`The pillar of fire by night, to shew them light`: Israeli broadcasting, the Supreme Court and the Zionist narrative

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‘The pillar of fire by night, to shew them light’: Israeli broadcasting, the Supreme Court and the Zionist narrative

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The dominant role played by electronic media, in particular the visual media of film and television, has earned them recognition as ‘the great history educators of our time’ (Weinstein, 2001: 27) and the ‘chief carrier of historical messages in our culture’ (Rosenstone, 1995: 3). And it has been seen as plausible that the modern sense of belonging to a particular territorially based nation – a process in which ‘imagined’ (Anderson, 1983) or ‘mediated’ (Poster, 1999) communities are created – is linked to the development of communications (Thompson, 1995: 62). National television, specifically, has been identified as a powerful force pushing toward nationalization (Schudson, 1994: 40). The creation of the Israeli ‘imagined community’, as noted by Anderson (1983: 136), has transpired in two separate phases: first, through the creation of the Zionist movement that established the Jewish people as a nation and, second, through the establishment of the State of Israel. The Zionist ethos and narrative serve, therefore, as the ideological basis for the State of Israel; they are presented as such to the citizens of Israel by the state, and the media serve a central role in this effort. Israel is not unique in the role the state takes in creating a common identity. As Geertz (1973) has noted, once all the postcolonial nations formed between 1945 and 1968 completed the establishment of their social and political institutions, they focused their attention on defining their respective identities and trying to balance, in their pursuit of uniqueness and distinctiveness, two ‘towering abstractions’: ‘essentialism’, which seeks to define ‘tradition’, ‘culture’ and ‘national character’; and ‘epochalism,’ which gives nation-creating its proper historical context. The state apparatuses that naturally lend themselves to this effort are the educational system and the mass media.
What has been largely overlooked, however, is the role the courts have played in this undertaking, specifically while supervising broadcasting. This study discusses cases in which the Israeli Supreme Court was asked to block the broadcasting of television programs produced by the national broadcaster – the Israel Broadcasting Authority (IBA) – on the grounds that they purportedly misrepresented historical truths. In these cases, the court was asked to rule on whether the broadcaster adhered to historical truths and whether that should be regarded a legitimate consideration in blocking broadcasts. The wording of its rulings demonstrates that the Israeli Supreme Court embraces the dominant interpretation of the Zionist narrative even though it is unnecessary to refer to it in order to reach decisions on cases. The study shows, through various examples, how the court uses its ideological biases in order to serve the dominant interpretation of the history of Zionism and to perpetuate this interpretation by providing it with a judicial stamp of approval. It is noteworthy that the two decisions that are the focus of this study are the lengthiest decisions ever written by the Supreme Court, sitting in its role as the High Court of Justice, in response to petitions to censor public broadcasts.¹ Providing relevant background to the events portrayed in these television programs and the ideological controversies surrounding them, the study describes how the court’s traditional interpretation of Zionism, as well as its long-established view of the role of media in society, contribute to its decisions and, consequently, how the court has joined the media in creating the ‘mediated/imagined’ Israeli community.

Media, memory, identity

As Katz and Wedell have observed, among the goals for introducing electronic media in developing countries are promoting national integration – that is, creating a sense of belonging to the new form of nation-state (1977: 171) – and cultural continuity and change (1977: 191). The media mark holidays of ‘civil religion’, and these perform similar functions to those of religious holidays (Dayan and Katz, 1992: 207), serving in this capacity as ‘electronic monuments’ (1992: 211). The ‘consciously contrived, deliberately produced media form’ highlights democracy’s cultural dimensions and serves as the means for transmitting cultural models from the political elite to the generally passive public (Merelman, 1991: 36). The media also reproduce the hierarchical structure of society in a way that is palatable to large audiences.

An essential mechanism in creating and preserving a unified social identity is establishing social memory, a process in which the media play a key role. Controlling a society’s collective ‘memory’ is a process largely conditioned around the hierarchy of power (Connerton, 1989). Connerton also observes that images of the past have a legitimating effect, as they may serve as the basis for legitimating the present social order. A presupposition of a shared
memory by the social actors underlies any social order. The images of the past and the recollected knowledge of the past become the subject that forms the national myth, and the material that is sustained by the national rituals.

Studying ‘social memory’ becomes, therefore, an exploration of the social impact of communication technologies (Kansteiner, 2002: 179). The primary means of providing a collective identity is the creation of a ‘shared’ past through narrative (Olick and Robbins, 1998). The representation of a group history, Liu and Hilton contend, is central to the construction of its identity, norms and values by providing a sense of both what the group has been in the past and what it should aspire to be in the future (2005: 537). Anderson rejects the consensus reached among both historians and media critics that finds television an unsuitable medium for the construction of history, and argues that American television, at least, has ‘virtually since its inception sustained an extremely active and nuanced engagement in the construction of history’ (2000: 15). The role of television and film in the construction of history (and contribution to social memory) has been documented, among other places, in Hong Kong (Ma, 1999), China (Farquhar and Berry, 2004), Japan (Fujitani, 1992) and Israel (Peri, 2001).

