

‘The Stranger That Dwelleth with You Shall Be unto You as One Born among You’—Israeli Media Law and the Cultural Rights of the ‘Palestinian-Israeli’ Minority

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Abstract

The media and communication rights of Palestinians in Israel are designed to deny them of collective cultural rights, specifically the right to express their identity through the mass media and to participate equally in the process of national culture building. Through a critical analysis of the documents that shape the media industry in Israel and their historical evolution, this paper lays bare the assumptions underlying Israeli media policies. The policies are designed in a discourse branding ‘Palestinian-Israelis’ a linguistic minority, and portraying them as the ‘enemy within’, thus barring their participation in the development of Israeli culture by limiting their electronic media participation to separate channels targeting both them and Arabs in neighboring states. The paper argues that this policy stems from a narrow interpretation of ‘democracy’ that rejects identification with the Orient and embraces neo-liberalism.

Keywords

Israel; broadcasting; Palestinians; minority rights; minority media

Introduction

How ruling majorities should treat their ethnic minorities is an issue that dates back to Biblical times. The ancient Hebrews, on leaving Egypt en route to the land of Canaan, were instructed to treat the minority groups that traveled with them as equals and were reminded that they themselves were once a minority in Egypt, indeed a terribly mistreated one. This critical study of the media and communication rights of the Palestinian minority residing in

* Leviticus, chap. 19, verse 34.

Israel's internationally recognized borders¹ (the so-called 'Green Line') demonstrates how a society that tends to perceive itself as liberal and democratic, and whose formal institutions so indicate (see, for example, Freedom House 2005), in fact, denies the collective cultural rights of an ethnic, homeland minority that resides within its borders. Specifically, it denies this minority the right to express its identity through the mass media and to participate equally in the process of national culture building. Through a critical analysis of the legal documents that shape the media industry in Israel and their historical evolution, this study lays bare the assumptions underlying Israeli media policies and their effect on public policy. It finds that not only does Israeli media law deny the Palestinians in Israel the right to express themselves collectively as a cultural minority by branding them a linguistic minority, but it also portrays them as the 'enemy within', thereby ruling out their participation in the development of a unified Israeli culture. Whereas previous research has focused on how the 'Palestinian-Israeli' is portrayed as the 'enemy within' in Israeli media (e.g. Niger et al. 2001; First 2002; Avraham 2003), this study delves into the ideological biases of the Israeli legal system, as reflected in the design of media policy, through a detailed presentation and analysis of laws, regulations, court decisions, committee reports and parliamentary debates set in their appropriate historical-political context, as mandated by such a discussion of minority media (Browne 2005).

Israel: Historical Context, Minority Issues and Media System Structure

Israel was established as a result of United Nations General Assembly Resolution 181 of November 1947² as a 'Jewish State' that was to reside next to an 'Arab State' in the former British colony of Palestine. The Israeli Declaration of Independence adopted this same construct, promising the Arab minority that would end up residing within its borders equal civil rights. As a result of the war that broke out soon thereafter, Israel's initial borders were redrawn and most Palestinian Arabs originally residing within its borders were displaced. Many Palestinian Arab families were separated, and many of

¹ Which will be referred to in this study as Palestinian-Israelis or the Palestinian-Israeli minority. Using this term denotes the identity of the Palestinian minority in Israel most accurately as it determines that 'Palestinian' is a distinct identity which may be Arab, too, but at the same time this is a group that holds Israeli citizenship, which differentiates it from Palestinians elsewhere.

² <http://www.yale.edu/lawweb/avalon/un/res181.htm>

the refugees ended up residing in areas originally carved for the Arab state that was never formed, but was instead ruled until 1967 by Egypt and Jordan, and after 1967 by Israel.

The Israeli constitutional framework that came into being over the years defined Israel in 1992 as a 'Jewish Democratic' state, and created a repatriation right for all Jews, regardless of their place of birth, but denied a similar right to the indigenous displaced Arabs. Israeli courts ruled as early as 1972 that there is no 'Israeli' nationality separate from Jewish ethnicity (H.C. 630/70). Israeli parliamentary democracy, however, awards all citizens an equal right to vote regardless of their ethnicity. Still, it is indisputable that the Arab citizens of Israel, many of whom have since assumed a 'Palestinian' identity, aligned with the yet-to-be-formed Arab state, are economically and socially removed from positions of power in Israeli society and are systematically discriminated against (Hasson and Karayanni 2006; Cook 2006).

Israel has been classified as an ethnic-democracy by some (Smootha 1990; 1997), non-liberal (Doron 1998; Gontovnik 2004) and neo-liberal (Hirschl 1997; 1998), but, in any case, a state that has recently shifted its focus from promoting social, cultural and collective rights to promoting individual rights in order to advance dominant cultural understandings that serve its self-determination as both 'Jewish' and 'democratic'. The inherent tension between these two objectives provides the context for this study.

Israel's Palestinian Minority

Arabs residing in Israel, who constitute approximately 18% of the country's population, are most commonly referred to as 'Arab Israelis' - a description that dates back to the time of the creation of the State of Israel (Bishara 1993: 203). Rubinstein and Medina (2005) argue in their definitive description of the Israeli constitutional system that Arab Israelis enjoy *de facto* cultural autonomy, as they administer their religious matters independently and study in Arabic in public schools in towns where they enjoy a virtual majority. Thanks to the existence of these autonomous spheres, they contend, it would be 'imprecise' to say that 'Palestinian-Israelis' enjoy a limited citizenship only because they cannot claim their cultural identity as a collective. They fail to note, however, that the Israeli Ministry of Education dictates the curriculum in these schools and that Palestinian Arab education in Israel receives fewer allocations for physical facilities, teacher training and curriculum development (Golan-Agmon 2006). Smootha (1990) concurs that 'Palestinian-Israelis' function as a separate cultural minority, but believes the Jewish majority

tolerates this situation only because it serves its own interest of keeping the communities separate.

