

Antisemitism and Freedom of Expression

Bernard Harrison and Lesley Klaff

1. Introduction

Antisemitism and the limits of freedom of expression is too vast a topic for a chapter of this length to hope to deal with in full. We shall try to keep the discussion within manageable bounds by concentrating on at least the main conceptual, moral, and legal issues arising in recent debates over the merits of the IHRA definition of antisemitism.

2 The IHRA definition of antisemitism

This document has a brief, but complex and interesting history. It belongs to a family of proposed definitions of antisemitism, all of which derive from what has become known as the International Working Definition, or the EUMC (European Monitoring Centre on Racism and Xenophobia) Definition of Antisemitism. This was originally published in January 2005 by the Fundamental Rights Agency of the European Union. It differed from the multitude of previous definitions, for the most part formulated by individual scholars and writers, by having emerged from lengthy discussion by teams of scholars, government officials and representatives of community and civil rights organisations. No doubt because of this, the definition broke new ground in recognising for the first time that antisemitism “could also target the State of Israel, conceived as a Jewish collectivity.”¹ This has since made it, and all its subsequent versions, intensely controversial.

Despite this, the Working Definition has been enormously influential. Versions of it have been adopted by the U.S. Department of State, the U.S. Commission of Civil Rights, the Organization for Security and Co-operation in Europe, and other agencies. In the summer of 2016, a version of the International Working Definition was adopted by the Berlin-based International Holocaust Remembrance Alliance (IHRA). Later that same year, the British Government announced its decision to formally adopt the definition in its IHRA version. According to a statement from the Prime Minister's office at the time, the intention of adopting the definition was to “ensure that culprits will not be able to get away with being antisemitic because the term is ill-defined, or because different organisations or bodies have different interpretations of it.”² More recently, numbers of British institutions, including universities, trades unions and the Labour Party among others, have found themselves under pressure, often from Government, sometimes from the media, to adopt the definition.

All versions of the International Definition share the same format. Each begins with a formula, essentially unchanged from the EUMC version, intended to establish the *nature* of antisemitism: to say *what antisemitism is*. In the IHRA version, this reads:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

The importance attached to the above statement is often indicated by enclosing it on the page in a printed box. This is followed by a brief further elucidation of the above, and by a series of “examples,” which, it is proposed, “may serve as illustrations.”

The further elucidation reads:

Manifestations might include the targeting of the state of Israel conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits. Contemporary examples of antisemitism in public life, the media, schools, the workplace and in the religious sphere could, taking into account the overall context, include, but are not limited to:

The list of “contemporary examples” then follows. It includes the following [numbers added]:

- 1. Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology, or an extremist view of religion.**
- 2. Making mendacious, dehumanising, demonizing, or stereotypical allegations about Jews as such, or the power of Jews as a collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy**

or of Jews controlling the media, economy, government or other societal institutions.

3. Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.

4. Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of national socialist Germany and its supporters and accomplices during World War II (the Holocaust).

5. Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.

6. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

7. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a state of Israel is a racist endeavour.

8. Applying double standards by requiring of it [Israel] a behavior not expected or demanded of any other democratic nation.

9. Using the symbols and images associated with classical antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterise Israel or Israelis.

10. Drawing comparisons of contemporary Israeli policy to that of the Nazis.

11. Holding Jews collectively responsible for actions of the state of Israel.

3. Fears concerning the use of the definition.

Although the definition neither has nor was ever intended to have any legal force, its application in combination with existing laws governing such matters as hate speech and workplace harassment could, it has been widely feared, result in restrictions upon freedom of expression in various quarters and circumstances.