Somewhat less documented, although recently a focus of academic interest, is the role the courts have played in the development of national memory and identity. As Maoz notes, the courts have been called on to rule on historical truths by parties that strive for institutional confirmation of their historical narrative, so that it may become the ‘official’ and ultimate historical story (2000: 605). The court’s unique ability to prevent social disintegration through binding decisions requires maintaining society ‘in its normatively determined identity’ and as ‘law traffics in the slippery terrain of memory … different versions of past events are presented for authoritative judgment’ (Sarat and Kearns, 1999: 3). The court, explains Barak-Erez (2001), may then take one of three roles: the court as judge and arbiter of historical events; the court as narrator of history; and the court as student and teacher of historical ‘lessons’. When the court recounts history, concludes Barak-Erez, it articulates the collective memory of the society within which it operates.

Hence, law and broadcasting become two of society’s main tools for preserving collective memory. By intervening in the interpretation of media products, the courts lend credence to some interpretations over others, utilizing the state’s normative powers in order to maintain the state’s own concept of society’s identity, and thereby promoting the dominant interpretations of culture and maintaining dominance of those interpretations that serve the status quo.

**Israel, the ‘imagined community’**

Whether Zionism is a national liberation movement or a colonial movement, its existence has mandated the creation of a new culture, virtually from
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scratch. As Shavit (1996) notes, Zionism created a new national culture to address the need to provide itself with a cultural content that would shape its identity. A major component of this evolving culture was the myth of ‘pioneering’ (Eisenstadt, 1967), embodied in the young Israeli ‘Sabra’ (Almog, 2000), a description that fitted only a tiny minority of the population but had an enormous cultural impact. The ‘Sabra’ myth served as a basis for turning Zionism into a ‘civil religion’, as well as for the formation of a Jewish collective identity that adopted the characteristics of an ethnie (Shimoni, 1996), a group that possesses a myth of common name, descent, historical memories, shared culture, territory and a sense of solidarity. The shared elements of this evolving culture, according to Smooha (1993), are the Jewish religion, Jewish nationalism, the Hebrew language and written culture, the Israeli ethic that emphasizes skills, achievement, hard work and competitiveness, along with Western values such as democracy, materialism, middle-class lifestyle and mass culture. Through Zionist eyes, Israel and Zionism are the only legitimate form of Jewish existence – one that has proven superior to the Diaspora option and negates it (Shapira, 2004: 69). Negating the exile is an integral part of the myth of redemption, which, together with revolt and replacing an image of weakness with one of strength, has become a pillar-stone of the Zionist narrative (Shalit, 2004). Indeed, the Zion–Diaspora dichotomy is often cited to explain why pre-state Zionists did not make greater efforts to alert the world about the Holocaust (Sternhell, 1998: 329).

The Zionist-statist hegemony is manifest in the concept of Mamlakhtiyut (Kimmerling, 2004), a dogma conceived of by Israel’s first prime minister, David Ben-Gurion. It regards the state as both a political entity and as a ‘social and cultural integrating agent’ (Kedar, 2002: 129), and highlights three sub-transitions undertaken by the Jews in their transition from a people to rulers of a state: a transition in focus from sectoral interests to the common good; a transition from semi-voluntarism to clearly defined duties; and a transition from foreign rule to national sovereignty (Peled and Shafir, 2005: 38). The basic elements of this dogma are that the State of Israel is the embodiment of the generations-long yearning of the Jews, as a nation, to form anew an independent political entity; that Israel is the state of the Jewish people; that Israel belongs to all the Jewish people, not only to its citizens; that Israel is a modern, ‘Western’-style nation requiring those Jews who do not share ‘Western’ values to ‘modernize’ through ‘melting pot’ apparatuses; and that Mamlakhtiyut is the basis for the ‘civil religion’ that became an inherent part of the culture that preserved and reproduced the Zionist-Ashkenazi (European) hegemony (Kimmerling, 2004: 150–1).