The main problem is that 'Palestinian-Israelis' are not recognized as a national minority; a recognition Rouhana (1997) argues is central to their identity. Thus, lacking both the power to self-determine their minority status within Israeli society and the ability to identify with the emerging independent Palestinian state, they cannot develop normally as a collective (Ghanem 2001). Since 1993, Israel has been negotiating directly with non-Israeli Palestinian representatives on how to fulfil their national aspirations alongside the state of Israel, effectively accepting *de facto* the existence of a Palestinian nationality.³

The Israeli Supreme Court has refused to recognize Palestinians in Israel as members of a discrete identifiable 'nation'. In a High Court petition filed in 1999 by Adalah, the Legal Center for the Rights of the Arab Minority in Israel, against the municipalities of Tel Aviv, Ramla, Lod and Upper-Nazareth, the majority – Justices Aharon Barak and Dalia Dorner – stipulated that these municipalities were obligated to add Arabic to street signs in all of the towns' streets, including neighborhoods where no Palestinians resided, first and foremost, as a service to them as individuals (H.C. 4112/99: section 15). Chief Justice Barak wrote that Hebrew is the 'language of the Israelis'⁴ and the 'power that brings us together as children of one country' (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 and English the language of all the English people, serving as a fundamental pillar of these nations' sovereignty. If all the citizens of the state of Israel were to study Hebrew, argued Barak, it would guarantee their equal rights (section 24).

Indeed, he concludes that neither in London, Paris nor New York are there street signs to be found that reflect the linguistic diversity of the residents of those cities. The chief justice did, however, acknowledge that the Arabic language is 'distinct', being the language of Israel's largest minority and a core element of its culture (section 25). The dissenting voice, that of Justice Mishael Cheshin, said that the petitioners were attempting through this request to establish a legal precedent, namely, a new type of 'right', a 'collective right' of the Israeli-Arab minority to maintain and nurture its national identity and cultural distinction. This type of right should be pursued through political,

³ This *de facto* recognition of a Palestinian people can be traced to the 1978 Camp David Accords, upon which the peace agreement between Israel and the Republic of Egypt was based.

⁴ Note the reference to 'Israelis' that the Supreme Court itself has ruled are not a separate entity from 'Jews'.

rather than legal, channels, argued Cheshin in his case to deny the request for street signs in Arabic (section 52).

Israeli Electronic Media Policy Structure

Israeli media law has created the framework for regulating a public radio and television broadcaster, two commercial television stations, a dozen regional commercial radio stations, and cable and satellite distribution platforms that own and operate additional ‘narrowcast’ channels. Three main laws govern Israeli media: the Broadcasting Authority Law, which governs the activities of the Israel Broadcasting Authority (IBA), the public service broadcaster, which is a self-regulated body that operates a national terrestrial channel (Channel 1), a satellite channel (‘the Middle East Channel’ or ‘Channel 33’), and half a dozen radio networks; the Second Authority for Radio and Television Law, which regulates the commercially funded terrestrial television stations (Channels 2 and 10) and regional radio stations through a designated regulator known as the Second Authority, and the Communications Law (Telecommunications and Broadcasting), which supervises multi-channel television over cable and satellite through a third and separate regulatory body, the Cable and Satellite Broadcasting Council (CSBC).

Broadcasting laws in Israel are deemed a delicate political issue. As such, they need a committee to establish and agree their development. These committees have no structural-legal pre-requisites; therefore at times they consist of foreign advisors, at times of government officials, at times of public representatives and at times they are a combination of members of more than one affiliation. The major committees described in this study are: two committees of foreign experts – a UNESCO committee and an EBU committee – asked to provide recommendations on the establishment of television in Israel; the ‘Bendor committee’ of 1965, appointed as well to recommend the establishment of a television service; the ‘Kubersky committee’ of 1978, appointed to recommend the establishment of commercial television; the ‘BarSela committee’ of 1982, appointed to establish the rules for cable television; and the ‘Peled committee’ of 1997 appointed to liberalize the broadcasting market. A number of committees were formed to recommend changes in the structure of public broadcasting. They included the ‘Livni’ (1993), Zuckerman (1997), and Bereshit (2001) committees.

A key feature of broadcast media regulation in Israel, from the outset, has been an across-the-board requirement for political impartiality. The Broadcasting Authority Law, the Second Authority Law and cable regulations all require that broadcasters provide ‘adequate expression to the variety of

opinions prevalent in society'. Rules that apply to broadcasting to and for the Palestinian minority residing within Israel's borders are another dominant feature of the system, as this study demonstrates.

The 1960s: Creation of IBA and Launching of a Television Service

The 1965 Broadcasting Authority Law, which created a European-style public service broadcaster following years of government broadcasting, can be seen in the larger context of Israel's transition from its developmental stage to its adoption of Western-style democratic institutions—a transition also characterized by the lifting of military rule imposed in 1948 in Palestinian towns. The law defines 'maintaining broadcasts in the Arabic language for the needs of the Arabic-speaking population and broadcasts to advance understanding and peace with neighboring states according to the 'basic aspirations of the state' as one of its goals. Another goal of the public broadcaster, namely 'to reflect the life and the cultural assets of all the tribes of the nation [who arrived] from the different countries of origin' was added to the original draft, and subsequently explained in the Israeli Parliament as applying only to the Jewish people (Knesset Records March 8, 1965).

