society. If accepted by his peers, the individual will never feel that his desires are at

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odds with theirs.

Summarizing the understanding of various commentators on the statements in *Avot*, the *Encyclopedia Talmudit* explains that, in any given situation, the correct path for the individual is the one that represents the middle ground between two extremes. These commentators maintain that following the middle path, characterized by one's choosing moderation in all things, remaining humble, and curbing one's anger and desires, leads to spiritual wholeness. While simple and appealing, this approach seems insufficient when considered practically. What if a person finds meaning and fulfillment—finds his own spiritual wholeness—in extremes? What if, on occasion, a person's community advocates for an extreme, let alone one that offends his own sensibilities? Should every decision be entirely relative? Doesn't that approach too often ignore the substance of individual issues?

In his *Guide For the Perplexed* (Chapter 34), Moses Maimonides addresses these very questions, ultimately asserting the law's immutability with respect to exceptional cases. Though he very sensitively acknowledges that the Law may cause pain or be ineffective for a certain individual who finds himself in extraordinary circumstances, he uses the Biblical verse, "As for the congregation, one ordinance shall be for you and for the stranger" (Numbers 15:15), to affirm the need for determined law that remains static despite changing cultural tides or circumstances. To shift the laws to match certain times and places, Maimonides argues, would compromise the system as a whole.

Yet, even if the individual were to accept Maimonides' perspective and ignore his personal needs and comforts in favor of keeping the legal system intact, there remains a moral obligation for the community to address its fellow's pain. So, again, the question of the tensions experienced by an individual whose inclinations depart from those of his tradition stands.

Looking at Biblical narrative that pertains to decision-making, we find a fascinating exchange between Moses and his father-in-law, Jethro. In Exodus 18, Moses and Jethro meet in the wilderness and, after rejoicing over Israel's surviving the Egyptian persecution, they discuss Moses' sitting in judgment of the people. Jethro strongly urges Moses to modify his responsibilities by convening a council of men to help him arbitrate, so as to ease the tremendous burden of sitting alone in judgment over the entire nation. Though Jethro's suggestion seems to be a practical response to the scope of Moses' job, its substantive implications are significant as well. It may not only be difficult for one man to sit in judgment of millions merely

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due to the numerical imbalance; it may be that, irrespective of the number of decisions one needs to make, to make them alone is emotionally burdensome and challenging. When one can sit in consultation with a peer group or community, a person can measure his opinions against others. Though a multiplicity of views may imply occasional friction, it is also in the company of others that one can seek support, ask important questions, explore and find clarity of vision.

In contrast to Moses' making decisions in the company of others is Abraham's choice in the Binding of Isaac narrative from Genesis. Though admirable in his willingness to heed God's call, Abraham is silent as he prepares to perform an unimaginably painful sacrifice. Without hesitation or remark, Abraham proceeds towards the most unnatural of acts, the sacrifice of his own son, never pausing to question or consider alternatives. After all, how could he? Alone in his faith, the father of Israel had no community with which to consult. And though the righteous Abraham may have wordlessly abided even if he had had a peer group, the reality is that the lonely sacrifice of his son was something that Abraham had to do without question because there was no one present with whom he might discuss it or against whose feelings he might measure his own.

Thus, as evidenced by the distinct decision-making experiences of Moses and Abraham, the tension experienced by an individual with marginal convictions is something that becomes both inflamed and assuaged by the very same thing—his community. The community may, at times, disturb a person's sense of right and wrong and challenge his innermost desires, but the presence of surrounding society is also the only thing that may allow a person to find ideological partners or, at the very least, people with whom to consult and discuss one's ideas and inclinations.

Still, though, the question remains—how is one to respond to the point of fissure, to the moment at which he and his community are at odds or when his personal feelings conflict with his responsibilities?

Ultimately, there is no hard-and-fast rule that can be applied to alleviate this tension in any given situation. There is fault in the presumption that there may be one prescriptive route for navigating points of fissure. Every conflict bears nuance and unique terrain, making our only recourse fresh deliberation upon the introduction of each new moment of discord or uncertainty. The only consistency may be in the support and agitation afforded by the presence of a peer group.

In the end, our only certainty is best encapsulated in God's reasoning for the creation of Eve: "It is not good that man should be alone."