Mamlakhtiyut also has legal ramifications, which are especially relevant to two of the ‘social arenas’ (Carey, 1992) in which the power struggle for national identity plays out: education and broadcasting. The enactment of the Mamlakhti education law in 1953 dismantled the pre-state ideological educational organizations and established a national system entrusted with
Mamlakhti educational goals. When broadcasting was about to be transferred from the hands of the government to a non-governmental institution – the IBA – the law stipulated that the new authority should maintain broadcasting as a Mamlakhti service (as opposed to the British-style ‘public service’ upon whose model it was designed), which, among other tasks, would serve the needs of the Mamlakhti educational system. Hence, in legal terms, Mamlakhtiyut means both non-sectarian and independent. An analysis, however, of the cultural missions of both the educational system and the IBA, as stipulated in the same laws, provides evidence of the hegemonic elements of Mamlakhtiyut. In the IBA’s code of conduct to journalists, the Mamlakhtiyut provision was understood to mean, at least until 1995, that the voice of the IBA is the ‘voice of the state’ and IBA’s radio was aptly named ‘The Voice of Israel’.4 The law instructs the public broadcaster to ‘reflect the life of the State, its creation, achievements, and struggle’, ‘to reflect the lives and cultural assets of all the tribes of the nation from the different countries’ and ‘to reflect the life of the Jews in the Diaspora’, evoking the Zionist themes of a state that has emerged from a Jewish Diaspora through a struggle. It also requires the IBA to ‘enhance the aims of Mamlakhti education, as delineated in the Mamlakhti education law of 1953’ – a law which entrusted the national education system with the duty of incorporating into public education ‘the values of Israel’s culture … loyalty to … the people of Israel’ – referring to the whole Jewish nation, as the Zionist ethos prescribes.

The courts, too, have heeded the call and adopted the Zionist ethos as an ideological guideline. Israeli courts ruled as early as 1972 that there is no ‘Israeli’ nationality separate from Jewish ethnicity (H.C. 630/70). Chief Justice Aharon Barak wrote in another decision that Hebrew is the ‘language of the Israelis’5 and the ‘power that brings us together as children of one country’ (H.C. 4112/99, section 21), and is therefore not the property of a specific group within society, the way French is the language of all the French people, English the language of all the English people, and the way that these languages serve as a fundamental pillar of these nations’ sovereignty. If all the citizens of the state of Israel were to study Hebrew, contended Barak, it would guarantee their equal rights (section 24). The Chief Justice explained elsewhere (E.A. 11280/02) that the ‘nuclear’ characteristics which shape the minimalist definition of Israel as a Jewish state, as spelt out in national election laws, as well as in those laws that ensure human dignity and freedom of occupation, have both a ‘Zionist perspective’ and a ‘heritage perspective’, and include the right of every Jew to immigrate to Israel where Jews are the majority; establish Hebrew as the main official language of the state; stipulate that the main holidays and symbols of the state reflect the national resurrection of the Jewish people; and establish that Jewish heritage is a central component of the nation’s religious and cultural heritage (E.A. 11280/02: 22). Calling a person an ‘anti-Zionist’ is considered libelous (C.A. 698/77) and the ‘Zionistic values of the state’ are the ‘realization of the aspirations of the
Jewish people carried from generation to generation to renew its life as before, the beginning of its redemption and the implementation of the Zionist vision’ (H.C.J. 1661/05: 63). Moglen hypothesizes that the need for a judicial ‘official version’ of historical events, which has characterized Israeli politics in the cases he discusses, stems from the state’s inability to guarantee that this historical message is conveyed through the mass media (2001: 616).

The courts and the power of the media

Israeli courts have acknowledged the power of television in various rulings, which have included an explanation of why they must consider the ‘special moral and public responsibility of television broadcasters whose words and appearance fascinate a mass audience and whose influence on the audience’s mind and taste cannot be measured’ (Justice Cohn in C.A. 7/79); an acknowledgment that broadcasting has a ‘tremendous impact on a mass audience’ (Justice Ben Porat in C.A. 7/79); and an assertion that television is the most powerful and efficient instrument for dispersing ideas (Justice Netanyahu in H.C. 3472/92). In 1977, the Supreme Court recognized as reasonable the decision by the IBA to transmit in black and white programming that had been purchased abroad in color, on the grounds that all programming produced locally at the time was broadcast in black and white. In arguing its case, the IBA explained to the court that locally produced programs would ‘pale’ in comparison with the imported programs, viewers would become disenchanted and the IBA would, therefore, be remiss in its legal Mamlakhti duty to ‘reflect the life of the state’ (H.C. 112/77). Whether or not television has a direct powerful effect, the Israeli legal system appears convinced that it does and, as this study demonstrates, it uses its judicial power to ensure that that power is used to promote a dominant interpretation of the national culture.