It was not until 1968 that television broadcasts began in the Jewish State (Caspi and Limor 1999; Oren 2004). These were perceived as a means of diluting the impact of across-the-border broadcasts from neighboring Arab countries, of advancing national goals that serve the Jewish majority and of promoting understanding between the two populations.⁵ A United Nations Education, Science and Culture Organization's (UNESCO) task force reported in 1961 that creating a television service would help achieve the national goal of striking a reasonable balance between paying respect to different ethnic cultures and promoting a unique national identity (Cassirer and Duckmanton 1961). A European Broadcasting Union team stressed in its 1965 report that any decision to establish a television service in Israel could not ignore the existence of a large Arab minority in the country and recommended launching a simultaneous bi-lingual service that would allow all viewers to watch the same programs in the language of their choice.

The inter-ministerial committee appointed to examine ways of implementing the government decision of July 1965 to establish a national television service,

⁵ It should be noted that the decision to initiate television broadcasts followed failed attempts to block the proliferation of television sets through excessive taxation of the sets, as a result of the fear from the impact of external propaganda (Oren 2004: 48).

following these two international expert reports, expressed concern about the Arabic-speaking Jewish population of the state, (which it described as the most susceptible to television's presumed effect), noting that these citizens owned television sets and watched 'uninterrupted' broadcasts from neighboring countries (Bendor 1965). It recommended, therefore, that the national television service provide 14 weekly hours of broadcasting in Hebrew and three-and-a-half weekly hours of broadcasting in Arabic to 'explain' Israel's positions in neighboring countries. The eventual decision to establish a television service in Israel was taken, however, only three months after the June 1967 war which resulted in Israel's occupation of territories heavily populated by Palestinians. The decision called for launching 'emergency broadcasts' aimed primarily at audiences in the occupied territories and at 'Arab Israelis' that were to include three hours of Arabic programming and one hour of Hebrew programming daily. This decision, which effectively overturned the Bendor committee's recommendation, shifted the cultural emphasis of the broadcasts and led Elihu Katz, the renowned Hebrew University sociologist who was charged with spearheading this effort, to later testify that 'I did not think that television could by itself cause the Arabs to like Israelis, and I said so' (Katz 1971: 254).

The 1970s: Preparing for the Launch of Commercial Television

The 'Kubersky committee' was appointed in 1978 by the first Likud-led government – whose election signified a departure from the social-democratic values that had defined the state until then and the adoption of a more hawkish⁶ and free market ideology. The committee recommended creating a commercially funded television channel that would be separate from the IBA, although it copied virtually verbatim the words used to define the goals of public broadcasting in the Broadcasting Authority Law when referring to the commercial channel's goals (Schejter 1996). Providing more broadcasting to Palestinian Israelis (at the time, this translated into 90 minutes of daily programming in Arabic on its one and only channel) was not perceived as a prime objective of the commercial channel, although the report did note that the establishment of a second channel might reduce the number of television programs from neighboring countries viewed in Israel and to a certain extent, might also fulfil the 'political-security-related' need to enhance visibility of Israel's positions in the region (Kubersky 1979: 27).

⁶ This included massive building of settlements in the Palestinian territories occupied in the 1967 war, a move mostly refrained from by the preceding Labor regime.

The goals of the IBA were never amended by law. In 1979, however, the Knesset, controlled by the Likud-led coalition, adopted a resolution which stipulates that according to the law, an objective of television broadcasts should be to promote Hebrew as well as 'Israeli and Jewish' creativity (Knesset Records December 17, 1979), a reference that does not appear in the law. The IBA's goals regarding Israel's 'Arabic-speaking population', defined by law in the same section, were not mentioned in the resolution.

The 1980s: Planning and Launching Cable Television

The Bar-Sela committee – appointed by the second Likud government with hawkish⁷ and neo-liberal policies – drafted the blueprint for cable policy in Israel in 1982, and was of the opinion that Palestinian Israelis deserved special attention, being a 'large public with a separate linguistic and cultural affinity' (Bar-Sela 1982: 76). It did not, however, recommend specific policies and merely urged the government to consider 'special channels or special hours for programming aimed at the Arabic-speaking population in Israel', that require 'special supervision' to ensure they do not 'slip into discussion of controversial issues for which this medium was not meant' (Bar-Sela 1982: 77).

While the committee's recommendations were arguably at the heart of the amendment introduced into the Telecommunications Law of 1986, which launched the cable service (herein referred to as 'the cable law'), its specific recommendation regarding the needs of the Palestinian Israeli population was disregarded. On the whole, the cable law paid little attention to content, restricting the operators from broadcasting anything but local current affairs and programs serving the unique needs of each franchise area. The majority of programming, as envisioned by the original law, was to be comprised of the rebroadcast of Israeli terrestrial and foreign satellite channels. The first set of regulations governing the cable industry, enacted by the CSBC⁸ in 1987,⁹ however, included a minimum requirement for broadcasts in Arabic. The regulations stipulated that in a franchise area in which the mother tongue of at least one-quarter of the potential subscribers was Arabic, a weekly minimum of four 15-minute newscasts and one full-length feature film in Arabic should be broadcast.

⁷ Including an invasion of Lebanon in order to confront Palestinian organizations based there.

⁸ Then still known as the 'Cable Broadcasting Council'.

⁹ By this time, both Labor and Likud were partners in a 'national unity' government and the communications portfolio was held by either a Labor member or a member of the centrist Shinui party.

The 1990s saw substantial changes in media policy as the international media environment was changing. In Western Europe commercial television was making gains and the role of public broadcasting was being debated. In neighboring countries transborder satellites were launched and made available to Israelis through their cable systems.¹⁰ Commercial television (Channel 2) in Israel was launched in 1993 and a parade of public committees appointed to redesign public broadcasters commenced. The same year a transborder satellite broadcast service (Channel 33) was launched as well. In the late 1990s, in response to the fragmented political scene and the massive immigration from the former Soviet Union, a plan to launch ‘designated channels’ aimed at minority communities was designed.

