

# Criminalizing Criticism of Israel in Canada

Bill C-13, A “Digital Trojan Horse for the Surveillance State”

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*The international campaign calling for boycott, divestment, and sanctions (BDS) against Israel, as a peaceful means of persuading that state to abandon its systematic violations of international law and its policies of apartheid dispossession, colonization, and blockade in the occupied Palestinian territories, has recently enjoyed a burgeoning number of successes.<sup>1</sup>*

*In early February 2014, The Economist noted that BDS “is turning mainstream,”<sup>2</sup> and former Israeli Knesset Speaker Avraham Burg wrote in Haaretz that the “BDS movement is gaining momentum and is approaching the turning point [... at which] sanctions against Israel will become a fait accompli.”<sup>3</sup>*



Israeli Prime Minister Benjamin Netanyahu made a point of indicating that he and his allies would respond vigorously to this trend. Some of the reports about a cabinet meeting where “tactics” were discussed revealed more about internecine divisions than about the substance of the meeting: “Netanyahu convenes strategy meeting to fight boycotts”—but he deliberately excluded some senior ministers:

“Left Ministers Kept Out of Secret Cabinet BDS Session.”<sup>4</sup>

Yet although Israeli media indicated “that ‘the discussion was held in secret’, with an imposed ‘media blackout’,” one source that reported this fact was able to give a fairly precise sense of what went on behind closed doors:

Ideas apparently discussed by senior ministers included lawsuits “in European and North American courts against [pro-BDS] organizations” and “legal action against financial institutions that boycott settlements ... [and complicit] Israeli companies”. There is also the possibility of “encouraging anti-boycott legislation in friendly capitals around the world, such as Washington, Ottawa and Canberra”, and “activat[ing] the pro-Israel lobby in the U.S.” for such a purpose.<sup>5</sup>

This kind of “lawfare,” as it is sometimes called, is nothing new (nor, one can add, is the notion, also discussed at this meeting, of bolstering surveillance of pro-BDS organizations by military intelligence, the Shin Bet Security Service, and the Mossad). It’s also evident that the pro-Israel lobby has been active in mobilizing politicians in the “friendly capitals” of Washington, Ottawa, and Canberra for many years.

Recent fruits of that labour have included, in Canberra, threats made in June 2013 by Julie Bishop, a senior member of Julia Gillard’s incoming Australian government, that “supporters of an academic boycott of Israel” would have their “access to public research funds summarily cut off.”<sup>6</sup> In Washington, a bipartisan “Protect Academic Freedom Act” that would deny federal funding “to colleges and universities that participate in a boycott of Israeli academic institutions or scholars”<sup>7</sup> has been brought before Congress.

But what of Canada, whose Prime Minister is Mr. Netanyahu’s most faithful friend?<sup>8</sup>

This essay will argue that revisions to the Canadian Criminal Code proposed by the Harper government contain wording that is designed to enable lawfare prosecutions of human rights activists in precisely the manner desired by Mr. Netanyahu and his associates.

## 1. Bill C-13 and its deceptions

Bill C-13, the Protecting Canadians from Online Crime Act, received first reading in the House of Commons in November 2013. In a web page devoted to “Myths and Facts” about this bill, the Department of Justice rejects the “myth” that “Bill C-13 is an omnibus crime bill that deals with more than cyberbullying.”

Bill C-13 is not an omnibus crime bill. It combines a proposed new offence of non-consensual distribution of intimate images to address cyberbullying with judicially-authorized tools to help police and prosecutors investigate not only the proposed new offence, but other existing offences that are committed via the Internet or that involve electronic evidence. [...] The Bill does not contain the former Bill C-30’s controversial amendments relating to warrantless access to subscriber information and telecommunication infrastructure modification.<sup>9</sup>

However, Dr. Michael Geist, the Canada Research Chair of Internet and E-commerce Law at the University of Ottawa, has observed that Bill C-13 does indeed retain provisions that permit an increased warrantless access to personal information, far beyond what is envisioned by the current Criminal Code.<sup>10</sup> Criminal lawyer Michael Spratt has denounced the bill as a “digital Trojan horse for the surveillance state”:

most of C-13 has little to do with protecting victims [of cyber-bullying]. This bill would recklessly expand the surveillance powers of the state. It sacrifices personal privacy. It limits or eliminates judicial oversight. It is inconsistent with recent Supreme Court jurisprudence. It’s a dangerous bill.<sup>11</sup>

The Department of Justice’s claim that “Bill C-13 is not an omnibus crime bill” is transparently false. As another critic, Terry Wilson, has remarked, despite being promoted “as legislation to prevent online bullying, the bill actually has very little to do with bullies

and has sections ranging from stealing cable, hacking, surveillance, to terrorism (cyberbullying accounts for 2 out of the 50 pages in the bill) [...]. The bill even includes ‘hate legislation’....”<sup>12</sup>

In this latter respect Bill C-13 incorporates, once again, a Trojan horse. The bill adds wording to the Hate Propaganda sections of the Criminal Code that seems, on the face of it, to do no more than to bring these sections into conformity with other parallel texts—with several important documents of international law, and with a sentencing provision later in the Criminal Code where the same wording already appears. But a second intention is also arguably at work in this part of Bill C-13, for there is good reason to believe that the new wording is intended, while deceptively avoiding any public debate over the matter, to make it possible to prosecute human rights discourse and advocacy relating to the oppressive treatment of Palestinians by the state of Israel as hate speech or incitement of hatred.

This view of the intention underlying Bill C-13 is supported by Prime Minister Harper’s speech to the Israeli Knesset on January 20, 2014 (which will be discussed below). It can draw support as well from the fact that an identical change to the wording of the French penal code made in 2003 by the so-called Lellouche Law has permitted the conviction of some twenty French human rights activists for incitement of racial hatred.<sup>13</sup>

The results in France have been paradoxical. France is, like Canada, a High Contracting Party of the Fourth Geneva Convention of 1949—whose first article states that “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”<sup>14</sup> The people convicted for incitement of racial hatred under the Lellouche Law are participants in a movement that has been consistent in its firm rejection of antisemitism and all other forms of racism.<sup>15</sup> This movement advocates a peaceful exertion of economic pressure with the aim of persuading the Israeli state to end its multiple and systematic violations of international law, including in particular the Fourth Geneva Convention, which Israel has been repeatedly been condemned for flouting by UN committees and reports, as well as by independent agencies such as Human Rights Watch and Amnesty International. The facts of the matter are thus unambiguous: in enforcing the Lellouche Law, and redefining human rights activists as people guilty of hate crimes, the French state has simultaneously been violating its prior solemn commitment “to respect and to ensure respect for” the Fourth Geneva Convention “in all circumstances.”

One of the aims of Bill C-13 appears to be to place Canada in a similar situation of openly violating one of the central instruments of international law.

## 2. Alterations to the meaning of Sections 318 and 319 of the Criminal Code

Section 12 of Bill C-13 proposes several small additions within that part of the Criminal Code (Sections 318-321.1) that carries the subtitle “Hate Propaganda.” Section 12 reads as follows:

12. Subsection 318.(4) of the Act is replaced by the following:

(4) In this section, “identifiable group” means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental and physical disability.<sup>16</sup>

(The emphasis here indicates the wording being added to the current Criminal Code by Bill B-13.)