The case for regarding the wide implementation of the definition as a potential threat to freedom of speech normally contains the following elements. Firstly, it is argued that antisemitism, properly understood, is hostility towards individual Jews as Jews. From this allegedly common-sense understanding of the nature of antisemitism as a form of ethnic prejudice, it follows that no hostility *to a state*, whether Israel or any other, can be considered antisemitic in character, but must rather be considered as part of the ordinary give and take of political debate. Yet several of the examples offered by the IHRA definition, for example 7 and 10 above, characterise as antisemitic criticisms of Israel frequently heard from progressive voices on both sides of the Atlantic. It follows -- so the argument goes -- that wide implementation of the definition could not but run contrary to the general requirement, in a free society, of freedom of expression for all political points of view, however objectionable some might seem to particular interest groups.

We shall label this *the Argument for Caution in Implementing the IHRA Definition*, or the Argument for Caution for short. It is frequently advanced in combination with two connected subsidiary assertions. (A₁) says that claims to the effect that any criticism of Israel whatsoever is antisemitic are, without exception, motivated by the desire to silence *all* (or, as it is sometimes put, "all serious") *criticism of Israel*. (A₂) says that Jewish objections to criticisms of Israel on grounds of antisemitism merely express the discomfort Jews feel at hearing Israel criticised, and hence, since mere *offense* can never be a legitimate ground for restricting freedom of expression³, offer no legitimate ground for doing so in the present case.

4. Objections to the Argument for Caution

The Argument for Caution is open to objection on the ground that it disregards a range of relevant conceptual distinctions. The present authors, a Jewish lawyer, and a non-Jewish philosopher, find these to be four in number; namely: (1) the distinction between types of antisemitism; (2) the distinction between a politics of change and a politics of de-legitimation; (3) the distinction between criticism and defamation; and finally, (4) the distinction between political opposition and inter-communal aggression. We shall deal with them in that order.

5. Types of antisemitism

The Argument for Caution hinges upon the claim that antisemitism manifests itself in one form only: contempt or hostility towards Jews as Jews. This account of the nature of antisemitism as a state of mind characteristic of certain individuals, is central to the arguments of a number of critics of the IHRA definition. Former Court of Appeal judge, Sir Stephen Sedley, writing in the *London Review of Books* in 2017, defines antisemitism as “hostility to Jews as Jews”⁴, while *Independent Jewish Voices* (IJV) supports the ‘Jerusalem Declaration on Antisemitism’ (JDA), which was published online in March 2021 under the auspices of the Van Leer Institute, Jerusalem.⁵ The JDA defines antisemitism as “discrimination, hostility or violence against Jews as Jews (or Jewish institutions as Jewish.)”⁶.

Such an account of antisemitism seriously underestimates the variety of forms it can take⁷. Antisemitism certainly can manifest itself in this way, as an emotional/intentional disposition of hostility and contempt for *individual* Jews, as Jews, on the part of bigoted *individual* non-Jews. We shall label this version *social antisemitism*. But antisemitism can also manifest itself as a *collectively* constituted and propagated body of pseudo-explanatory political theory (we shall label this version *political antisemitism*) concerning the alleged role of the Jewish *collectivity* in the secret control and manipulation of world affairs.⁸ The main elements of this theory are familiar enough. The Jewish community lies at the root of all the main evils affecting the world, including all wars. Its powers over finance and its inherent cohesion have

allowed it, through the agency of the World Jewish Conspiracy, to secretly take control of a wide variety of only apparently non-Jewish institutions, from Wall Street, the banks, Hollywood and the media, to the Pentagon and the US Presidency. The secret power of the Jews is such that the only way to combat it is to eliminate the Jews completely, either by forcibly excluding them from all positions of influence, or in the last analysis, by extermination.

This second version, in which antisemitism takes the form of a body of pseudo-explanatory theory, is the version propagated by the pre-War Nazi party; the version that led to the Holocaust. Explicit versions of it are presently propagated by a variety of Islamist groups, including Hamas and the present government of Iran, and expressions of it from Arabic-language media and journalistic sources are commonplace throughout the Middle East.⁹ Contemporary antisemitism in the UK and elsewhere is also chiefly motivated by a belief in the *collective* (and sole) responsibility of Jews for the Nazism, racism, colonialism and Apartheid supposedly represented by Israel, as well as for the threat to peace in the Middle East and the world that these supposedly entail. Indeed, the IHRA definition's examples of antisemitism were included precisely to reflect the changed nature of the wave of antisemitism that swept across Europe and America at the start of the millennium, in the aftermath of three seminal events: the breakdown of the Israel/Palestine peace process in 2000, the UN Conference at Durban in 2001, where Zionism was portrayed as the key source of racism in the world, and 9/11, for which "the Jews" were widely, if irrationally, blamed by conspiracy theorists¹⁰.