The Launch of Commercial Terrestrial Broadcasting

Though conceived in 1978, the Second Authority for Radio and Television Law, which regulates commercial broadcasting, was enacted only in 1990. By then, both major parties had concluded that a move away from massive government intervention and a reliance on market forces was the desirable path for the country’s economy (Ben Bassat 2002). The law repeats verbatim the Broadcasting Authority Law’s requirement that Arabic-language programs be broadcast to serve the Israeli Arabic-speaking population and to promote peace and understanding with neighboring countries, applying it to the commercial broadcasters as well. Although the law *prima facie* favors a broadcasting policy more open to Western culture and less suspicious of foreign cultural influences, this is the only section of the Broadcasting Authority Law that appears verbatim in both the Kubersky report and the Second Authority Law (Schejter 1996).

Among the cultural obligations assigned to the commercial broadcasters, the law requires the provision of ‘adequate expression to the cultural diversity of Israeli society’ (Article 5(b) (6)). The Second Authority, as the regulator is known, was empowered to require the channel licensees to broadcast programs (Article 61) as well as news in Arabic (Article 63(c)). Originally, the regulations enacted in 1992 required the broadcasters to allot no less than 2.5 % of their total program time, and in any case not less than 30 minutes a week, to programs in Arabic. Half of this quota was to be filled with original local productions. No mention, however, was ever made of news. In 1997, the

¹⁰ For a detailed description of how Israeli policy makers react to the emergence of transnational broadcasting, see Schejter (2005).

quota was raised to 8% of total weekly broadcasting time, with 30 minutes for original programming. In 1999, the quota was raised once more, this time to 18%, reflecting the share of 'Palestinian-Israelis' in the total population.

Responding to the 'New Middle East'

The IBA's dual public (internal) and state (both internal and external) missions initially emerged in response to the political climate of the 1960s, which Israel perceived as hostile. These objectives were not forsaken, however, in the early 1990s, when the first official reconciliation talks between Israel and the Palestinians were being held and Israel had begun forming relations with other Middle Eastern countries. In 1993, the IBA launched, at the government's behest and financing, a satellite channel charged with broadcasting in Arabic to neighboring countries (commonly known as 'Channel 33'). As part of its efforts to gain back viewers who had abandoned it in favor of the newly launched commercial channel, Channel 2, the IBA began concomitantly to reduce its Channel 1 terrestrial broadcasts in Arabic.

The 1990s saw the official seeds of reconciliation between Israel and its Palestinian neighbors, including mutual recognition of each other's right of self-determination (a goal yet to be realized by the Palestinians), and a growing acceptance of neo-liberal economic policies by Israeli lawmakers, and the enactment of constitutional amendments in line with these beliefs. In addition, more than a million immigrants from the former Soviet Union settled in Israel during that decade. This new immigration movement consisted mostly of Jews, and in line with the Jewish identification of the state, its members acquired benefits Palestinian Israelis could not expect to receive.

The recommendations of numerous government committees appointed by cabinet ministers to present recommendations on restructuring the IBA in light of the establishment of commercial and cable broadcasting were never implemented, although they do provide valuable insight into the mindset of Israeli policy makers and illustrate what they, or at least the advisers they appointed, found to be faulty with existing policy. The 'Livni Committee'¹¹ recommended rephrasing the law in order to have it stipulate that 'in maintaining the broadcasts, the authority will focus on creating a unique Israeli culture by expressing and documenting the life, cultural assets and heritage of all the citizens of Israel' (Livni 1993: 3). It also recommended that the IBA

¹¹ The author was a member of this committee.

maintain broadcasts in Arabic in order to ‘reflect the heritage and way-of-life of Arabic-speaking Israeli citizens’ (p. 12) and that these broadcasts comply with the rules and professional emphases that apply to broadcasting in Hebrew. The committee explained that broadcasts in Arabic are necessary to provide a means of expression for the Arabic-speaking population (p. 18).

The ‘Zuckerman committee’ reiterated that the obligations of the IBA include maintaining broadcasting in Arabic for ‘Israeli-Arabs’¹² and promoting ‘understanding and peace with the Palestinian people and with neighboring countries’ (p. 40). It proposed adopting a model that distinguishes between the ‘public’ missions of the IBA (which it recommended continue to be funded directly by the public through a license fee) and missions it would carry out at the request of the government (which it recommended be funded through the national budget) (p. 11). The committee recommended eliminating the IBA’s ‘Channel 33’ that targeted the Palestinian Authority and neighboring states, since the IBA’s regular broadcasts could be received in these areas (p. 86-7).

With regard to radio broadcasts, the committee noted that the IBA’s broadcasts in Arabic fulfill two tasks—broadcasting to Palestinian Israelis and broadcasting to neighboring Arab countries (p. 25)—and proposed that the latter be funded separately from local broadcasts (p. 86). The committee did not, however, see a need to separate the broadcasts themselves.

The ‘Designated’ Channels

A provision in the original cable law allowed the government to determine the use of one-sixth of the country’s cable capacity. The first channel launched on this platform was a shopping channel. However, when the minister of communications and the CSBC¹³ appointed by Prime Minister Yitzhak Rabin’s Labor government began contemplating creating an Arabic language channel in 1995, a petition filed by commercial broadcasters to the Supreme Court initially blocked them. The petitioners feared that the new channel would become a competitor by initiating broadcasts in Hebrew as well and worked to guarantee that its mandate would be limited to broadcasting in Arabic. The government bowed and agreed to define the channel and its goals through legislation before taking any further steps to promote the plan.