These proposed additions within Section 318 of the Criminal Code, which is concerned with the crime of “Advocating genocide,” also have an impact on the meaning and application of Section 319, which is concerned with the crimes of “Public incitement of hatred” and “Wilful promotion of hatred,” and in which—as Subsection 319.(7) states—“‘identifiable group’ has the same meaning as in section 318”. The relevant clauses in Section 319 read as follows:

319. (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.<sup>17</sup>



The most noteworthy addition to the concept of “identifiable group” is that of the category of national origin, which has no evident connection to the ostensible purpose of Bill C-13, but may be understood as linked to another agenda that was forcefully enunciated by Prime Minister Stephen Harper in his January 20, 2014 speech to the Israeli Knesset—namely, that of re-defining criticism of the policies and behaviour of the nation-state of Israel in relation to its Palestinian citizens and to the inhabitants of the Occupied Palestinian Territories as hate propaganda.

As a February 2014 report in the leading Israeli newspaper Haaretz indicated, the hate-crime convictions in France several months previously of twelve human rights activists, supporters of the international campaign advocating boycott, divestment and sanctions (BDS) against Israel, were secured under the Lellouche Law, which “extended the definition of discrimination beyond the expected parameters of race, religion and sexual orientation to include members of national groups.”<sup>18</sup>

### 3. The Lellouche Law: another Trojan horse?

Whether intentionally or not, the Lellouche Law has functioned as a kind of Trojan horse. Dr. Jean-Yves Camus has remarked that this law, “passed on 3 February 2003, in the wake of an unprecedented wave of anti-Semitic violence, allows judges to impose harsher sanctions

upon perpetrators of racist violence, than those they would normally receive in the case of a similar act of violence not motivated by racism.”<sup>19</sup> As the Haaretz report on the criminalization of BDS activism in France indicates, the law’s ostensible purpose, at a time when the openly antisemitic, anti-immigrant and neofascist Front National of Jean-Marie LePen had been attracting increased support, in southern France especially, was “to strengthen French republican values and counter sectarian tendencies”:

The law was passed in 2003, shortly after unprecedented gains by the far right National Front party in the presidential election.

The measure was designed to respond to a social climate of not only mounting anti-Semitism, but also anti-Arab discrimination and xenophobia.<sup>20</sup>

The “Outline of motives” that prefaced the Lellouche Law when it was presented to the Assemblée Nationale in November 2002 was explicit in its repeated statements that the additions to the Penal Code proposed by this law were primarily intended to target openly racist violence:

“violences ouvertement racistes,” “actes de violence intentionnellement racistes,” “violences à caractère raciste,” “agressions à caractère raciste.”<sup>21</sup>

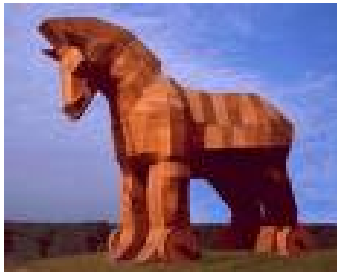
Although this text specified that racist violence could be “moral” as well as physical,<sup>22</sup> the two recent examples it offered to the deputies of the Assemblée Nationale were the “openly racist murder” of a young Frenchman of Moroccan origin in northern France in October 2002, and racist aggression directed against young students of a private Jewish school in the 13th arrondissement of Paris in early November.<sup>23</sup> Noting that existing French laws already targeted racial discrimination, the incitement of hatred or violence, and Holocaust revisionism, the prefatory outline defined the purpose of this law as being to significantly enhance the penalties imposed in cases where attacks on people or property are racist in character—as when racism is involved in acts of torture and barbarism, violence resulting unintentionally in death, and acts leading to mutilation or permanent disability, as well as acts involving damage to or the destruction of property.<sup>24</sup>

Despite this explicit statement of intention, the Lellouche Law has been applied in another manner altogether—on the pretext that in eight of its nine articles it includes the category of “nation” in the definition of groups that can be understood as victimized. As the Haaretz report indicates, this law “has been invoked repeatedly against anti-Israel activists. France has seen 10 trials against BDS supporters based on Lellouche.”<sup>25</sup>

Pascal Markowitz, head of the BDS legal task force of the Conseil Représentatif des Institutions Juives de France (CRIF), is frank in his assessment of the Lellouche Law’s instrumental value. He is quoted by Haaretz as saying that “the law is ‘the most effective legislation on BDS today.’ ‘We had only one acquittal, so the statistics are looking good,’ he said.”<sup>26</sup> But other political figures in France have taken a different view of the matter:

“These convictions are unconscionable,” Nicole Kiil-Nielsen, a French member of the European Parliament, said at a special session on the case in Strasbourg

in 2011. “Governments are doing nothing to end Israel’s illegal occupation [of the Palestinian territories] and the French court is wrongfully denying citizens from acting through BDS.”<sup>27</sup>



It’s important to understand what is meant, in the present context, by a “Trojan horse.” In every version of the ancient story, from Homer to Virgil,<sup>28</sup> the essential point is the same. The hollow wooden horse was a duplicitous stratagem used by the Greek army that had for ten years been besieging Troy; it succeeded because the horse was deceptively dual-purpose in nature. Pretending to abandon their siege, the Greeks left this huge artefact behind: its plausible overt function was as an offering to the gods, which the Trojans were persuaded to drag into their city in celebration of their supposed victory. But it also had a second concealed function—as a treacherous means of getting a body of armed Greeks inside the walls of Troy, so that they could open the city gates at night when the rest of their army returned.

The Lellouche Law has served as a Trojan horse because when it was passed it seemed an appropriate and plausible means of dealing with an increase in racially motivated violence in France that coincided with an upsurge in support for a frankly racist far-right political party. But the law has since been used for a quite different purpose: that of criminalizing the discourse of human rights activists who speak out in support of respecting and ensuring respect for international humanitarian law.

#### 4. The insertion of “national” into Sections 318 and 319: just “housecleaning”?

According to a report by Paul McLeod of the Halifax Chronicle-Herald, the addition of the word “national” to Sections 318 and 319 of the Criminal Code is explained by the Department of Justice as being “designed to match the wording of a protocol from the Council of Europe, a human rights organization.”<sup>29</sup> The reference is to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, adopted in Strasbourg in January 2003. In Chapter I, Article 2.1 of this text the word “national” occurs in a definition of the groups understood to be victimized by “racist and xenophobic material.”<sup>30</sup>

McLeod indicates that some legal experts have proposed that the change is “likely a mere housecleaning amendment to bring the Criminal Code in line with the wording of other statutes.”<sup>31</sup> The word “national” does indeed occur in similar contexts in the UN International Covenant on Civil and Political Rights, Article 20, and in Article 2 of the UN Convention on Genocide. Moreover, Bill C-13 brings Sections 318 and 319 of the Criminal Code into conformity with the sentencing provision in Section 718, which already includes all the groups (national origin, age, sex, and mental and physical disability) that were not included in Section 318.(4) but have now been added.

A “housecleaning” explanation of the changes is thus entirely plausible.