6. The Politics of Change vs. the Politics of Delegation

The final clause of Example 8 of the IHRA definition implicitly characterises a vast range of criticisms of Israel -- any act or policy in conflict with standards of conduct "expected or demanded of any other democratic nation" -- as *non-antisemitic*. An example would be the

use of white phosphorus in the first Gaza campaign of 2008-9. This was widely criticised, both abroad and within Israel, with the result the IDF took steps to see that it would not recur¹¹.

Both the criticism and the result belong to what one might call the *politics of change*. The aim of such a politics, which encompasses the greater part of progressive politics in democratic countries, is not to overthrow the state but rather to force governments or entrenched bureaucracies to change in limited and specific ways.

Matters are very different with the criticism that Example 9 *does* characterise as antisemitic: "Drawing comparisons of contemporary Israeli policy to that of the Nazis." In fact, the charge which this example singles out as antisemitic is not generally put as cautiously as this. The charge as usually heard is not that this or that Israeli policy is comparable to this or that policy of the Third Reich; it is, rather, that *Israel is a Nazi state*. That is the message intended to be drawn from the banners, commonly exhibited at demonstrations, which display the swastika and the Star of David linked by an 'equals' sign¹².

Plainly, this is not a claim that belongs to the politics of change. What it is saying is not that this or that specific aspect of Israeli policy is in need of change. It says something, not about *any specific act or policy* of Israel but about *the very nature of Israel as a state*, and what it says is that Israel is a state *of a type that should not exist*.¹³ It belongs, in short, not to the politics of reform, but to what one might call the *politics of delegitimation*. It is in fact a position central to the politics of the "antizionist" left, including the BDS movement, that Israel is an "illegitimate state", which should never have been allowed to come into existence in the first place and should not continue to exist now. It is not an easy position to defend, for two reasons. The first is that no other state at present in existence is held, by the left or by any other political grouping in the West, to *lack legitimacy as a state*. The second is that the human rights record of Israel is vastly better than that of many other states in the world, including the majority of those in the region. If the illegitimacy claim is to enjoy any plausibility, therefore, its

plausibility must depend, not on supporting claims concerning this or that specific act or policy of the Government of Israel, but rather on supporting claims concerning the *essential nature* of the state. The claim that Israel is a Nazi state is advanced as one of these supporting claims. Others include the claim that Israel is a *racist state*; that it is a *settler-colonial state*; and that it is an *Apartheid state*.

7. Criticism vs. Defamation

These are plainly very serious charges. Were they to display point-for-point correspondence with reality they would indeed raise worrying questions concerning Israel's right to exist as a state. Unfortunately for those who believe in them, however, they display no correspondence with reality whatsoever. Israel is not a 'Nazi state,' because its government is not in the hands of a single political party obedient to an inspired leader and committed to enforcing policies in broad alignment with those of the former *Nationalsozialistische Deutsche Arbeiterpartei*. It is not an "Apartheid state" because its constitutional arrangements fail to correspond in any way with those of the Apartheid regime in South Africa, which among other things rested upon the enforcement of 'Pass laws' designed to keep the "races" as far apart as possible and allowed representation to non-white citizens only in the so-called "Bantustans." It is not a 'racist state' because its Jewish population embraces Jews of all racial origins and colours, and for that matter because its citizens are only about 70 per cent Jewish, the remainder being for the most part Arab, including Muslim and Christian, Druze, Circassian and others. There are Arab Israeli Members of the Knesset and Arab Ministers of Government, as well as Arab Israeli Supreme Court Justices. An Arab political party, Ra'am, forms part of the present governing coalition in Israel. Many Druze, some Christian Arabs and a few Muslims choose to serve in the IDF. Israel is not a 'colonial-settler state' because it did not come into being as a result of any European project of colonialism, but as the result of the Jewish population of Palestine establishing its right to

political autonomy in the face of an attempt, from which the European powers stood aloof, to exterminate it or drive it from the land by military force.