¹² and not ‘Arabic speaking population’.

¹³ Then still known as the ‘Cable Broadcasting Council’.

Amendment No. 15 to the Telecommunications Law¹⁴ established a new type of cable channel, dubbed the ‘designated channel’. Designated channels were to be identified and licensed as such if they limited their content to a designated topic, identifiable audience, or unique language, culture or heritage. It was decided that the communications minister and the CSBC would share the authority to award licenses to such channels. In order to alleviate the fears of the commercial terrestrial broadcasters, a minimum of 20% of the programs on these designated channels were to be locally produced; all of the programs and advertisements on those channels designated by language were to be made accessible to speakers of that language; and half of the programs on those channels designated by language were to be dubbed or broadcast in that language, including at least half of the programming during prime time. While the Knesset was debating the law in 1996, the conservative Likud government elected following the assassination of Rabin established the ‘Peled committee’, which was asked to present recommendations for deregulating the broadcasting industry.

Although this committee’s recommendations (Nissan 1997) focused on deregulation, it provided non-partisan retroactive support for the government’s decision to promote the designated channel plan. In August 1997, the government decided to adopt the committee’s recommendations (even though the law had already been passed a few months earlier) and established the ‘Broadcasting Regulation Administration’ (BRA) to oversee their implementation. While the idea for a channel in Arabic that would serve Palestinian Israelis was the catalyst and precursor of the process that led to the creation of the designated channels, with the Knesset’s Economics Committee listing it first among the planned designated channels in its July 1998 decision on ‘designations’, the BRA put the Arabic channel last on its list in its request for information from the public regarding the designated channels, published in December of that year.¹⁵ What emerged as the first ‘designated language’ channel to be established was a channel in Russian, reflecting the dramatic demographic changes in the 1990s.

At the same time, a 1997 amendment to the cable regulations lowered the threshold for the Arabic language broadcast requirement: the requirement

¹⁴ It had been subsequently renamed the Communications Law (Telecommunications and Broadcasting), in 2001.

¹⁵ This change in preference can be attributed to the fact that a member of the opposition party traditionally heads the Knesset Economics Committee. In 1998, the BRA was appointed by the ruling right-wing Likud coalition.

would kick in, under the amendment, when at least 20% of the population in a franchise area was Arabic-speaking, rather than the original 25%. In addition, the amendment provided the cable council with the discretion to replace the required newscasts and feature films with other programs that targeted Arabic-speaking subscribers.

The 2000s:

The turn of the century saw the launch of a second commercial channel (Channel 10) as well as a designated channel for Russian immigrants. Attempts to launch a designated channel in Arabic failed as did the attempts to implement yet more recommendations of committees appointed to restructure the IBA. Amendment No. 24 to the Telecommunication Law meant to redraw and somewhat liberalize the regulatory landscape of the cable industry was presented to the Knesset in 1999. The draft included a provision, not explicated in the explanatory memorandum, authorizing the minister of communications to allow a designated channel to be broadcast as an unencrypted satellite channel as well. As the amendment went through the legislative process, it was renamed the ‘designated channel in Arabic’ provision. Its final version stipulates that in order to ensure maximum access to the designated channel in Arabic, it should be allowed to broadcast over an unencrypted satellite signal. It also states that within two years of its launch, the channel will pass from the jurisdiction of the CSBC to that of the Second Authority and be regulated as a commercial channel.

The Knesset Economics Committee devoted lengthy discussions to this provision, mainly because of objections raised by members who represented the nationalistic and religious right-wing parties. While initially their objections seemed only procedural, it eventually emerged that they were ideological. Representing the nationalist ‘Herut’ (‘Liberty’) faction, Knesset Member Michael Kleiner said he objected to the proposed channel because the only ‘Arab channel’ (sic) that should exist is a government-owned channel, namely the IBA’s Channel One (Knesset Economics Committee Records, July 18, 2001). Kleiner described the proposed privately owned channel as an enemy channel with an ‘official stamp of approval’. He argued that since it would have to broadcast ‘what they [the Palestinian-Israelis] want to hear’ in order to survive economically, it will revert to broadcasts serving the enemies of the state.

His position was endorsed by Knesset Member Yigal Bibi of the National Religious Party, who described the proposed channel as a ‘lifetime license to broadcast propaganda’ without proper supervision. Kleiner later raised similar concerns on the Knesset floor, but to no avail (Knesset Records,

July 25, 2001). The first tender for a designated channel in Arabic was published, however, only in January 2003, after tenders had been published and licenses awarded for designated news, music and Russian language channels. The Arabic channel had not been established, nor had a license for its establishment yet been awarded after the winners (and sole competitors) in the 2003 tender retracted their bid. By 2005, the minimum Arabic programming requirements in densely Arabic-speaking cable franchises were scrapped as well and replaced with a general obligation to broadcast in Arabic, as required by the law and relevant regulations.

Amendments to the Second Authority Law, enacted in 2000, provided for the establishment of a second commercial terrestrial channel, a move justified in the explanatory memorandum appended to the draft of the bill only by the need to broaden the choice of commercial television programs available to viewers and to lower the price of advertising. The law redefined the term 'local programming' to include programming in Arabic and in Russian, so long as the majority of those involved in production were Israeli citizens. The addendum to the law set the minimum time allotted to programming in both Arabic and Russian, including programs with subtitles, at 5% of total programming time. When a representative of the Knesset Finance Committee presented the law on the Knesset floor, he explained that this provision was meant to 'protect the Arabic language' (Knesset Records, March 28, 2000), although at the time, the Second Authority regulations required that Arabic programs be allotted 18% of broadcasting time. Helping Russian immigrants who understood only Russian feel 'partners in the content of a television channel in the State of Israel' was the reason he cited for the provision requiring a similar (5%) quota of programs in Russian.