However, the housecleaning has not actually been very thorough. In its current form, Section 318 of the Criminal Code, which defines the appropriate punishment for the crime of advocating or promoting genocide, is a somewhat peculiar text—for its subsection 2, while clearly derived from Article 2 of the UN Convention on Genocide, omits clauses (b), (d), and (e) of that article’s definition.<sup>32</sup>

David MacDonald and Graham Hudson have remarked that when Parliament ratified the Convention on Genocide in 1952, it excluded some of the clauses of Article 2 from Canada’s Criminal Code, on the grounds that matters such as the forcible removal of children are not relevant to this country. (Given the existence of Canada’s system of church-run residential schools, into whose custody native children were forcibly transferred, it seems obvious that the last clause of the Convention’s Article 2 was excluded in bad faith.) MacDonald and Hudson note as well that when in 2000 Parliament adopted the Crimes Against Humanity and War Crimes Act, it thereby made the 1998 Rome Statute of the International Criminal Court (which includes the Convention on Genocide’s full definition of genocide) a part of Canadian statutory law.<sup>33</sup> Section 318 of the Criminal Code is thus anomalous in its current form, in that its definition of the crime of genocide excludes clauses which are nonetheless part of Canadian statutory law because of their incorporation into the Crimes Against Humanity and War Crimes Act.

In a thorough housecleaning of this part of the Criminal Code, the inclusion of the three omitted clauses from Article 2 of the Convention on Genocide would have been an obvious step to take.

I mention this not because it tells with any force against a “housecleaning” explanation of Bill C-13’s insertion of the word “national” into Sections 318 and 319 of the Criminal Code: as noted above, that explanation remains wholly plausible. But what this example does suggest is that the framers of Bill C-13 may not have been single-mindedly focused on housecleaning.



Prime Minister Harper's January 20, 2014 address to the Israeli Knesset leads us toward a second explanation of the purpose of Bill C-13's insertion of the word "national" into the definition of groups that can be victimized by hate propaganda. In suggesting that this speech reveals with some clarity the thinking that underlies this addition to the text of the Criminal Code, I do not mean to imply that the primary and overt explanation of the change as a "housecleaning" matter is displaced by this second underlying intention—for that is not how Trojan horses work.

A Trojan horse is by its nature duplicitous, but that duplicity can only be successful to the degree that the horse's overt and primary purpose remains plausible.

##### 5. Prime Minister Harper's January 20, 2014 address to the Israeli Knesset

In this speech the Prime Minister asked, rhetorically, what it is today that threatens societies that, like Israel, embrace "the ideals of freedom, democracy and the rule of law." His answer was sweeping:

Those who scorn modernity, who loathe the liberty of others, and who hold the differences of peoples and cultures in contempt. Those who, often begin by hating the Jews, but, history shows us, end up hating anyone who is not them. Those forces, which have threatened the state of Israel every single day of its existence, and which, today, as 9/11 graphically showed us, threaten us all.<sup>34</sup>

This might seem imprecise. But as Prime Minister Harper went on to explain, "we live in a world where [...] moral relativism runs rampant."



And in the garden of such moral relativism, the seeds of much more sinister notions can easily be planted.

And so we have witnessed, in recent years, the mutation of the old disease of anti-Semitism and the emergence of a new strain.

We all know about the old anti-Semitism.

It was crude and ignorant, and it led to the horrors of the death camps.

Of course, in many dark corners, it is still with us.

But, in much of the Western world, the old hatred has been translated into more sophisticated language for use in polite society.

People who would never say they hate and blame the Jews for their own failings or the problems of the world, instead declare their hatred of Israel and blame the only Jewish state for the problems of the Middle East.

As once Jewish businesses were boycotted, some civil-society leaders today call for a boycott of Israel.

On some campuses, intellectualized arguments against Israeli policies thinly mask the underlying realities, such as the shunning of Israeli academics and the harassment of Jewish students.

Most disgracefully of all, some openly call Israel an apartheid state.<sup>35</sup>

In the Prime Minister's view, any profound criticism of Israeli policies and governance can only be a product of antisemitic hatred, spewed forth by people who are simply looking for further ways of victimizing Jews. By this account it is, very precisely, as members of a national group—as potential or actual citizens of Israel—that Jews are being victimized by these devious, sophisticated new antisemites. Canadian Jews could be counted among those victimized in this manner, for those who do not actually hold Israeli citizenship are all potentially Israeli nationals, under Israel's Law of Return.



This claim that criticisms of Israel are motivated by a “new strain” of antisemitism, and can therefore legitimately be categorized and stigmatized as a form of hate propaganda, is not an invention of the Prime Minister. As the historian Norman G. Finkelstein wrote in 2005, “the allegation of a new anti-Semitism is neither new nor about anti-Semitism”: it is, rather, an ideology formulated in the early 1970s for the explicit purpose of deflecting pressures on the state of Israel to end its occupation of the Palestinian

territories of Gaza and the West Bank that had been captured by Israel in the 1967 Six Days War.<sup>36</sup>

The following sections will show that the ideology and rhetoric of the “new antisemitism” have been decisively rejected by many contemporary Jewish scholars and public intellectuals, a significant number of whom have come to recognize in the moral debate within the Jewish community over Israel’s treatment of the Palestinians a reason for adding their support to the growing international support for the movement for boycott, divestment and sanctions against Israel. This division within the Jewish community provides further grounds for recognizing the Prime Minister’s claims as misleading and untrue. It will be shown as well that the judgment that Israel has become an apartheid state (which Mr. Harper regards as the ‘most disgraceful of all’) has in fact been endorsed by prominent scholars and public figures both in Israel and internationally—including in South Africa, a country whose legal experts and public figures could surely claim with some cause to know better than Mr. Harper what apartheid is.

## 6. Refuting the so-called “new antisemitism”

The “new antisemitism” can be briefly defined as a rhetorical gambit which consists in claiming that the tropes of antisemitism, one of whose traditional functions has been (and continues to be) to justify the exclusion of Jews from the full rights of citizenship in whatever country they inhabit, are now being turned against the “collective Jew,” as embodied in the state of Israel—with the purpose this time of excluding Jews as a national collective from enjoying their full rights of participation in the family of nations. The aim of this rhetorical turn is to defend Israeli policies and actions by proposing that their critics are only pretending to be acting on the basis of universal principles of justice and equity; these people are instead antisemites who in a “sophisticated” manner have redirected their hatred against the Jewish nation-state.

We can sample the workings of this gambit in three recent instances involving attributions of a re-deployment of some of the most vicious traditional tropes of antisemitism: the ‘Jew’ as embodiment of abjection, filth and excrement; the ‘Jew’ as a contaminating presence or poisoner (most especially of communal water sources); and the ‘Jew’ as child-murderer.<sup>37</sup> Over the centuries, antisemites have used all of these foul accusations, especially the third (known as the “blood libel”), to arouse mob violence and state persecutions of Jewish communities.

The first of these tropes was turned against English journalist Johann Hari when he wrote in 2008 that he could not join the celebrations of the sixtieth year since Israel’s founding because of Israel’s well-documented mistreatment of Palestinians in the occupied territories, which has included the flushing of untreated sewage from illegal hilltop settlements onto Palestinian farmland, and an embargo on equipment needed to repair Gaza’s sewage system, resulting in potentially catastrophic health hazards. Britain’s Community Security Trust (parallel in some respects to B’nai Brith Canada) accused Hari of “us[ing] the themes of Israeli ‘raw untreated sewage’ and ‘shit’ to help explain why he could not bring himself to celebrate 60 years since Israel’s creation”—thus leaving readers to suppose, since no mention was made of Hari’s on-site reporting and references to reports on the subject, that he had engaged in a literally filthy piece of antisemitism aimed at the Jewish collectivity of Israel.<sup>38</sup>

The second trope was activated by former Canadian Minister of Justice Irwin Cotler in a paper on “Human Rights and the New Anti-Jewishness,” published in the *Jerusalem Post* in 2004, in the course of which he declared that “in a world in which human rights has emerged as the new secular religion of our time, the [UN] portrayal of Israel as the metaphor for a human rights violator is an indictment of Israel as the ‘new anti-Christ’—as the ‘poisoner of the international wells’....”<sup>39</sup> It is noteworthy that Cotler provides no indication of these antisemitic tropes being used by anyone in the UN committees he attacks—and one can only regret that a legal expert who earned an international reputation as an advocate of human rights has turned against that discourse to the point of caricaturing it as a pseudo-religion suffused with antisemitism.

