

On Myths, Straw Men and Academic Freedom

A Response to the “Readers Respond” section of the [AAUP Journal of Academic Freedom, Volume 4](#)

By Rima Kapitan

Demands for censorship through “balance” of an unpopular view

Demands for viewpoint balance frequently arise in response to discourse in defense of human rights in Israel/Palestine. So, when Issue 4 of the Journal of Academic Freedom published 6 papers supportive of the academic boycott of Israel and one paper in opposition, controversy ensued.¹ Some critics accused Editor Ashley Dawson of abandoning ethical editorial practices to further a personal political agenda, the sum total of their evidence being that he has expressed opinions on the topic.²

Some critics also demanded that the Journal’s Issue 4 be amended to render it more “balanced.” One of them, Ernst Benjamin, finds it “difficult to understand why the Journal published a ‘roundtable’ on academic boycotts that included only one essay in support of AAUP policy.” Although there was a simple explanation for this perceived imbalance (the Journal simply did not receive many submissions which reflected an anti-boycott perspective), the Journal decided to solicit essays “in opposition to an academic boycott of Israel to add to the current issue of the online journal.”³ According to Founding Editor Cary Nelson, “By the time this is finished . . . it is going to look like a very balanced issue.”⁴ To my knowledge, no similar critique was raised about the lack of diversity of opinion with respect to the articles regarding adjunct professors and the commercialization of higher education, no demands were made that the journal should have included opposing views, and no revelations about Dawson’s opinions with respect to adjunct labor were revealed. Moreover, the issue’s critics employed a reactionary and reductive interpretation of “balance;” the original essays addressed the topic from different approaches and angles, approaches which are less prevalent in American discourse than those which the issue’s critics sought to impose on the issue. An organization whose *raison d’être* is free academic speech should vigorously oppose demands that controversial scholarly opinions only be published if they are tempered by equal and opposite viewpoints. Although there is nothing wrong with the Journal’s publication of responses to our articles for the purpose of continued exchange (in fact I support continuing the discussion), it should have made clear that it had no obligation to treat Issue 4 differently than any other.

Forced academic cooperation is not academic freedom.

Many of the new additions to Issue 4 mistakenly assume that all of the demands of the boycott movement restrict academic freedom, and they do this by employing an unreasonably expansive definition of “academic freedom” -- one that dictates that American scholars *must* engage with Israeli ones or else be deemed to have violated the academic freedom of the latter. Nelson briefly engages

¹ Peter Schmidt, “AAUP Journal Is Under Fire for Issue With 6 Essays Calling for Boycott of Israel,” *The Chronicle of Higher Education*, October 22, 2013, <http://chronicle.com/article/AAUP-Journal-Is-Under-Fire-for/142525/>

² Ibid.

³ Ibid.

⁴ Ibid.

the argument that academic freedom is important to the protection of other human rights, the importance of which should be kept in mind when defining its contours. Even while acknowledging that “the contributions faculty and students make to public advocacy and debate can help sustain other people’s rights,” Nelson argues that “academic freedom is a specialized right that is not legally implicated in the full spectrum of human rights that nations should honor.”

To the contrary, academic freedom does not function in a void, but rather facilitates and is itself reinforced by the exercise of other human rights. As Omar Barghouti pointed out in his essay in this issue, international treaties and declarations themselves acknowledge the interconnectedness of human rights.⁵ The AAUP recognizes the importance of academic freedom to the development of society and the safeguarding of human rights, a point with which Nelson concurs; in fact he identifies laudable examples of the AAUP itself having acted in furtherance of that principle. According to the AAUP’s 1940 Statement of Principles on Academic Freedom and Tenure, freedom in teaching and research are “indispensable to the success of an institution in fulfilling its obligations to its students and to society.”⁶ It goes on to say, “Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.” The AAUP thus positions academic freedom as necessary to achieving the “common good” within society. In furtherance of that common good, the AAUP recently emphasized that in the context of “current political threats” to the expression of controversial opinions, “The protection of their unfettered expression, including the ability to espouse highly controversial and unpopular views, is an *essential social responsibility of universities and colleges.*”⁷

What Nelson does not explain is why faculty may not meet that social responsibility by deciding for themselves with which institutions and governments to associate. He makes a distinction between a) using academic discourse to promote good social ends and b) declining to engage in academic cooperation to promote good social ends. But he fails to explain the basis of that distinction. Similarly, Stanley Fish argues that it would be improper for a scholar to use criteria such as whether an institution participates in a military occupation in deciding whether or not to collaborate with that institution, because that criterion is not “a professional one.”⁸ It follows from Fish’s argument that when presented with such a possibility, the scholar *must* collaborate with the oppressive institution. But Fish presumes a right where none exists. If, analogously, a scholar approached Fish and asked if he was interested in a joint book project, and Fish declined, he would not be violating that scholar’s academic freedom, since the right to work with Fish did not exist to begin with; Fish would simply be exercising his own freedom in declining to participate in the project. We might disagree with the basis of Fish’s decision not to work with him or her, or argue

⁵ See e.g. Preamble of the United Nations International Covenant on Civil and Political Rights (“Recognizing that . . . the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”).