After this legislation was passed, new regulations were enacted in 2002.¹⁶ The new regulations redefined the character of commercial broadcasts. While the original regulations made no reference to minorities, the new regulations urged the franchise holders to express in their broadcasts 'the core of Israeli existence', which was defined as 'the Jewish-Israeli discourse', alongside 'the culture and religious beliefs of the residents of Israel' and of 'Jews and Arabs, immigrants and old-timers...a variety of audiences'. As for the amount of broadcasting, the new regulations reversed the upward trend of previous years and lowered the minimum quota of broadcasting in Arabic to 5% in order to match the law's addendum. The minimum 30 minutes a week of original programming was maintained and similar requirements were set for Arabic and Russian programming.

¹⁶ By now, the Likud was in power once more.

In 2003, the Knesset intervened again in the content of commercial broadcasts by adding a second addendum to the law, one which stipulates how much commercial television franchisees are required to invest in the production of different genres of programs they are legally obligated to broadcast. Regarding programming in Arabic and Russian, however, this second addendum merely repeated the first addendum's requirement that 5% of broadcasting time be allotted to programming in these languages. The Knesset record does not explain why a minimum monetary expenditure was not fixed to the desirable language broadcast as well.

In September 2004, the Second Authority published a new tender for a 10-year license commencing in November 2005 for two franchise holders in Channel 2. While the requirements for the tender were stipulated in the law, the Second Authority formulated its own set of conditions for fulfilling the requirements. These included the production and broadcasting of 'preferred programs', defined as 'programs of knowledge and culture, heritage and Jewish culture'. A requirement for a minimum number of programs in Arabic dealing with issues relevant to 'Israeli-Arab society' was also included, although it is not clear whether this was meant to be part of the 'preferred programs' quota that was evaluated at 5% of the total value of the offer. What is clear is that the most important program category, the 'elite genre', which accounted for 20% of the total offering, was not required to include programs in Arabic or programs produced and created by Palestinian Israelis.

In 2002, the Second Authority also initiated special rules for commercial radio broadcasts in Arabic. Of the 12 commercial radio regions in the country, one was dedicated to broadcasting in Arabic and geographically covered non-contiguous regions where the majority of 'Palestinian-Israelis' reside. Cross-ownership barriers between newspapers and radio were lifted in order to expand the pool of operators eligible for this license. In its annual reports that provide information on how the franchise holders comply with the terms of their licenses and other regulations since 1999, the Second Authority reported that the only sanction taken against franchise holders who failed to meet the quota of programming in Arabic in 2002 and 2004 was that they were required to increase the number of hours they broadcast in Arabic the following year.

IBA

The Bereshit committee, formed by a Labor-led government in 2000, proposed a major overhaul of broadcasts to Palestinians in Israel, including introducing affirmative action hiring policies at the IBA, appointing 'Palestinian-Israelis'

to management positions in the organization, and providing this population with proportional representation on the IBA's board. With regard to content, the committee advocated designing broadcasts that express the 'national Arab minority's' society and culture while eliminating their propaganda content (Caspi 2005). These recommendations notwithstanding, the IBA remained loyal, with government support, to its traditional credo as a broadcaster of messages in service of the state: In August 2001, it announced plans to launch yet another satellite channel for the purpose of enhancing its Arabic and English broadcasts and compensate for the constant decline in terrestrial broadcasting in Arabic (which in the 1990s prompted the creation of 'Channel 33').

The government took notice of the IBA's plan, with the minister of communications announcing that the new channel would broadcast in Arabic 12 hours daily. In June 2002, the IBA indeed launched this satellite channel, but ended up targeting Arabic speaking viewers in neighboring countries. The deputy minister of commerce, industry and labor notified the Knesset in November 2003 that this new channel, 'the Middle East Channel' would provide, for the first time since broadcasting was launched in 1968, around-the-clock broadcasts in Arabic, to fulfill the needs of 'the Arabic speaking population' and thereby enable the cessation of broadcasts in Arabic on the IBA's lone terrestrial channel (Knesset Records, November 11, 2003).

After the Supreme Court was petitioned to force the IBA to provide terrestrial broadcasts in Arabic (H.C. 375/03), the public broadcaster began retransmitting the Middle East channel on terrestrial channels for a limited number of hours a day, since a small percentage of Israelis were equipped with satellite dishes, but vowed to eventually provide 24 hours of service a day. The petition was consequently withdrawn. In June 2004, the deputy minister announced yet a new policy, this one involving the integration of 'Channel 33' and the 'Middle East' channel. This integration, he argued, would allow the two channels to carry more broadcasts in Arabic than ever before, daily from 4 p.m. to 8 p.m (Knesset Records, June 6, 2004). Decisions and promises notwithstanding, the IBA web site, last updated on July 28, 2005¹⁷ describes 'Channel 3 – the Middle East' as a channel broadcasting in Arabic over satellite for Arabic speaking viewers in Israel and neighboring countries. The program schedule shows that its content is limited to one daily hour of news and current affairs programming in Arabic and, on occasion, an additional hour of programming in Arabic.

¹⁷ Accessed on 5/21/06, this reference has since been removed. Currently, the IBA website (www.iba.org.il) has no descriptive reference to any of the IBA channels, as accessed on 9/8/06.