The third trope was used on March 22, 2009 by Jonathan Kay, when he complained in the *National Post* that “From the opening days of the Gaza campaign [i.e. Operation Cast Lead], the blood-libels of ‘massacre’ and ‘genocide’ have flown thick and fast”; on the same day Melanie Phillips, writing in the *Spectator*, accused the Israeli newspaper *Haaretz* of a blood libel for having reported the testimony of Israeli soldiers that they had witnessed and participated in war crimes against Gaza civilians.<sup>40</sup>

Common to all three cases is a deliberate avoidance of the material evidence relating to allegations of Israeli wrong-doing: any such evidence is conveniently made to vanish by a rhetorical inversion which turns the state of Israel from the victimizer of Palestinians into the victim of its antisemitic accusers, and turns the human rights activist or journalist who has gathered or reported on evidence of war crimes and crimes against humanity into someone who must instead answer to charges of being an antisemitic disseminator of hatred.

The rhetorical strategy of this ideology of the “new antisemitism,” in short, is to move expeditiously away from material evidence and into the domain of rhetorical inversions and slander. In 2009, Yuli Edelstein, Minister of Public Diplomacy and Diaspora Affairs, explained at the Global Forum for Combating Antisemitism in Jerusalem how to go about it. The capital letters are his:

We must repeat again and again these basic facts—TO BE ‘anti-Israel’ IS TO BE ANTI-SEMITIC. TO BOYCOTT ISRAEL, ISRAELI PROFESSORS and ISRAELI business, these are not political acts, these are acts of hate, acts of anti-Semitism! Anti-Israel hysteria is anti-Semitic hysteria. They are one and the same.<sup>41</sup>

Leading Jewish intellectuals have been dismissive of the ideology out of which this rhetoric of a “new antisemitism” arises. Of the many who could be mentioned, I will cite just two.<sup>42</sup> University of Oxford philosopher Brian Klug wrote in an essay on “The Myth of the New Antisemitism” that “when every anti-Zionist is an anti-Semite, we no longer know how to recognize the real thing—the concept of anti-Semitism loses its significance.”<sup>43</sup> And American philosopher and literary theorist Judith Butler, while insisting that one must “refuse to brand as anti-Semitic the critical impulse or to accept anti-Semitic discourse as an acceptable substitute for critique,” has analyzed with characteristic lucidity the manner in which a false charge of antisemitism “works to immunize Israeli violence against critique by refusing to countenance the integrity of the claims made against that violence.” She has called for “a certain collective courage” to enable the public to “speak out, critically, in the

face of obvious and illegitimate violence....”<sup>44</sup>

An attempt to re-activate this already-refuted ideology of the “new antisemitism” was undertaken in Canada between 2009 and 2011 by a group of MPs, led by Irwin Cotler and by Citizenship, Immigration and Multiculturalism Minister Jason Kenney, who formed themselves into a Canadian Parliamentary Coalition to Combat Antisemitism (CPCCA). This attempt failed. Evidence given by senior police officers and university administrators to the inquiry held by the CPCCA refuted its claims that Canada is experiencing a surge of antisemitic incidents, and that Jews (especially those supportive of Israel) are routinely persecuted and harassed on Canadian campuses. The CPCCA, which had initially had all-party representation, lost its Bloc Québécois members, who resigned over the CPCCA’s refusal to give space in its hearings to human rights groups whose views differed from those of its principal organizers. The CPCCA’s final report was delayed for many months due to dissension prompted in part by the Conservative Party’s disgraceful attempts (for which Jason Kenney refused any apology) to undermine Irwin Cotler in his own riding with robocalls and a whispering campaign that charged him, ironically, with being insufficiently supportive of Israel. And although the CPCCA took pains not to accept any submission to its inquiry that was critical of its own announced presuppositions, eighteen of those submissions were published in a book that appeared many months before the CPCCA’s own belated report, and that was recommended in the *Globe and Mail* as late-summer reading “for Tories willing to learn.”<sup>45</sup>

## 7. The debate among Jews over the morality of Israel’s treatment of the Palestinians

As mentioned above, many Jewish scholars and public intellectuals, both in Israel and internationally, have placed themselves firmly in opposition to Israel’s policies of apartheid treatment of the Palestinians and of ongoing colonization of the occupied territories. The mere fact that this is so, and that in Canada and elsewhere they are joined in this by many Jewish citizen activists, amounts to a living refutation of Prime Minister Harper’s repetition of the rhetoric of the “new antisemitism.”

As one might expect, Israeli opinions as to the value of Harper’s speech were not unanimous. In confident anticipation of Harper’s declarations, Benjamin Netanyahu called him “a friend who always stands by us.”<sup>46</sup> Other Israelis, though they are certainly in a minority, think differently. Uri Avnery, a former member of the Knesset, a founding figure in Israel’s (sadly faltering) peace movement, and an internationally respected journalist, dismissed Harper’s speech as “ridiculous.”<sup>47</sup>

A fortnight after that speech was delivered, one of Israel’s leading sociologists, Professor Eva Illouz of the Hebrew University in Jerusalem, published a long essay in *Haaretz* that explored the depth and significance of the division in Jewish opinion over the moral issue of Israel’s treatment of the Palestinians. The title of that essay, “47 years a slave: a new perspective on the occupation,” is striking enough;<sup>48</sup> Illouz’s analysis is more so.

Illouz begins by remarking that on any given day, half or three-quarters of the news items in *Haaretz* “will invariably revolve around the same two topics: people struggling to protect the good name of Israel, and people struggling against its violence and injustices.” She points to two surprising features of this struggle: first, that while it involves copious mudslinging, “this mud is being thrown by Jews at Jews”; and secondly, that “the valiant combatants for the

good name of Israel miss an important point: the critiques of Israel in the United States are increasingly waged by Jews, not anti-Semites.”<sup>49</sup>

Claiming that “If Israel is indeed singled out among the many nations that have a bad record in human rights, it is because of the personal sense of shame and embarrassment that a large number of Jews in the western world feel toward a state that, by its policies and ethos, does not represent them anymore,” Illouz cites the observation of Peter Beinart that “the Jewish people seems to have split into two distinct factions....”<sup>50</sup>

Unlike most communal divisions in history, this one, she says, has occurred over a moral issue, that of Israel’s treatment of Palestinians in the occupied territories. Both sides claim to be impelled by moral imperatives. What she calls the “security as morality” group feel that “because Jews were the super victim of history and because of Israel’s inherently vulnerable state amidst a sea of enemies,” Israel “is twice morally beyond reproach.” The second group derives its positions from universal standards of justice, and from the observation that Israel is fast moving away from the pluralistic, multiethnic, pacific democracies of the world. Israel stopped being a valid source of identification for these Jews not because they are self-hating, but because many of them have been actively involved, in deed or thought, in the liberalization of their respective societies—that is, in the extension of human, economic and social rights to a wider variety of groups.<sup>51</sup>

Illouz then argues, at length, that the best historical analogy for understanding this communal division is the nineteenth-century debate in the United States over slavery.