In the case of these alleged "criticisms" of Israel, we are dealing, in short, not with "criticism," in the sense of a legitimate move in a politics of change, but rather with defamation in the service of a politics of delegitimation. The claims in question are *defamatory* in the sense of being falsehoods calculated to undermine the reputation of the victim and to expose him or her to hatred and contempt. In this they are consistent with the long history of antisemitism. Indeed, Anthony Julius has described antisemitism as "a repertoire of attitudes, myths, and defamations in circulation at any given time"¹⁴ and has explained that all versions of antisemitism libel Jews, whether as individuals or as a collective, thereby damaging the good name of the Jewish people.¹⁵

Moreover, they are defamatory in ways made familiar by past eruptions of antisemitism in the form of a pseudo-explanatory theory: *political antisemitism*. Political antisemitism characteristically holds that Jews are responsible for all the evils that occur in the world, and that the only way of ridding the non-Jewish world of their malign influence is to eliminate them altogether. In the same way, current "antizionism" holds Israel to be guilty of things -- Nazism, colonialism, Apartheid, racism -- which for many on the "progressive" wing of Western politics at the moment represent the nadir of evil, and proposes that the only way to preserve the non-Jewish world from these abominations is to deny the right of Israel to exist as a Jewish state and, with luck, to bring its allegedly iniquitous existence to an end¹⁶.

8. Political Opposition vs. Inter-Communal Aggression

If one were really to believe, for instance, that Israel *is by its nature a Nazi state*, then presumably one would be under a duty to oppose any supporter of Israel, whether Jewish or non-Jewish. As we see every day, however, on social media, in the universities, in work

environments and in public life, it is only *Jewish* supporters of Israel, or those who are presumed to be Jewish, who must endure abuse, harassment, death threats and occasional physical attack justified on such grounds by its perpetrators¹⁷. The vastly greater numbers of non-Jewish supporters of Israel endure none of this. That in itself suggests that what we are witnessing is not political opposition to a state, but the far more familiar phenomenon of inter-communal aggression: that what is at stake here is not, ultimately, hostility to Israel, but hostility to Jews. Moreover, it is hostility of a type that not only may, but does quite frequently, erupt into physical assault and disturbance of the peace.

9. The IHRA Definition and Freedom of Expression

It seems reasonable to conclude, therefore, that all the examples in the IHRA definition do in fact successfully identify types of acts or utterances as antisemitic. We turn now to the question of the consequences, including legal consequences, of the adoption by institutions of the IHRA definition, and of how far these might include restrictions on freedom of expression.

With respect to the latter, the first thing to note is that the IHRA definition has no standing in law. This is important because Article 10 (2) of the European Convention on Human Rights (ECHR), which was incorporated into domestic law by section 3 of the Human Rights Act 1998, provides that any interference with the right to freedom of expression must be proscribed by law¹⁸. In other words, any restrictions on freedom of expression must be laid down by statute or some other legal regulation. The IHRA definition, on the other hand, is a heuristic device for judging whether one or more specific instances of expression might be antisemitic, given the context. The examples of Israel-related antisemitism that the IHRA definition lists merely indicate that antisemitism *might* be present. As philosopher Eve Garrard points out, the definition is peppered with conditional verbs to the effect that this or that action or statement ‘may’ or ‘might’ or ‘could’ be antisemitic, leaving open the possibility that they might *not* be¹⁹. Similarly, the definition makes it clear that antisemitism is not ‘limited’ to the