Discussion

By systematically analyzing the legal documentation relevant to a particular issue, the identification of motivations that may be legitimate within a specific social order, but whose formal justification obscures their real political importance in serving a dominant ideology is possible (Cotterell 1992: 212), as is the case here. Two underlying beliefs have influenced the approach taken by Israeli policy makers in providing the country's Palestinian citizens with electronic media services: one, that the Palestinians are merely a linguistic minority with linguistic needs, and two, that they are an 'enemy within'. These characterizations of the minority, that emerge throughout the legal documentation described herein, have created a two-pronged policy, both *de jure* and *de facto*, which has driven broadcasts aimed at 'Palestinian-Israelis' away from the traditional channels offered to society at large and into seclusion on dedicated channels, some of which are meant to serve as apparatuses aimed at presenting the state's positions to citizens of neighboring countries.

The characterization of the 'Palestinian-Israelis' as a linguistic minority allows the Israeli legal system to simultaneously adopt both a 'liberal' and a 'hostile' approach in addressing them. Linguistic rights are widely regarded as a minority right that should be guarded, in accordance with Article 27 of the International Covenant on Civil and Political Rights, to which Israel is party.¹⁸ 'Palestinian-Israelis' are consistently defined only as an 'Arabic speaking'¹⁹ minority in all media laws and regulations and in most regulatory preparatory work such as committee reports. Providing them with some Arabic content in broadcasts would seem to fulfill an international obligation aimed at linguistic minorities and be in line with the state's democratic ethos. At the same time, it achieves another goal – one implied in the wording of Israeli media laws and many of the accompanying legal documents: it associates this minority with an 'Arab' culture and an 'Arab' nation, thereby denying its self-proclaimed 'Palestinian' identity.

In the Israeli case, awarding linguistic rights has become a means for restraining nationalistic sentiments. This is in contrast with Kymlicka & Patten (2003) who see a connection between the creation of language rights

¹⁸ Linguistic rights are recognized in many other international documents; however only the Covenant is part of Israeli law; hence relevant in this context.

¹⁹ The terminology 'Arabic Speaking Israelis' must be seen in this context as a euphemism for 'Palestinian-Israelis', and in no way can it be seen as referring to Jews that immigrated from Arabic speaking countries, as for them, as for the rest of the Israelis, broadcasting services are provided in Hebrew as part of the Zionist ethos.

and the acceptance of the legitimacy of minority nationalism, and Cormack who believes that if there is a connection between language distinction and national aspirations, governments will be inclined to address the needs of these populations more seriously. The constant comparison between Israel's Palestinian citizens and the state's enemies abroad is neither accidental, incidental nor is it archaic, but rather systematic and repetitious, in both law and practice. It is a common thread that runs through the government's decision to adopt the Bendor commission's report in 1965, the subsequent reports that established commercial and cable television in Israel, and the eventual endorsement by the government, the Knesset and the court of the IBA's decision to broadcast to Israel's Palestinian minority a channel meant for neighboring states, some of which are hostile, and, in that way, fulfill its 'public service' obligation to Israeli citizens who purportedly enjoy equality in a democracy.

It is a characterization independent of time, political regime or level of conflict with neighboring Arab countries. This characterization plays out on two levels: First, the committee reports all refer to broadcasting to the Palestinian minority, not as an obligation the state has toward citizens with equal rights, but rather toward citizens with 'special needs' who are susceptible to across-the-border broadcasts and whose television viewing should be monitored. Second, the law and the policy implemented band together 'Palestinian-Israelis' and the citizens of neighboring states, both in the definition of the service and in the actual provision of one service to both audiences. Indeed, there is a common thread that runs through the 1965 Broadcasting Authority Law to the Knesset record and the court decision regarding the retransmission of the Middle East channel in the early 2000s: namely, two goals are served by the very same broadcasts. The broadcasts that supposedly serve the 'needs' of 'Arabic speaking Israelis', in fact serve the needs of the state. This ongoing policy has detrimental social outcomes and raises questions about the underlying ideology.

The Policy's Outcome

The elimination of Arabic broadcasts from public channels and the creation of a media service aimed at 'Palestinian-Israelis' and Arabs in other Middle Eastern countries contribute to the exclusion and seclusion of Palestinians in Israel from the rest of Israeli society, and is in line with other exclusionary policies and in sharp contradiction to the self-description of the state as 'democratic'. This exclusion from civic discourse has been achieved through two measures: one, Arabic programs are no longer broadcast on the public

channel and two on the main commercial channels their time slot has been slashed from 18% of the total to 5% (all during non-prime time viewing hours). In addition, Arabic speakers are not offered any professional news programs in their own language, while Hebrew speakers can choose among three. The only Arabic language news broadcast remaining is one produced for the 'Middle East' channel, which is designed to present the positions of the states, by its very nature.

Since the commercial and cable channels are not required to broadcast Arabic newscasts (although the regulators were empowered to require such broadcasts), Arabic speaking viewers are left to choose between Israeli government messages and messages emanating from neighboring Arab countries and transmitted via satellite, the same choice Israel's neighbors, some of which are its enemies, face.

In his insightful study, Saban (2004) illustrates the extent of Israel's denial of the collective rights of its Palestinian minority, including the rights to preserve their distinct culture, shape their own relevant aspects of life and gain fair access to the goods allocated by the state's social institutions. I would argue that at the root of this policy is Israel's interpretation of its credo of being at once 'ethnic' ('Jewish') and 'democratic', and the apparent contradiction that interpretation creates. Indeed, the state's 'Jewish' ethnicity and 'democratic' institutional structure were dictated by its founding documents: UN resolution 181, the Declaration of Independence and the incorporation of the Declaration into the state's constitutional framework in 1992.

The definition of 'Jewish' adopted by the state has been interpreted as dictating an exclusion of ethnic minorities from civic, by definition, non-ethnic, activities. The definition of 'democracy' incorporated a limited and narrow concept of 'liberalism', particularly in the 1990s, a concept which highlights individual rights. It could be argued that both processes were fueled by the ongoing conflict with Arab nations, who by identifying with the Palestinian cause 'helped' Israelis define their in-state Palestinian constituency as a 'fifth column', denying them both equal rights and an equal opportunity to participate in national decision-making and culture-building.