Two factors make this analogy persuasive. The first follows from the view of Harvard sociologist Orlando Patterson, “a specialist in the history and sociology of slavery,” that the central fact about slavery is not that people are bought and sold as property, but rather that they are forced to endure a condition of “permanent, violent and personal domination” and of being “nationally alienated and generally dishonored.”<sup>52</sup> Illouz observes that “what started as a national and military conflict” between Israelis and Palestinians has morphed into a form of domination of Palestinians that now increasingly borders on conditions of slavery. If we understand slavery as a condition of existence and not as ownership and trade of human bodies, the domination that Israel has exercised over Palestinians turns out to have created the matrix of domination that I call “a condition of slavery.”<sup>53</sup>

As she explains in detail, this matrix of domination includes subjection to arbitrary arrest, incarceration, and torture; the imposition of a Kafkaesque legal system quite unlike the one under which Jewish Israelis live; military attacks (which have included using Palestinians as “human shields”), as well as violence and property destruction inflicted with impunity by settlers; severe restrictions on movement and an accompanying economic strangulation; restrictions on marriage, and a systematic undermining of property ownership; and the imposition of “a permanent sense of dishonor” on people who “conduct their lives without predictability and continuity, live in fear of Jewish terror and of the violence of the Israeli military power, and are afraid to have no work, shelter or family.”<sup>54</sup>

The second factor is the shocking degree to which an ideology of inherent Jewish superiority to Arabs—fully analogous to the biblically-supported doctrines of white supremacy preached by pro-slavery advocates in nineteenth-century America—has been adopted in Israel to legitimize the subjugation of Palestinians, in a now-mainstream settlers’ discourse. “Like the

whites in the American south,” Illouz writes, Israeli Jews “view themselves as obviously more moral, superior, civilized, technologically and economically far more accomplished than the inferior Arabs”; and “exactly like their southern 19th-century counterparts the settlers have abundantly sanctified the land through Bible narratives and see themselves, like the proslavery owners, as executing God’s will.”<sup>55</sup>

As a responsible scholar, Illouz explains very precisely both the limitations of this analogy and also—through extended analysis and citation that unfold full details of the conditions of slavery endured by Palestinians and the discourse of domination that has become implanted in Israel—its explanatory power.

Her conclusions are indeed forceful. Israel, although it is “the most security-conscious state on the planet,” has failed to make its conflict with the Palestinians into a military one. Instead, it has been dragged into a humanitarian disaster that has provoked a moral war and unbridgeable rift within the Jewish people. The public relations strategies of the state will not silence this moral war.

This also implies an increasing international isolation:

Israel is dangerously sailing away from the moral vocabulary of most countries of the civilized world. The fact that many readers will think that my sources are unreliable because they come from organizations that defend human rights proves this point. Israel no longer speaks the ordinary moral language of enlightened nations. But in refusing to speak that language, it is de facto dooming itself to isolation.<sup>56</sup>

It should be obvious how strongly Professor Illouz’s essay tells against the false pieties of Stephen Harper’s Knesset speech. On the most basic level of fact, Mr. Harper’s claim that critics of Israel’s policies and governance are by definition antisemites is exposed as wretchedly untrue—and one might hope that the analogy Professor Illouz develops at such length and with such precision would make even someone of his moral obliquity to squirm.

#### 8. Most disgracefully of all ... an apartheid state

In the concluding section of her essay, Eva Illouz remarks that Israelis fail to understand the nature of their colonization and occupation “because language has itself been colonized.” Most Israelis interpret the occupation in terms of “terrorists and enemies, and the world sees weak, dispossessed and persecuted people. The world reacts with moral outrage at Israel’s continued domination of Palestinians, and Israel ridicules such moral outrage as an expression of double standards....” Because of this “colonization” of discourse, “the debate dividing the Jewish people is more difficult than the debate about slavery, because there is no agreement even on how to properly name the vast enterprise of domination that has been created in the territories.”<sup>57</sup>

There is in fact quite widespread agreement—at least on the “universal standards of justice” side of the divide analyzed by Professor Illouz—as to an appropriate name.<sup>58</sup>

The term “apartheid” was applied with clinical accuracy by Marwan Bishara in 2001 to describe what Israel has done in the occupied territories from the early 1990s onward, “physically and demographically divid[ing] up the West Bank and Gaza into islands of



poverty, or bantustans, while maintaining economic domination and direct control over Palestinian land and natural resources.”<sup>59</sup> It was re-used by former US President Jimmy Carter in 2006—a usage validated in 2007 by Israel Prize laureate and former Minister of Education Shulamit Aloni.<sup>60</sup> And in January 2010, Henry Siegman, the former Executive Director of the American Jewish Congress and current President of the US/Middle East Project of the Council on Foreign Relations, wrote that Israel’s “relentless” construction of new settlements “seems finally to have succeeded in locking in the irreversibility of its colonial project. As a result of that ‘achievement,’ one that successive Israeli governments have long sought in order to preclude the possibility of a two-state solution, Israel has crossed the threshold from ‘the only democracy in the Middle East’ to the only apartheid regime in the Western world.”<sup>61</sup>

As Dr. Jason Kunin has remarked, there is a pungent irony to the fact that while Canadian university administrators—not to mention politicians—denounce as unacceptable any application of the term “apartheid” to the structures of land theft, cantonment, and racialized subjugation, separation, and oppression of a subject-population that characterize Israel’s treatment of the Palestinians, “South African legal scholars, who might be expected to have a more immediate understanding of the nature of apartheid, have not hesitated to describe the state of Israel’s behaviour in the occupied Palestinian territories as ‘a colonial system that implements a system of apartheid.’”<sup>62</sup> (His reference is to a report by South African scholars and jurists published by the Human Sciences Research Council of South Africa in May, 2009: *Occupation, Colonialism, Apartheid? A reassessment of Israel’s policies in the occupied Palestinian territories under international law.*)<sup>63</sup>

A finding that the state of Israel has implemented a system of apartheid has consequences under international law—in which apartheid is defined as a crime against humanity. It is scarcely surprising, then, that as Nobel Peace Prize winner Archbishop Desmond Tutu has observed, “Some people are enraged by comparison between the Israeli/Palestinian conflict and what happened in South Africa....” But as Tutu went on to insist, “For those of us who lived through the dehumanizing horrors of the apartheid era, the comparison seems not only apt, it is also necessary [...] if we are to persevere in our hope that things can change.”<sup>64</sup>

This comparison does not involve any claim that the Israeli system of apartheid is identical to the one that existed in South Africa. In the words of Naomi Klein, the question is not “Is Israel the same as South Africa?”, it is “do Israel’s actions meet the international definition of what apartheid is?” And if you look at those conditions which include the transfer of people, which include multiple tiers of law, official state segregation, then you see that, yes, it does meet that definition—which is different than saying it is South Africa.<sup>65</sup>

But supporters of Israeli policies would be mistaken to think that they can draw consolation or encouragement from the differences between the Israeli and the South African systems. In the words of Ronnie Kasrils, who was one of the many South African Jews who struggled honourably against apartheid, and who subsequently served as a minister in Nelson Mandela’s government:

[W]ithout a doubt, we South Africans who fought apartheid have been unanimous in finding Israel’s methods of repression and collective punishment far, far worse than anything we saw during our long and difficult liberation

struggle. Israel's indiscriminate, widespread bombing and shelling of populated areas, with scant regard for the civilian victims, was absent in South Africa, because the apartheid system relied on cheap black labor. Israel rejects outright an entire people, and seeks to eliminate the Palestinian presence entirely, whether by voluntary or enforced "transfer." It is clearly this that accounts for Israel's greater degree of sustained brutality in comparison to apartheid South Africa.<sup>66</sup>

Perhaps, in view of Eva Illouz's analysis, we should supplement the term "apartheid" by speaking as well of "conditions of slavery." But whether or not we accept this intensification of the term, we should remember something else that is underlined in a recent article by Professor Jake Lynch, Director of the University of Sydney's Centre for Peace and Conflict Studies. As he notes, the South African Human Sciences Research Council report that found Israel to be in breach of the International Convention on the Suppression and Punishment of the Crime of Apartheid also declared that such a finding obliges governments to "co-operate to end the violation; not to recognise the illegal situation arising from it; and not to render aid or assistance to the State committing it."<sup>67</sup>

There seems no need to comment on Prime Minister Harper's view that it is disgraceful to apply the term "apartheid" to what Israel is doing. Uri Avnery may be right in thinking that the best response to such vapourings is ridicule.

## 9. Conclusion

But something more than ridicule is required to deal with an evident threat to the right of citizens to engage in nonviolent protests, boycotts, and the like when they find it necessary to draw public attention to the failure of our government (and many others) to fulfil their formal obligations under international law.

Two actions seem appropriate in response to what I have argued is a Trojan horse in Bill C-13's revisions to Sections 318 and 319 of the Canadian Criminal Code. The first should be uncontroversial, and can be undertaken at once. Section 12 of Bill C-13 (the section that contains these revisions) can simply be amended to include the statement that "Nothing in this Section shall be interpreted as conflicting with Canada's responsibility, in accordance with Article 1 of the Fourth Geneva Convention, 'to respect and ensure respect for' that Convention 'in all circumstances'; nor shall anything in this section be interpreted as conflicting with Canada's responsibilities under other instruments of international humanitarian law of which Canada is a signatory."

The second action I would recommend is for Canadians to replace the government that engages in Trojan-horse lawfare of this kind with a better one.

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## Notes

1See, for example, Michael Deas, "Norway's pension fund divests from Israel's largest real estate firm," The Electronic Intifada (19 June 2012), <http://www.electronicintifada.net/blogs/michael-deas/norways-pension-fund-divests-israels-largest-real-estate-firm>; "Major US pension fund divests ethical fund from Veolia," BDS Movement (22 November 2013), <http://www.bdsmovement.net/2013/tiaa-cref-social-choice-veolia-11431>; "Veolia Campaign Victories: Total value of lost Veolia contracts: €18.122 billion (\$23.97 billion)," Global Exchange (c. February 2014), <http://www.globalexchange.org/economicactivism/veolia/victories>; Asa Winstanley, "Dutch pension giant divests from 5 Israeli banks," BDS Movement (13 January 2014), <http://www.bdsmovement.net/2014/dutch-pension-giant-divests-from-5-israeli-banks-11594>; Elena Popina, "SodaStream Drops Amid Sanctions Over Jewish Settlements," Bloomberg (3 February 2014), <http://www.bloomberg.com/news/2014-02-03/sodastream-slumps-on-sanction-campaign-over-jewish-settlements.html>.

2"Sanctions against Israel: A campaign that is gathering weight," The Economist (8 February 2014), <http://www.economist.com/news/middle-east-and-africa/21595948-israels-politicians-sound-rattled-campaign-isolate-their-country/>.

3Avraham Burg, "What's wrong with BDS, after all? Israel will be helpless when the discourse moves from who's stronger/tougher/more resilient to a discourse on rights and values," Haaretz (3 February 2014), <http://www.haaretz.com/opinion/.premium-1.572079>; quoted from Rev. Robert Assaly, "BDS movement scores huge in Superbowl victory over Sodastream," NECEF: Near East Cultural & Educational Foundation (20 February 2014), [www.necef.org](http://www.necef.org).

4Herb Keinon, "Netanyahu convenes strategy meeting to fight boycotts," Jerusalem Post (10 February 2014), <http://www.jpost.com/National-News/Netanyahu-convenes-strategy-meeting-to-fight-boycotts-340904>; Gil Ronen, "Leftist Ministers Kept Out of Secret Cabinet BDS Session," Arutz Sheva 7 (10 February 2014), <http://www.israelnationalnews.com/News/News.aspx/177294#.UwZ3FkJdUfj>. The fact that figures like Tzipi Livni can be described as "leftist" is one sign of a far-right skewing of the Israeli political spectrum.

5"Israeli ministers discuss using lawyers and Mossad to fight BDS," Middle East Monitor (10 February 2014), <https://www.middleeastmonitor.com/news/middle-east/9666-israeli-ministers-discuss-using-lawyers-and-mossad-to-fight-bds>.

6Jake Lynch, "Coalition plans to punish those who boycott Israel," The Drum Opinion (Australian Broadcasting Corporation) (25 June 2013), <http://www.abc.net.au/unleashed/4778144.html>.

7Abdus-Sattar Ghazali, "Academic Freedom Act threatens academic freedom?" OpEd News (16 February 2014), [http://www.opednews.com/articles/Academic-Freedom-Act-threa-by-Abdus-Sattar-Ghaza-Academic-Freedom\\_Associations\\_Backlash\\_Boycott-140216-464.html](http://www.opednews.com/articles/Academic-Freedom-Act-threa-by-Abdus-Sattar-Ghaza-Academic-Freedom_Associations_Backlash_Boycott-140216-464.html).

8Campbell Clark, "Netanyahu calls Harper a 'friend that always stands by us'," Globe and Mail (19 January 2014, updated 20 January 2014),

<http://www.theglobeandmail.com/news/politics/harper-arrives-in-israel-on-inaugural-middle-east-visit/article16398905/>.

9“Myths and Facts: Bill C-13, Protecting Canadians from Online Crime Act,” Department of Justice Canada (November 2013, modified 5 December 2013), [http://www.justice.gc.ca/eng/news-nouv/nr-cp/2013/doc\\_33002.html](http://www.justice.gc.ca/eng/news-nouv/nr-cp/2013/doc_33002.html).

10See Michael Geist, “The Privacy Threats in Bill C-13, Part One: Immunity for Personal Info Disclosures Without a Warrant,” Michael Geist (25 November 2013), <http://www.michaelgeist.ca/content/view/7006/125/>; and “The Privacy Threats in Bill C-13, Part Two: The Low Threshold for Metadata,” Michael Geist (11 December 2013), <http://www.michaelgeist.ca/content/view/7028/125/>.

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12Terry Wilson, “The Dangers Hidden in Bill C-13 ‘Protecting Canadians From Online Crime Act’,” Canadian Awareness Network (23 November 2013), <http://www.canadianawareness.org/2013/11/the-dangers-hidden-in-bill-c-13-protecting-canadians-from-online-crime-act/>.