examples listed. This means that the IHRA definition will not do all our judging for us; we still need to think for ourselves.²⁰ Additionally, as previously noted, the definition protects a wide range of criticisms of Israel against the charge of antisemitism with its statement that “criticism similar to that levelled against any other country” is not a manifestation of antisemitism. Moreover, any use of the IHRA definition in the context of UK statute law requires, by virtue of section 3 of the Human Rights Act 1998, compliance with Article 10 (1) ECHR, which guarantees freedom of expression. For these reasons we are inclined to dismiss fears of any abridgement of freedom of expression and to agree with David Wolfson QC and Jeremy Brier in their independent legal opinion published in July 2017, that the IHRA definition of antisemitism is an important tool in the fight against antisemitism without infringing freedom of expression²¹.

We have suggested that the types of antisemitism identified by the definition include false and defamatory claims concerning the supposed essential nature of Israel as a Nazi, racist, Apartheid, colonial-settler or warmongering state. Does this make them actionable *per se*? Probably not, as under UK law even defamatory falsehoods can be protected under free speech rationales. The fact that speech is defamatory is only the beginning of the enquiry. It is still open to a defendant to justify defamatory publication by means of the defenses of truth, honest opinion, publication in the public interest, and privileged communication.²² Moreover, a group or class of individuals (“the Jewish Community” or “Jewish and non-Jewish defenders of Israel”) can only sue for defamation if it is sufficiently well-defined and small enough for the claimant to show that the statement applies to every member of the class.²³

Article 10 and UK law do not, however, protect hate speech. This is understood to be any form of expression which spreads, incites, promotes, or justifies hatred based on intolerance²⁴. Accordingly, Part III of the Public Order Act 1986 criminalises expression that is intended to stir up racial hatred, or that is likely, having regard to all the circumstances, to stir up racial hatred. Under the Crime and Disorder Act 1998, perpetrators of basic criminal

offenses can be charged with an aggravated form of the offense (carrying a longer maximum sentence) if they demonstrated, or were motivated by, hostility on the basis of race or religion. A case in point is the motorcade that on May 16, 2021, toured Jewish areas of North London, shouting through loud hailers abuse of Israel, along with cries of “Fuck the Jews. Fuck their daughters. Fuck their mothers. Rape their daughters.” The culprits were arrested for racially aggravated public order offences under the 1998 Act.²⁵ In 2018, online antisemitism in the form of Holocaust denial was successfully prosecuted under section 127 Communications Act 2003, which makes it an offense to use a public electronic communications network to send a message (or other matter) that is grossly offensive²⁶. Moreover, the Report of the Equality and Human Rights Commission into Antisemitism in the Labour Party, published on October 29, 2020, found that comparing Israelis with Nazis and referring to Jews as a “fifth column” amounted to the statutory tort of unlawful harassment related to Jewish ethnicity under section 26 of the Equality Act 2010, and did not have free speech protection under Article 10²⁷. In none of these instances was the IHRA definition of antisemitism specifically applied, although the findings of the Equality and Human Rights Commission were stated to be consistent with it.²⁸

Defamatory expression of the kind stigmatised as antisemitic by the IHRA definition has been claimed to create climates of day-to-day harassment and insecurity for British Jews in universities and other working environments. Following a steep rise in antisemitic incidents affecting Jewish students on campus in the academic years 2018-20, as well as a reported failure on the part of universities to recognise antisemitism because of incomplete or inappropriate definitions, the government in September 2020 urged all universities in England and Wales to adopt the IHRA definition of antisemitism.²⁹ It is within the university sector that the strongest opposition to the adoption of the IHRA definition on free speech grounds has been voiced. As environments of research and learning, universities have a special role in encouraging vigorous debate, the free exploration and exchange of ideas, free speech and freedom of inquiry within the law, as laid down in the Education (No.2) Act 1986 and the Education Reform Act 1998. Universities also have a responsibility under section 149 Equality Act 2010 to ensure that their

staff and students are protected from discrimination, harassment and victimisation, and to foster good relations between students of different ethnic and religious groups by having due regard to the need to tackle prejudice and promote understanding. To understand how the IHRA definition would apply in the university setting consistently with the university' legal obligations, consider the process involved in deciding the outcome of a student complaint of antisemitic harassment.