However, that would be too narrow an explanation. The exclusion of 'Palestinian-Israelis' can be explained by two parallel underlying ideological forces: the deep-seated rejection of the Israeli ruling elite, which originated in European Jewry, of all that smacked of the Orient, and its more recent tendency to embrace anything deemed 'liberal', 'Western', or better 'American', which regarding the media environment, has been defined as a 'lost war' (Liebe 2003). As Yiftachel and Kedar (2000) note, Israel may be defined as a 'settling ethnocracy', a political system based simultaneously on ethno-national

expansion and ethno-class stratification through a three-layered European Jews (*Ashkenazi*), Middle Eastern Jews (*Mizrahi*) and Palestinian ethno-racial structure that allows the dominant *Ashkenazi* group to sustain its power by controlling cultural hegemony and as a result economic and political power.

The *Mizrahi* cultural heritage was only gradually introduced into the school system, but only after it had been dismissed as dead and innocuous (Smooha 1993). The *Mizrahi* portrayal in popular culture has suffered stigmatization and prejudiced stereotyping in both film (Shohat 1989) and historic documentaries on television (Saranovitz 2005). Cultural hegemony is then translated into control of political power and is also evident in the country's political hierarchy. When the state was founded, the token *Mizrahi* appointment to the cabinet held the insignificant post of police minister (Shohat 1988). The judicial system was bereft of *Mizrahi* representation until 1962 – 14 years after the founding of the State—when the first *Mizrahi* Supreme Court justice was appointed, and 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.

A similar pattern emerges with regard to Israel's Palestinian population: reference to Palestinian culture in the Jewish educational system is all but non-existent, and Palestinians have always been portrayed in popular culture products and in news programs as an 'enemy within' (Niger et al. 2001; First 2002; Avraham 2003). Only in 2004 was the first non-Jewish justice appointed to the Israeli Supreme Court, and only in 2007 was the first 'Palestinian-Israeli' appointed to a cabinet position – albeit minister without portfolio. Indeed, individual members of the 'Palestinian-Israeli' community slowly get more opportunities as citizens, as Israel is distancing itself from its formative years in which Palestinian Israelis were held under military rule. But the emergence from the developmental to the post-industrial stage was paralleled by a transition from the 'collective-socialist' ideology to a 'neo-liberal' ideology. This has allowed the maintaining of the social exclusion of the Palestinians; even as their rights as individuals are slowly being recognized, their rights as a collective are being denied.

Tamir (1993: 6) contends that 'the liberal tradition, with its respect for personal autonomy reflection and choice, and the national tradition, with its emphasis on belonging, loyalty and solidarity, although generally seen as mutually exclusive, can indeed accommodate each other'. In fact, the emphasis on individual rights and individualism has served these exclusionary policies even when political winds shifted and governments more open to social equality were in power. Indeed, some commentators (Barzilai 2000) draw a direct connection between Israel's self-determination as a 'state of the Jews'

and its continued oppression of the ‘Palestinian-Israeli’ minority. It would be more accurate to adopt Hirschl’s (1997; 1998; 2000) observation that the ‘institutional disregard for subsistent social rights’ (2000: 1087) in Israel is rooted in the narrow ‘neo-liberal’ and ‘individualist’ (1998: 428) worldview reflected by the ‘constitutional revolution’ of 1992 - the same revolution that institutionalized the ‘democratic’ and ‘Jewish’ ethos in law.

This revolution allows policy makers, lawmakers and courts to award members of the Palestinian minority individual constitutional rights, but its emphasis on individualism comes at the expense of community and group solidarity. These would have led to the support of inclusive policies that allow a significant Palestinian voice on predominantly Hebrew channels. Providing the Palestinian ‘Arabic speaking minority’ with its own channels allows its members to express themselves as individuals, but disregards the need to accept them as equal participants in the formation of Israeli culture. Even those who contend that a state self-described as belonging to one ethnic group can be democratic (i.e. Gavison 1999) acknowledge that the Palestinian minority is more often than not excluded from participating in policy making affecting its own status and welfare. Media rights are therefore but one aspect of this much larger ideological debate.

Concluding Remarks

The decision – though still unimplemented – taken by Israeli policy makers to provide separate media outlets to the country’s minority groups has become the norm in many multi-ethnic societies. One might argue that this approach should be commended for demonstrating a deep internalization of multiculturalism. However, as this study argues, this approach is, in fact, ‘segregational’: first, because language rights are awarded in order to diminish broader cultural rights to citizens of the state who are perceived as enemies, and second, because even if an international ‘norm’ of creating separate media outlets in ethnically diverse countries exists, that does not necessarily make it a desired policy (Sreberny 2005). As Browne (2005) notes, mini-cultural spheres created along ethnic lines probably do not promote an ideal public sphere as an ideal public sphere strives to support a sense of community. Indeed, ‘for democracy to work, community is necessary’, a community that is deliberative and participatory (Friedland 2001: 359–59).

When the people of Israel arrived in Canaan after 40 years of wandering in the desert, they were accompanied by a distinguishable minority of non-Hebrews (as they were known then). The social policies that dominated that

era did not include extreme expressions of nationalism and neo-liberal capitalism. The people of Israel were instructed to rejoice in all the good with which God had provided them, together with the strangers living among them²⁰ and to treat them as equal citizens.²¹ It seems that this ancient dictate has no less relevance in modern day Israel.

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²⁰ Deuteronomy, chap. 26, verse 11.

²¹ Leviticus, chap. 19, verse 34.

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