13“BDS a hate crime? In France, legal vigilance punishes anti-Israel activists,” Haaretz (15 February 2014), <http://www.haaretz.com/jewish-world/1.574361>.

14Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, <http://www.icrc.org/ihl/nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>, Article 1.

15See, for example, Omar Barghouti, “Besieging Israel’s Siege,” The Guardian (12 August 2010), <http://www.theguardian.com/commentisfree/2010/aug/12/besieging-israel-siege-palestinian-boycott>: “Created and guided by Palestinians, BDS opposes all forms of racism, including antisemitism, and is anchored in the universal principles of freedom, justice and equal rights that motivated the anti-apartheid and US civil rights struggles.”

16Bill C-13. An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Docid=6311444&File=4>.

17Criminal Code (R.S.C., 1985, c. C-46. Act current to 2014-01-14 and last amended on 2013-12-12, Justice Laws Website, <http://www.laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>.

18“BDS a hate crime?” Haaretz (15 February 2014). Italics added.

19Dr. Jean-Yves Camus, *Racist Violence in France* (Brussels: European Network Against Racism, 2011), <http://www.cms.horus.be/files/99935/MediaArchive/Racist%20Violence%20Report%20France%20-%20Online.pdf>, p. 4.

20“BDS a hate crime?” Haaretz (15 February 2014).

21“Proposition de loi visant à aggraver les peines punissant les infractions à caractère raciste et à renforcer l’efficacité de la procédure pénale,” N° 350, Présentée par MM. Pierre Lellouche et Jacques Barrot, Députés, Assemblée Nationale (7 novembre 2002), <http://www.assemblee-nationale.fr/12/propositions/pion0350.asp>, “Exposé de motifs.”

22Ibid.: “Morales ou physiques, les violences racistes offensent non seulement les personnes qui en sont victimes, mais elles portent aussi atteinte à la cohésion national et aux valeurs essentielles de la Nation.”

23Ibid.: “Reste que le phénomène peut à tout moment resurgir, comme l’attestent plusieurs cas récents, particulièrement préoccupants, tels l’assassinat ouvertement raciste au mois d’octobre d’un jeune Français d’origine marocaine dans le département du Nord, ou l’agression perpétrée début novembre contre les jeunes élèves d’une école privée juive du XX<sup>e</sup> arrondissement de Paris, du seul fait de leur confession.”

24Ibid.: “L’objet de la présente proposition, sans créer de nouvelles incriminations dans le code pénal, vise à prendre en compte l’intention raciste, et dès lors à aggraver lourdement les peines encourues par les auteurs d’atteintes à la personne humaine et aux biens lorsqu’elles ont un caractère raciste. Ces aggravations de peines sont appelées à s’appliquer aux actes de torture et barbarie, aux violences ayant entraîné la mort sans intention de la donner, une mutilation, une infirmité permanente ou un incapacité de travail, ainsi qu’aux actes de destruction, dégradation et détérioration de biens.”

25“BDS a hate crime?” Haaretz (15 February 2014).

26Ibid.

27Ibid.

27Ibid.

28The earliest version of the Trojan horse story is in Homer’s *Odyssey*, Books IV. 271-89, and VIII. 492-520. The story was re-told by later poets, among them Quintus Smyrnaeus, in *The Fall of Troy*, Books XII. 104-520, and XIII; and Virgil, in his *Aeneid*, Book II. 13-267.

29Paul McLeod, “Hate law favours Israel, critics charge,” *Chronicle-Herald* (19 March 2014), [http://www.thechronicleherald.ca/canada/1194592-hate-law-bill-favours-israel-critics-charge?from=most\\_read&most\\_read=1194592](http://www.thechronicleherald.ca/canada/1194592-hate-law-bill-favours-israel-critics-charge?from=most_read&most_read=1194592).

30 *Additional Protocol...*, <http://www.conventions.coe.int/Treaty/en/Treaties/Html/189.htm>, Ch. I, Art. 2.1: “For the purposes of this Protocol: “*racist and xenophobic material*” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.”

31 McLeod, “Hate law favours Israel, critics charge.”

32 In the *Criminal Code*, 318.(2), “‘genocide’ means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely, (a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”

Article 2 of the *Convention on Genocide* declares that “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” (See *Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by Resolution 260 [III] A of the United Nations General Assembly on 9 December 1948*, <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-1-1021-English.pdf>.)

33 David MacDonald and Graham Hudson, “The Genocide Question and Indian Residential Schools in Canada,” *Canadian Journal of Political Science/Revue Canadienne de Science Politique* 45.2 (June 2012): 427-49, <http://www.journals.cambridge.org/action/display/Abstract?fromPage=online&aid=8649111>; see especially pp. 434-38. MacDonald and Hudson remark that the 2000 *Crimes Against Humanity and War Crimes Act* explicitly excluded the possibility of retroactive prosecutions for genocidal crimes committed in Canada prior to 1998.

34 “Read the full text of Harper’s historic speech to Israel’s Knesset,” *The Globe and Mail* (20 January 2014), <http://www.theglobeandmail.com/news/politics/read-the-full-text-of-harpers-historic-speech-to-israels-knesset/article16406371/?page=1>.

35 Ibid.

36 Norman G. Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History* (Berkeley: University of California Press, 2005), pp. 21 ff.

37 Following the example of Brian Klug, I have referred to “the ‘Jew’” in quotation marks in order to make it clear that what is being referred to in this sentence is the fantasy-figure generated by antisemitic stereotyping. See Klug, “What do we mean when we say ‘antisemitism’?” Plenary lecture at the Jewish Museum, Berlin, 8 November 2013, *YouTube* (21 November 2013), <http://www.youtube.com/watch?v=ytzSZxIS3OI>, quoting Shoah survivor Imre Kertész: “In a racist environment, a Jew cannot be human, but he cannot be a Jew either, for ‘Jew’ is an unambiguous designation only in the eyes of the antisemite.”

38 This incident is discussed in Michael Keefer, “Data and Deception: Quantitative Evidence of



Antisemitism," in Keefer, ed., *Antisemitism Real and Imagined: Responses to the Canadian Parliamentary Coalition to Combat Antisemitism* (Waterloo, ON: The Canadian Charger, 2010), pp. 183-85. See Johann Hari, "Israel is suppressing a secret it must face," *The Independent* (28 April 2008), <http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-israel-is-suppressing-a-secret-it-must-face-816661.html>; Hari, "The loathsome smearing of Israel's critics," *The Independent* (8 May 2008), <http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-the-loathsome-smearin-g-of-israels-critics-822751.html>; and Community Security Trust, *Antisemitic Discourse in Britain in 2008* (CST, 2009), <http://www.thecst.org.uk/docs/Antisemitic%20discourse%20Report%202008.pdf>, p. 24 (italics in the original text).

39See Keefer, "Desperate Imaginings: Rhetoric and Ideology of the 'New Antisemitism'," in *Antisemitism Real and Imagined*, pp. 212-15; and Irwin Cotler, "Human Rights and the New Anti-Jewishness," *Jerusalem Post* (5 February 2004); available at SPME: Scholars for Peace in the Middle East, <http://www.spme.net/cgi-bin/articles.cgi?ID=128>.