A student complaint of antisemitic harassment would be determined under section 26 Equality Act. This defines “harassment” as “unwanted conduct related to a protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, or offensive environment for him.” Among the “protected characteristics” are “race” and “religion or belief” and Jewish students are protected under section 26 as both a “race” and a “religion”³⁰. When deciding whether harassment has occurred, the university would be required to consider the perception of the student complainant, the wider circumstances of the case, and whether it was reasonable for the conduct to have had the effect complained of.³¹ The university would also need to consider its own student anti-harassment policy and procedure, which is required by law, as well as any relevant sector guidance.

It is important to note that the statutory tort of harassment as defined in section 26 requires a nexus between the “unwanted conduct” and the complainant’s “protected characteristic.” This has been described as “a loose associative link between the behavior under consideration and the protected characteristic.”³² It is in recognising the associative link required by section 26 that the IHRA definition serves its purpose; it helps the university to understand why the conduct complained of would be likely to harass a student who identifies as Jewish. However, the determination of whether there is antisemitic harassment is not complete until the rest of section 26 is considered. In making its determination, the university would need to consider the implications for freedom of expression set out under Article 10 as

the Equality Act must be read and applied, as far as is possible, in a way that is compatible with the ECHR³³. Expression, whether speech or conduct, should not be regarded as harassment, and no action should be taken on it, where this would breach the Article 10 rights of the person whose expression is in question. This will often involve the delicate balancing of rights involving the legal concept of ‘proportionality.’

In sum, to find that the allegation of antisemitic harassment is made out, the university must be satisfied that the harmful effect of the expression is enough to outweigh the freedom of expression rights of the individual concerned. It is for this reason that the European Court of Human Rights has decided that expression which is ‘merely offensive’, ‘provocative’ or ‘insulting’ is protected under Article 10 ECHR, whereas expression which is racist is not because it is incompatible with society’s fundamental values of tolerance, social peace, and non-discrimination.³⁴ It is also for this reason that the IHRA definition of antisemitism poses no threat to freedom of expression.

10. Conclusion

The IHRA definition was not designed to be used as a ‘legal tool’ but rather serves as a guide to identifying antisemitism in its traditional and contemporary forms. The examples of antisemitism that it lists, while not exhaustive, are correctly characterised as *prima facie* manifestations of antisemitism, but they still require a political judgment to be made which is highly context sensitive. Further, there is no danger to public bodies, including universities, in adopting the definition as it poses no threat to freedom of expression. This is because the IHRA definition’s use in the context of UK statute law requires compliance with Article 10 of the European Convention on Human Rights, which guarantees freedom of expression.

NOTES

¹ Kenneth L. Marcus, *The Definition of Anti-Semitism*, Oxford: Oxford University Press (2015), p.18

NOTES

² Peter Walker, "UK adopts antisemitism definition to combat hate crime against Jews", *The Guardian*, Monday 12 December 2016.

³ *Handyside v United Kingdom* (1976) 1 EHRR

⁴ Sir Stephen Sedley, "Defining Anti-Semitism," *London Review of Books*, v. 39, No. 9, 4 May 2017

⁵ The Jerusalem Declaration on Antisemitism, <https://jerusalemdeclaration.org>

⁶ For a critique the Jerusalem Declaration of Antisemitism, see for example, Cary Nelson, "Accommodating the New Antisemitism: A Critique of the Jerusalem Declaration", *Fathom*, April 2021, <https://fathomjournal.org/fathom-long-read-accommodating-the-new-antisemitism-a-critique-of-the-jerusalem-declaration/>

⁷ For as discussion of the limitations of the *Jews as Jews* formulation, see John Hyman and Anthony Julius, "Calling a truce with left-wing antisemitism: The Case Against the Jerusalem Declaration of Antisemitism," *Fathom* May 2021, <https://fathomjournal.org/calling-a-truce-with-left-wing-antisemitims-the-case-against-the-jersualem-declaration-on-antisemitism/>