Zionism and the Mizrahi question: The Pillar of Fire decision

‘Zionist historiography pays little attention to the history of the Jews in the Muslim world’ (Shohat, 1999: 6). The marginalization of the Mizrahi contribution to the Zionist endeavor can be seen as an outcome of the aforementioned dominant ideological construct. Since it is inconsistent with Zionism’s Western orientation and with the interpretation of Jewish existence as a uniform experience shared by all Jews, the Mizrahi contribution to culture contradicts the dominant Zionist narrative. This dominant description was predominantly Ashkenazi (European; see Chetrit, 2004: 309), as the background of the Mizrahi Jews was perceived as threatening (Smohoa, 1993: 182). The ‘story’ of the Mizrahi Jews and their relationship to the state was, therefore, reformulated to fit the mold of the dominant Ashkenazi story (Shenhav, 2004: 155).
Mizrahi Jews, in fact, began immigrating to Palestine before the Zionist movement was founded. When the first Zionists began arriving in Palestine in 1882, Mizrahi Jews constituted 60 percent of the Jewish population of the land (Smooha, 1978) and their share among the immigrants was higher in the pre-state years than their share in the total world Jewish population, in comparison with Ashkenazi Jews. Ever since the inception of the state, however, the Mizrahi Jews have found themselves in the role of ‘back-seat drivers’ in the Zionist revolution. Not only was their historical contribution to Zionism largely ignored, but also they were isolated geographically, concentrated in ‘development towns’ located in the country’s periphery where a ‘discernible low status “ethno-class”’ (Yiftachel, 2000) emerged in which they comprised the majority. This demographic placement planning reflected what Yiftachel and Kedar (2000) have termed the ‘settling ethnocracy’, a political system based simultaneously on ethno-national expansion and ethno-class stratification. Yiftachel and Kedar (2000) identified a three-layered Ashkenazi–Mizrahi–Palestinian ethnocratic structure in Israel, which allows the dominant group to sustain its power by controlling the cultural hegemony. This approach was evident in the educational system as well, where Mizrahi Jews, stigmatized as ‘unmodern’, were relegated to segregated vocational high schools (Dahan and Levy, 2000). Their cultural heritage, at first shunned, has been gradually introduced in the schools, but only since it has been dismissed as dead and unharmful (Smooha, 1993: 182). The seclusion of Mizrahi Jews from positions of power was a by-product of the political culture that evolved in Israel in its formative years. When the state was founded, Israel’s political leaders discussed the possibility of appointing a token Mizrahi to the 12-member cabinet (Shohat, 1988). Indeed, the first Mizrahi to serve in the Israeli cabinet held the insignificant post of police minister. The judicial system as well was left bereft of Mizrahi representation. It was not until 1962 – 14 years after the founding of the state – that the first Mizrahi Supreme Court justice was appointed and a ‘Sephardic seat’ was set aside on the court. As Lahav (2001) contends, the first two Mizrahi justices left no enduring impression on Israeli jurisprudence and are remembered best for endorsing opinions written by other justices. Mizrahi portrayal in popular culture has suffered no less stigmatization. Shohat (1989) has analyzed the prejudiced portrayal of Mizrahi Jews in Israeli film.

In the early 1980s the IBA initiated the production of a 19-episode seminal documentary series portraying the history of Zionism and aptly named The Pillar of Fire. A group of Mizrahi intellectuals petitioned the High Court, demanding that the series not be broadcast, since it did not provide an accurate account of the contribution of Jews from Asia, Africa and the Balkans to the Zionist endeavor and the establishment of the state of Israel, and since it devoted a disproportionate amount of footage to the history of Zionism in Europe (H.C. 1/81). The petitioners argued, after reviewing 11 scripts for the series and meeting with its creators, that the program ignored indisputable historical facts that are proof of the contribution of Jews of Mizrahi origin to
the Zionist enterprise, among them the arrival of Jews from Asia, Africa and the Balkans to Palestine at the end of the 19th and beginning of the 20th centuries, the massive illegal immigration from these regions in pre-state years, and the large number of Jews from these regions who have immigrated to Israel since its founding. It should be noted that while the series focused only on the period leading up to the founding of the state, the petitioners argued that the relatively large proportion of Mizrahi Jews who immigrated to Israel after the establishment of the state was an important part of the history of Zionism as well and, therefore, deserved mention in the program.

The Supreme Court rejected the petition. In a patronizing manner, the justices complimented the plaintiffs’ attorney (a law professor, himself of Mizrahi origin) on his presentation, noting that its ‘good taste’ had compensated for the extreme and unreasonable demands put forth in the affidavits and appendixes to the petition (H.C. 1/81: 376). Although the plaintiffs based their demands on the IBA’s legal obligation to ‘reflect the lives and cultural assets of all the tribes of the nation from the different countries’, the court said that this argument was not valid, since it is prohibited from ruling in ideological disputes over national heritage. Indeed, the court said there is no need for proportional ethnic representation in the historical narrative and that anything that may have transpired in the history of the Jewish people anywhere in the world becomes part of the entire nation’s experience, rendering the question of ethnic affiliation irrelevant. This traditional view that ‘all Jews are responsible for one another’, argued the court, is no less valid than the plaintiffs’ view – a view that the court does not elaborate on but can be understood to mean that their ancestors, as well, deserve recognition for their contribution to the Zionist endeavor (H.C. 1/81: 385). The court was not required to elaborate any further once it declared that it was upholding the IBA’s right to freedom of expression. Still, it went on to provide its own romantic interpretation of Zionism. In the words of Justice Meir Shamgar:

It would be clichéd to repeat [not mentioning where he has ever said this in the past, A.S.] that this is a wondrous phenomenon, apparently with no historic equivalent, whose essence is the maintenance of loyalty and the daily love, lasting for thousands of years, between a nation and its land, when the majority of the nation is separated and far away from the land. There is room to argue, that in a series such as this one, it be noted that the origins of this movement are rooted in the rivers of Babylon thousands of years ago, when the dream of returning to Zion was first woven, and that its tangible expression has taken the form of the return of individuals and groups for generations…. Had the series taken such an approach, the petition would have been obsolete. However, its creators chose a narrow description based on the persecution of Jews in Europe in the late 19th and early 20th centuries. (H.C. 1/81: 385)

Shamgar is then joined by Justice Miriam Ben-Porat, who expressed outrage that the petitioners, as ‘Jews from the East’, should in any way feel slighted. Jews are Jews, she argued, regardless of their place of origin, and ‘Jews from
the East’ are part of the same people as ‘Jews from the West’ – a people that should be guarded from a damaging split from which ‘the smell of distancing hearts emanates’ (H.C. 1/81: 388). Ben-Porat expressed skepticism about the claim made by the petitioners that the television series might damage the image of Mizrahi Jews in their own eyes, as well as in the eyes of others, as if Mizrahi Jews were ‘an independent body, carrying itself, and the rest of the nation is, presumably, “others”’. According to news reports in 2005, two of the commercial television license holders, as part of their bid for a renewed license, planned to include in their program offering for the coming decade two new versions of the IBA’s seminal *Pillar of Fire* series: an ultra-orthodox (‘Haredi’) version and a Mizrahi version (Zach, 2005). Perhaps this attempt to endear themselves to the broadcasting regulator serves as an indication of the extent of the trauma caused by the original 19-episode series in the early 1980s. The *Pillar of Fire* controversy notwithstanding, Saranovitz (2005) notes the distinct portrayal of Mizrahi Jews and their history in the IBA’s 1998 seminal documentary series, *Tkuma* (Resurrection), which was described as a continuation of the *Pillar of Fire* series, this time describing the first 50 years of the state.

**Zionism and the memory of the Holocaust: ‘The Kasztner trial’ decision**

Several days before she was caught, tortured and executed by Nazi forces in Hungary, Hannah Senesz,7 a 23-year-old Jewish paratrooper deployed from pre-state Israel to gather intelligence information behind enemy lines in her former homeland, wrote a poem that paid tribute to a metaphorical match that lit a flame in the hearts of those who died ‘in dignity’. It was later found among her belongings and, together with other poems she had written as well as her personal diary, led to her coronation as one of the prominent icons of the Zionist narrative. Her own personal story contained many of the key elements of this narrative: courage, defiance, determination, sacrifice and commitment to Jews in the Diaspora. Senesz had been a source of vindication for her fellow Zionists, accused of indifference to the plight of Diaspora Jewry during the Holocaust. Her decision to leave the Zionist homeland in order to help save her Hungarian brethren provided evidence to the contrary. In her personal act of self-sacrifice Senesz had come to symbolize both the ‘Sabra-style’ Israeli heroine and the Jewish heroine (Baumel, 1996). Further proof of her iconic stature can be seen in the decision to transport her remains from Hungary for reburial in the national military cemetery on Mt Herzl in Jerusalem, in what was the first official high-level military funeral held in the newly established State of Israel in 1949 (Baumel, 2002).