# Book Review – A Guide To The Complex

Aron White

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In his book, A Guide to the Complex: Contemporary Halakhic Debates, Shlomo Brody ambitiously attempts to summarize one hundred and thirty contemporary halakhic debates over a broad spectrum of topics. To appreciate the significance of the task, I would like to provide a historical analogy. Professor Haym Soloveitchik has pointed out that Jewish intellectual history has periods of great advances in the study of Torah, which are then followed by periods of consolidation during which scholars collect and organize ideas and pass on the flurry of academic activity from the previous generation to the next one in a refined and explicated form (Soloveitchik demonstrates how the school of the French Tosafists, in the 12th and 13th centuries, followed this pattern). In the last fifty years, there has been a flowering of thought and writing on contemporary issues in Jewish law. Given the unprecedented rate of technological change seen in the past half-century, the major shifts in gender roles and the position of women in society, the creation of the State of Israel and so forth, new questions for jurists of Jewish law needed to be answered, and numerous books, articles and journals were dedicated to these issues. The great flurry of output has reached vast proportions, yet there is difficulty in accessing the information for the layman or inchoate scholar. Shlomo Brody's book is the first attempt to consolidate the work of this previous period of intellectual innovation. In four hundred pages, Brody addresses issues as varied as whether one can use a microphone on Shabbat, the permissibility of stem cell research, limitations on the commercial sale of weapons, entrance into a Church, women's obligation to wear phylacteries (tefillin), prisoner exchanges in Israel, conversion standards and eating legumes (kitniyot) on Passover – just to name just a few.

The book is ground breaking in its scope, but there are two additional aspects that make this book stand out from others that discuss similar

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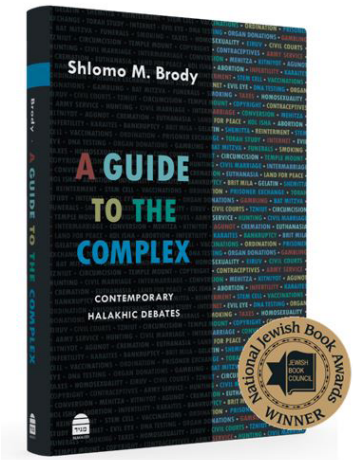
topics. First, Brody's book is eminently readable to the layman. Usually, works on Jewish law are difficult to understand – they often rely heavily on technical terms and will employ forms of logic and argument that may strike the casual reader as convoluted. Many contemporary articles that are written in English and examine contemporary topics are oftentimes long, scholarly, heavily footnoted works – making them more conducive to library study than casual reading. Nevertheless, Brody manages to make his work readable, without compromising on the number or the quality of his sources. Even in those paragraphs wherein he presents eight or ten different halakhic sources in as many lines, one does not lose the line of argument in a maze of technical terms. The need for his pieces to be short and readable is an outgrowth of the needs of the target audience for the original articles that now form this book – the articles were originally written for the Jerusalem Post, and thus were always geared for a mass audience, rather than a scholarly elite. One wonders whether other areas of Torah and Jewish study could similarly benefit from being presented in public fora, "forcing" authors to demystify some of the more difficult areas of Torah.

The second aspect of the book's uniqueness is its representing the synthesis of secular and Torah knowledge in such a way that it reflects the highest values of Torah U'Madda, the philosophy that Torah knowledge is best utilized when it is paired with knowledge of the world. If Jewish law and rabbinic jurists are often characterised as detached and unfeeling, (and I will not enter into the discussion whether this is a fair characterisation or not), this book provides a glimpse into a jurist who does not lose touch with the real world or the people with whom he is communicating. Brody is acutely aware of the political and sociological ramifications of conversion standards in Israel, is sensitive to the pain of individuals who are suffering from terminal illnesses, and is aware of the historical development of many of the innovations he discusses, such as the development of copyright restrictions



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in publishing houses. In bringing psychological, historical and political knowledge to bear, and with sensitivity to human emotions, Brody shows the way in which Jewish law is bolstered, rather than threatened, by a connection and engagement with the world.

The content of the book is authoritative and, generally, very comprehensive (there are a few essays that would benefit from and be considered more comprehensive with more substantial citations). However, Brody's most significant contribution is in providing a paradigm for the Modern Orthodox jurist to follow –to articulate knowledge in a way that is accessible and readable, and to buttress the jurist's expertise in Torah with an understanding of our world, ensuring the continued vitality of Jewish law and tradition in everyday life.

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