⁸ For a recent extended study of this second type of antisemitism and its role in politics, see Bernard Harrison, *Blaming the Jews; Politics and Delusion*. (Indianapolis and Bloomington: Indiana University Press 2020)

⁹ See, for instance, Matthias Kuentzel, *Jihad and Jew-Hatred: Islamism, Nazism and the Roots of Evil*. (NY: Telos Press 2007)

¹⁰ David Hirsh, "Defining antisemitism down," *Fathom*, Winter 2013, <https://fathomjournal.org/defining-antisemitism-down/>

¹¹ BBC NEWS, 'Israel to stop using white phosphorus shells', 26 April 2013, <https://www.bbc.com/news/world-middle-east-22310544.amp>

¹² Alan Johnson, "Antisemitism in the Guise of Anti-Nazism: Holocaust Inversion in the United Kingdom during Operation Protective Edge," in *Anti-Zionism and Antisemitism: The Dynamics of Delegitimation* ed. Alvin H. Rosenfeld (Indianapolis and Bloomington: Indiana University Press 2019)

¹³ Robert S. Wistrich, "Anti-Zionism and Antisemitism," *Jewish Political Studies Review* 16, nos. 3–4 (Fall 2004): 29.

¹⁴ Anthony Julius, *Trials of the Diaspora: A History of Antisemitism in England* (Oxford: Oxford University Press 2011), p. xlv

¹⁵ Julius, *ibid.* p. 69.

¹⁶ Cary Nelson, *Israel Denial: Anti-Zionism, Anti-Semitism & The Faculty Campaign Against the Jewish State* (Academic Engagement Network & Indiana University Press, 2019).

¹⁷ See, e.g., The Community Security Trust's *Annual Antisemitic Incident Reports* [online] at <https://cst.org.uk>

¹⁸ Steve Foster, *Human Rights and Civil Liberties* (3rd edn, Pearson 2011) 357.

¹⁹ Eve Garrard, "The IHRA Definition, Institutional Antisemitism, and Wittgenstein," *Fathom*, December 2020, <https://fathomjournal.org/the-ihra-definition-institutional-antisemitism-and-wittgenstein/>

²⁰ Garrard, *ibid.*

²¹ David Wolfson QC and Jeremy Brier, 'Opinion on the Adoption of the IHRA Definition of Antisemitism by the Government of the United Kingdom,' <https://antisemitism.org/wp-content/uploads/2017/07/Opinion-on-the-International-Definition-of-Antisemitism.pdf>

²² The Defamation Act 2013, sections 2 – 6.

²³ *Knupffer v London Express Newspaper* [1944] AC 166 (HL). In this case a group of 24 individuals was considered too large a group to sue for defamation.

²⁴ *Jersild v Denmark* (1994) 19 EHRR 1

²⁵ CST Blog, "CST Stands Against Anti-Jewish Hate", 19 May 2021,

<https://cst.org.uk/news/blog/2021/05/19/cst-stands-against-anti-jewish-hate>

²⁶ *R (Alison Chabloz) v Crown Prosecution Services* [2019] EWHC 3094 (Admin) (31 October 2019).

²⁷ EHRC Report, October 29, 2020, p. 27

²⁸ EHRC Report, October 29, 2020, p. 116.

²⁹ CST, 'Campus Antisemitism' in Britain 2018-2020, December 17, 2020, <https://cst.org.uk/news/blog/2020/12/17/campus-antisemitism-in-britain-2018-2020>

³⁰ *R (E) v Governing Body of JFS* [2009] UKSC 15, per Lord Phillips.

³¹ Equality Act 2010, sections 26 (4) (a) - (c).

³² *Fraser v The University & College Union* Case No. 2203290/2011, Employment Tribunal (2013), para. 35

³³ The Human Rights Act 1998, section 3

³⁴ European Convention on Human Rights, Article 17.