The story of Senesz meshes well with the Mamlakhti interpretation of the meaning of the Holocaust in the Zionist experience. In 1980, ‘awareness of the Holocaust and heroism’ was added to the list of values that need to be
promoted by the Mamlakhti educational system. Remembering the Holocaust is, therefore, an essential goal of the Mamlakhti educational system and, by definition, of the Mamlakhti broadcasting system. The effort to ideologize the history of the Holocaust, in accordance with the Mamlakhti ethos, is seen most profoundly in the introduction of ‘heroism’ (part of the Jewish transformation created by Zionism, as mentioned above) into the ethos, through use of the combined phrase ‘Holocaust and heroism’ in official documentation and law. This attempt to portray the Holocaust not only as a story of annihilation and destruction, but as one of heroism (as manifest in the acts of the Jewish ghetto fighters who defied the Nazis) that eventually led to the creation of the state, was meant to give ‘meaning to the death of six million Jews’ (Brog, 2004). ‘Yad Vashem’, the memorial authority created to commemorate the Holocaust and the heroism of Jews in that period, was established by law as far back as 1953. Of the nine types of memories ‘Yad Vashem’ is meant to promote, according to the law, three involve aspects of loss (of individuals, families and communities), while six involve aspects of heroism: five of Jews who either died in holiness, served in the allies’ military, took part in ghetto revolts, preserved their dignity and ‘never ceased the efforts to save and redeem their brethren’, and one of the righteous gentiles who sacrificed their lives in order to save Jews. In 1959, the Holocaust Martyrs and Heroes Remembrance Day was enacted into law for the purpose of ‘coming together with the memory of the Holocaust the Nazis and their collaborators brought down on the Jewish people and [with] the memory of the acts of heroism and acts of revolt in those days’. On this day, all houses of entertainment must close, commercial television stations are prohibited from carrying advertising, and the family and children’s cable channels (which do not carry advertising) are required to broadcast a minimum of two hours of original programming reflecting, according to the telecommunications regulations, the ‘Israeli experience and Israeli heritage’.

The Israeli establishment has thus chosen to convey the Holocaust experience by invoking the dominant elements of the Zionist narrative – ‘heroism’ and ‘negation of exile’. The events surrounding the libel indictment of Malchiel Grunwald in the 1950s, better known as ‘the Kasztner trial’, challenged this particular interpretation of events by pointing an accusing finger at some Jews, namely Rudolph Kasztner, then a leader among Hungarian Jewry and, after the establishment of the state, a prominent member of the Israeli Ashkenazi establishment (Lahav, 1997). The trial addressed the role played by Jews who cooperated with the Nazis during the Second World War and were thus able to have their lives, as well as the lives of their next of kin, spared, while most other Jews under Nazi occupation were being exterminated. Indeed, the outcome of this trial – Grunwald’s acquittal on a charge of defaming Kasztner after accusing him of collaboration with the Nazis – was so traumatic that it led to the resignation of then Prime Minister Moshe Sharett (Hecht, 1961/1997; Weitz, 1996) and motivated Attorney General Gideon Hausner, the chief prosecutor in the
trial of Nazi war criminal Adolph Eichmann, several years later, to ‘create a narrative of heroic memory’ (Douglass, 2001: 156) in the design of his arguments and questioning of the witnesses.

In 1994, the IBA aired a three-part docudrama, *The Kasztner Trial*, purportedly depicting the events surrounding the trial. In one scene, it was suggested that Hannah Senesz may have broken down under torture and betrayed two of her fellow paratroopers. As the libel trial at the center of the drama unfolds, Kasztner, a tragic figure in both the real trial (in which he serves only as a witness) and the docudrama, grows increasingly desperate. When Katerina Senesz takes the witness stand in the televised drama and testifies that he did not assist her daughter, Hannah, while she was being held captive by the Nazis before her execution, Kasztner interjects and accuses Hannah Senesz of breaking down during her interrogation and betraying her fellow paratroopers – a scene that never took place in real life. The Kasztner trial’s reincarnation on television 40 years after it took place not only opened old wounds, therefore, but aggravated them by suggesting that the mythic Senesz may have been a traitor, or at a minimum, far less heroic than had been assumed by her countrymen.

Hence, not only her family, but the entire Israeli establishment – as reflected in the decision of ‘Yad Vashem’ to join as a petitioner in the suit against the IBA – resisted any attempt to rewrite her role in the Zionist narrative. And, as this analysis shows, so did the Israeli Supreme Court. While *The Pillar of Fire* was a documentary, *The Kasztner Trial* was a docudrama, or, as the author writes in the introduction to the script, ‘a fictitious drama inspired by events that actually took place’ (Lerner, 1995). However, as the author goes on to note:

… the depiction of these events obviously necessitates many diversions from the real events … the script provides an interpretation of highly controversial events, and clearly, many readers and viewers will choose to see in it an intervention in the chronicles of history (1995: 11)

In their petition (H.C. 6126/94), Hannah Senesz’s brother, Giora Senesz, his sons, the deputy chairman of ‘Yad Vashem’ and others, demanded that this extremely short scene be deleted from the program.