40Ibid., p. 211; see Jonathan Kay, "Here is the difference between Israel and its Arab enemies," *National Post* (22 March 2009), <http://network.nationalpost.com/np/blogs/fullcomment/archive/2009/03-kay-here-is-the-difference-between-israel-and-its-arab-enemies.aspx>; and Melanie Phillips, "The Ha'aretz Blood Libel," *Spectator* (22 March 2009), <http://www.spectator.co.uk/melaniephillips/3464331/the-haaretz-blood-libel.html>.

41Quoted in Keefer, ed., *Antisemitism Real and Imagined*, "Introduction," p. 15.

42Others who could be cited include Shulamit Aloni, Max Blumenthal, Noam Chomsky, Marc Ellis, Richard Falk, David Theo Goldberg, Neve Gordon, Amira Hass, Tony Judt, Sir Gerald Kaufman, Baruch Kimmerling, Naomi Klein, Joel Kovel, Gideon Levy, Ilan Pappé, Harold Pinter, Yakov Rabkin, William I. Robinson, Jacqueline Rose, Israel Shahak, Avi Shlaim, and David Shulman. (Many of these people have also been supporters of BDS.)

43Brian Klug, "The Myth of the New Anti-Semitism," *The Nation* (15 January 2004), <http://www.thenation.com/article/myth-new-anti-semitism>.

44Judith Butler, "The Charge of Anti-Semitism: Jews, Israel, and the Risks of Public Critique," in *Precious Life: The Powers of Mourning and Violence* (2004; rpt. London and New York: Verso, 2006), pp. 126-27.

45Gerald Caplan, "A Mideast reading list for Tories willing to learn," *Globe and Mail* (27 August 2010, updated 15 November 2010), <http://www.theglobeandmail.com/news/politics/second-reading/a-mideast-reading-list-for-tories-wllin-g-to-learn/article1314259/>. The book, *Antisemitism Real and Imagined: Responses to the Canadian Parliamentary Coalition to Combat Antisemitism*, contains in the first of its three parts eleven submissions by scholars and human rights activists (a majority of them Jewish, as it happens), and in its second part, rejected submissions by seven human rights organizations; the third part consists of three essays by the editor (whose submission to the CPCCA had also been rejected).

46Campbell Clark, "Netanyahu calls Harper a 'friend that always stands by us'," *Globe and Mail* (19 January 2014). This statement was made a day before Harper's address to the Knesset. But as Netanyahu knew, Harper's statements on Israel-Palestine echo what he has been saying for years. In March 2014, Netanyahu declared to AIPAC that supporters of BDS "should be opposed because

they're bad for peace and because BDS is just plain wrong. Those who wear the BDS label should be treated exactly as we treat any anti-Semite or bigot. They should be exposed and condemned" (video clip reproduced by Lia Tarachansky, "Netanyahu Attacks Boycott As Campaign Enters New Phase," *The Real News* [23 March 2014], [http://www.therealnews.com/t2/index.php?option=com\\_content&task=view&id=31&Itemid=74&jumival=11633](http://www.therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=11633)).

47Uri Avnery, "Nothing New Under the Sun," *Gush Shalom.org* (25 January 2014), <http://www.zope.gush-shalom.org/home/en/channels/avnery/1390578868>.

48Eva Illouz, "47 years a slave: a new perspective on the occupation," *Haaretz* (7 February 2014), <http://www.haaretz.com/news/features/.premium-1.572880>. Illouz is the author of eight books and more than eighty articles and book chapters; her work has been widely translated, and has won major awards in Germany, France, and the United States, including, in 2013, the Anneliese Meier Award of the Alexander von Humboldt Foundation. She has also been, since 2012, President of the Bezalel Academy of Arts and Design, her country's national arts academy.

49Ibid.

50Ibid. Illouz is referring to Peter Beinart's essay "The Failure of the American Jewish Establishment," *New York Review of Books* (10 June 2010), <http://www.nybooks.com/articles/archives/2010/jun/10/failure-american-jewish-establishment/>; and perhaps also to his book *The Crisis of Zionism* (New York: Times Books, 2012).

51Ibid.

52These words are quoted by Illouz from another internationally respected authority on slavery, David Brion Davis, who cites Patterson in his book *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006). Orlando Patterson's books include the classic study *Slavery and Social Death: A Comparative Study* (Cambridge MA: Harvard University Press, 1982).

53Illouz, "47 years a slave."

54Ibid.

55Ibid.

56Ibid.

57Ibid.

58The two following paragraphs are repeated from my essay "Desperate Imaginings: Rhetoric and Ideology of the 'New Antisemitism'," in *Antisemitism Real and Imagined*, p. 231.

59Marwan Bishara, *Palestine/Israel: Peace or Apartheid* (2001; 2nd ed., London and New York: Zed Books, 2002), p. 4.

60Jimmy Carter, *Palestine: Peace Not Apartheid* (2006; rpt. New York: Simon & Schuster, 2007); see also "Canada's withholding funds from Palestinians 'criminal': Carter," *CBC News* (9 December 2006), <http://www.cbca.ca/canada/story/2006/12/08/carter-israel.html>; and Shulamit Aloni, "Yes, There is Apartheid in Israel," *CounterPunch* (8 January 2007),

<http://www.counterpunch.org/aloni01082007.html>. Aloni is also the author of *Demokratia ba'azikim* [Democracy or Ethnocracy] (Tel Aviv: Am Oved, 2010).

61Henry Siegman, "Imposing Middle East Peace," *The Nation* (7 January 2010), <http://www.thenation.com/doc/20100125/siegman>.

62Jason Kunin, "Freedom to Teach, Freedom of Speech: Israel-Palestine," in *Antisemitism Real and Imagined*, pp. 58-59 n. 2.

63Middle East Project of the Democracy and Governance Programme, *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law* (Cape Town: Human Sciences Research Council of South Africa, May 2009), 302 pp.; available at <http://www.electronicintifada.net/files/090608-hsrc.pdf>.

64Quoted by Ronnie Kasrils, "Sour Oranges and the Sweet Taste of Freedom," in Audrea Lim, ed., *The Case for Sanctions Against Israel* (London and New York: Verso, 2012), p. 109 (quoting from Archbishop Desmond Tutu, "Realizing God's Dream for the Holy Land," *Boston Globe* [26 October 2007]). See also "Palestinian 'humiliation' by Israel reminds Tutu of apartheid," *Mail & Guardian* (10 March 2014), <http://www.mg.co.za/article/2014-03-10-palestinian-humiliation-by-israel-reminds-tutu-of-apartheid>.

65"Transcript of Naomi Klein Lecture in Ramallah," *BDS Movement* (10 July 2009), <http://www.bdsmovement.net/2009/transcript-of-naomi-klein-lecture-in-ramallah-465>; quoted by Ken Loach, Rebecca O'Brien, and Paul Laverty, "Looking for Eric, Melbourne Festival, and the Cultural Boycott," in Lim, ed., *The Case for Sanctions Against Israel*, p. 200.

66Ronnie Kasrils, "Sour Oranges..." in Lim, ed. *The Case for Sanctions Against Israel*, pp. 109-110.

67Jake Lynch, "Coalition plans to punish those who boycott Israel," *The Drum Opinion* (Australian Broadcasting Corporation) (25 June 2013)<sup>1</sup>. The relevant section of the *International Convention on the Suppression and Punishment of the Crime of Apartheid* is Article IV: "The States Parties to the present Convention undertake: (a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of *apartheid* and similar segregationist policies or their manifestations and to punish persons guilty of that crime...." The text is available at <http://www.oas.org/dil/1973%20International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf>.

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