It took the court five years to publish the reasoning behind its decision to allow the broadcast, delivered on the day the program was aired by a vote of 2 to 1. The majority opinion, written by Chief Justice Barak, with the support of Justice Eliahu Matza, maintained that preserving the dominant interpretation of Zionism was a matter of public interest. Barak noted in the opinion that the controversial scene damaged both Hannah Senesz’s reputation and ‘the myth that surrounds it’ (section 12 of the decision). He agreed that the public interest, which deserves constitutional safeguards, is not a pre-defined and constant term, and that it reflects society’s credo and expresses its interest as a collective from the collective viewpoint. These interests include propagating
cultural values, art and language; preserving language as a national tool for expression and as a cultural value; being attuned to the public’s desire to promote social tolerance; preserving historical continuity; respecting national values and preserving historical truths. Barak acknowledged that the controversial scene was untrue and, as such, had damaged the ‘myth of Hannah Senesz’ (a phrase repeated in sections 4, 12, 18, 22, 27 of the verdict) and hurt the public’s feelings, thereby betraying the public interest. He noted, however, that when the value of freedom of speech and creativity conflicts with the public interest, the former supersedes the latter.

The circumstances under which the court may intervene in editorial decisions taken by the IBA, Barak noted, had already been established in *The Pillar of Fire* case, namely, in extreme circumstances that include clear and present danger to the public safety or unambiguous illegality of content. When what is at issue, on the other hand, is hurt feelings, wrote Barak, the degree of pain should be so great that it ‘shakes the foundations of mutual tolerance in a democratic society’, and since that would not be true in this case, the program should be broadcast as planned.

In the dissenting minority opinion, Justice Mishael Cheshin argued that it was not the IBA’s right to freedom of speech that was being challenged but that of the creator of the program. He noted in his opinion that the docudrama has a powerful effect on its audiences, going on to explain that a docudrama mixes fact and fiction, thereby misleading the audience about accepted historical truths. Because the creator of this docudrama distorted historical facts, Cheshin argued, his right to freedom of expression is limited, especially when it is weighed against the indisputable right of Hannah Senesz to maintain her good name. The rights in dispute, argued Cheshin, are two individual rights: the author’s right to free speech and Hannah Senesz’s right to protect her good name, and since the author is not telling the historical truth, her right supersedes his. What emerges is that, despite their dissenting opinions, Cheshin and Barak are in agreement about the myth and its significance. Cheshin even quotes from Senesz’s poetry and describes her in superlatives derived from the prevailing narrative about her life and death. Their only disagreement is over whether upholding the myth is in the public’s interest or in the interest of the mythologized person.

**Discussion**

Both *The Pillar of Fire* and *The Kasztner Trial* were televised series produced by the Mamlakhti IBA, aspiring to fulfil its public mission to provide programming that ‘reflects the life of the nation’. They resulted in the lengthiest decisions ever written by the Supreme Court in response to requests to censor IBA broadcasts. In both cases, the Supreme Court went ‘beyond the call of duty’ in making far-reaching statements about Zionism, statements that contributed little to its legal argumentation. On the face of it, its rulings in
both The Pillar of Fire and Kasztner Trial cases were ‘correct’. Disgruntled individuals tried to block a broadcast, and the court upheld the democratic principle of freedom of expression, rejecting attempts at censorship. A critical look at the wording of these decisions, however, paints a different picture altogether. By systematically analyzing legal documentation relevant to a particular issue, the identification of motivations that may be legitimate within a specific social order (at least formally), but whose formal justification obscures their real political importance in serving a dominant ideology, is possible (Cotterrell, 1992: 212), as these cases demonstrate. These distortions are revealed by demonstrating the contradiction between the liberal values a system proclaims allegiance to and the actual preferential treatment given to one group in society. In the Pillar of Fire case, the court concluded that the petitioners’ request amounted to a form of ‘censorship’ and, by stressing the democratic value of ‘freedom of expression’, the court denied the petition. Both the petitioners and the court agreed, however, that the series reflected the dominant interpretation of the history of Zionism and, in particular, could have represented the role of Mizrahi Jews differently, without defying historical truths. In the rather sophisticated way the court refrained from intervening in the IBA’s editorial decision-making process, invoking the principle of ‘freedom of speech’ and thereby promoting its ‘liberal’ image in the Western sense, it simultaneously let it be known what constituted the authorized and legitimate interpretation of events in the national narrative.

Because the petitioners were the marginalized Mizrahi Jews, the court’s ‘job’ was relatively easy: it said their demand smacked of attempts at ‘censorship’ and, through its ruling, established the right to ‘freedom of speech’ of the Mamlakhti broadcaster. Through this ‘newspeak’, the court provided ‘freedom of speech’ to the IBA, an organ of the state and an organization that is officially committed to, and in fact expresses, the ‘official line’ – hardly the type of ‘freedom of speech’ case the courts were empowered to defend and that ‘public interest’ law is designed to protect. Israeli courts have historically denied ‘collectivist ideologies’ (Mautner, 2002), and the case of The Pillar of Fire is no exception. The contention here, however, is that there is one collectivist ideology the court has sought to protect – the collectivist Mamlakhti version of Zionism, which may purport to serve all citizens of the state, but in fact favors one group above all others: the Western Ashkenazi Jews. Defending the historical role of this group as founders of the state has helped validate their consistently disproportionate dominance in the country’s ruling elite. Describing the demand of the petitioners in The Pillar of Fire as ‘censorship’ is ludicrous at best. Indeed, all that the petitioners were demanding was equal representation in the official version of history. True ‘censorship’, in this case, was reflected in the decision to deny the true role of Mizrahi Jews in Zionist history from being broadcast. As Yona (2005) notes, the petitioners did not really offer an alternative version of Zionist history. Rather, they demanded that their role as equals in this narrative be acknowledged. They
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did not challenge the fact that the Zionist movement created the state, nor did
they question its legitimacy or morality in the ‘neo-Zionist’ or ‘post-Zionist’
tradition. Rather, they asked for a place in the collective memory as contrib-
utors to the Zionist ideology and mythology. The ‘liberal’ court, however, per-
ceived this as a threat to the Ashkenazi rendition of events. Otherwise, it is
difficult to explain the angry reprimand delivered to the petitioners, who were
accused by the court of ‘distancing hearts’ and of being ‘extreme’ and ‘unrea-
sonable’. It was not freedom of speech that was protected here, but rather
freedom of participation in the national myth that was denied. In The Kasztner Trial
case, while the court permitted the Mamlakhti broadcaster to
air the controversial scene about Hannah Senesz, it declared, for the record,
that the broadcast contained an outright lie. Moreover, the court created a
legal precedent by elevating the importance of maintaining the ideologized
version of the national myth to the status of the public interest. The Kasztner
Trial tested the boundaries of the dominant interpretation of the myth and was
able to cross it, with two qualifications: first, the court said that the myth was
true and the broadcast false (although it did not have the legal tools to make
that evaluation) and, second, the value that clashed with preserving the hege-
monic interpretation of the historical event was ‘freedom of speech’, a value
deeply rooted in Western thought whose promotion supports the Western self-
image of both the state of Israel and the Zionist movement. While television
programs have indisputable value as ‘electronic monuments’, it is the author-
itative voice of the court that comes to provide the ‘official’ interpretation of
broadcast content, in these cases. While far more people watch television than
read court rulings, court rulings still carry more weight because of the legiti-
mating role of the courts in society and their stature.

The Kasztner Trial decision also demonstrates where the court stands on
matters that involve the relationship between the individual as the creator and
the state apparatus as the broadcaster: in the original order nisi to permit the
broadcast, all three justices concurred, as though they had been asked to wear
the hats of artistic critics, that, after watching the drama, they were convinced
that eliminating the controversial scene would not have impaired the continu-
ity of the text. They did say, however, that the final decision should be left to
the IBA. By declaring that the decision rested with the broadcaster and not
with the creator of the program, the court took sides with an organization
entrusted by law with maintaining the dominant version of the nation-
building narrative.

The two ideological elements of the Zionist narrative discussed in this
article – the commemoration of the Holocaust and the creation of a shared iden-
tity for Jews gathered from around the world while maintaining their unique
ethnic identities – have been emphasized since the creation of Israel. The way
in which the court chose to deal with their televised interpretations serves the
dominant version of history most suited to the original Zionist ideology. Both
the legendary pillar of fire and Hannah Senesz’s proverbial match were meant
to show the people of Israel, and all free spirits, the right path and the courage
to be defiant. It is doubtful whether this is also the legacy of the court.

Notes

1. The quotation in the article title is from the Bible (Nehemiah 9:19).
2. Some argue (e.g. Peled and Shafir, 2005) that Israel is the outcome of the colo-
nial Zionist movement. I contend, however, that Israel is the result and outcome of
British colonialism and not a colonial force in itself.
3. There had been lengthier decisions, when the request was to force the authority
to broadcast content it had instructed to censor.
4. In 1995 in the new version of the code of conduct (Rogel and Schejter, 1995), it
was rephrased to state that Mamlakhtiyyut meant that, unlike commercial newspapers,
the IBA did not have an opinion, adopting the British concept of ‘impartiality’.
5. Note the reference to ‘Israelis’, otherwise a legally non-existent term.
6. The term we will use in this study to describe Jews descended from those who
first came from Arab, Mediterranean and Balkan countries.
7. The proper way to spell Hannah Senesz’s name is unclear, as it is spelt in at least
three different ways (Senesz, Szenes and Senesh) in different sources. For the sake of
consistency, we have chosen ‘Senesz’.
8. Although the law was rewritten in 2000, references to the history of the Jewish
people and the memory of the Holocaust were maintained.
9. Grunwald was eventually found guilty on three of four counts by the Supreme
Court. By then, however, Kasztner had been assassinated for his presumed historical role.

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