⁶ AAUP, 1940 Statement of Principles on Academic Freedom and Tenure, p. 3, <http://www.aaup.org/file/principles-academic-freedom-tenure.pdf>

⁷ AAUP, Committee A on Academic Freedom and Tenure, “Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions,” August 2011 (emphasis added), <http://www.aaup.org/report/ensuring-academic-freedom-politically-controversial-academic-personnel-decisions>

⁸ Stanley Fish, “Boycotting Israeli Universities, Part Two,” November 11, 2013, <http://www.nytimes.com/2013/11/12/opinion/fish-boycotting-israeli-universities-part-two.html?pagewanted=1&r=0>

that Fish employed unjust or arbitrary (or non-“professional”) criteria in making his decision, but it would not be appropriate to say the scholar is entitled to work with Fish. Similarly, it is not a violation of anyone’s “academic freedom” if American institutions freely choose to disassociate from Israeli universities until they cease reinforcing Israeli apartheid. So, with respect to many of the demands of the boycott movement, academic freedom is not implicated at all.

As to the aspects of the boycott which *would* restrict academic freedom of individuals (for example rejecting the participation in an academic conference of a scholar who is sponsored by the Israeli Ministry of Foreign Affairs), academic freedom has never been conceived as absolute, especially when it conflicts with other rights. In fact, in some cases the AAUP has defended the right of concerted action to disassociate from oppressors even when this disassociation results in restrictions of academic freedom. As my original essay pointed out, the AAUP (and Nelson himself) have defended concerted actions which restrict academic freedom in other contexts (e.g. strikes in order to achieve labor rights), and suggested that shutting down an entire campus might be necessary in another (e.g. Yale’s campus in Singapore).⁹

Nelson and Fish also protest that the AAUP is not a human rights organization equipped to investigate whether or not Israeli universities are worthy of censure.¹⁰ Censure is not at issue, however. The question is whether the AAUP’s position that academic boycotts are inappropriate is defensible. The AAUP’s position is not merely that it is disinclined to participate in an academic boycott of Israel, but that no one should.¹¹ If the AAUP is not equipped to make judgments about whether Israel is deserving of academic boycott, it should step aside and allow entities which are equipped to make such judgments (like the American Studies Association)¹² do so.

Deployment of historical and contemporary myths to reinforce opposition to the boycott call

In addition to arguing that boycott is an inappropriate tool for activism, several of the anti-boycott responses argue that the historical and contemporary conditions in Palestine/Israel render the boycott unjust. They argue that although there is some minor but unexceptional inequality in Israel, Israel is a democracy nonetheless, and undeserving of boycott. These arguments are only coherent when viewed in a vacuum devoid of any reference to history, law and widely accepted human rights norms.

1) The anti-Boycott authors grapple with the Palestinian problem in the Israeli educational setting.

⁹ AAUP, Committee A on Academic Freedom and Tenure, <http://www.aaup.org/news/2012/open-letter-aaup-yale-community>

¹⁰ Stanley Fish, “Academic Freedom Against Itself: Boycotting Israeli Universities,” *The New York Times*, October 28, 2013, <http://opinionator.blogs.nytimes.com/2013/10/28/academic-freedom-against-itself-boycotting-israeli-universities/?partner=rssnyt&emc=rss>

¹¹ Rudy Fichtenbaum, Henry Reichman, “Open Letter to Members of the American Studies Association,” <http://www.aaup.org/file/OpenLettertoASA.pdf>

¹² The Palestinian Campaign for the Academic and Cultural Boycott of Israel (“PACBI”), “Historic Decision: American Studies Association National Council Unanimously Endorses BDS,” December 6, 2013, <http://www.pacbi.org/etemplate.php?id=2294>

Although Jewish Israeli academic freedom is the main focus and concern of most of the authors, the academic freedom of Palestinians and Jewish Israeli dissidents makes brief appearances when the anti-boycott authors argue that these groups face no serious restrictions of their academic freedom.

Some restrictions of Israeli professors' academic freedom are imposed directly by the state. When Joshua Fogel claims, for example, that Israeli dissidents are free to support the academic boycott, he overlooks Israel's law against advocacy of boycott, which makes it *illegal* for individuals and institutions in Israel to promote the boycott of Israeli institutions, including boycott of settlements.¹³

Other restrictions of academic freedom originate in complicit institutions. Fogel claims that Joan Scott is unable to substantiate her claim that "those who represented dissenting views' in Israel were threatened and fired for holding such views," "probably because there have been no such cases." I invite him to read Ilan Pappé's descriptions of his own experience.¹⁴ He might also be interested in the case of Najwa Makhoul, a lecturer at the Hebrew University with a doctorate from MIT who was prevented from publishing a political-literary journal for undisclosed "security reasons."¹⁵ He might take note of the case of a Palestinian professor who was dismissed from his position for refusing to make a statement acknowledging his obligation to be "respectful to the [Israeli military] uniform" after he opposed the militarization of the university.¹⁶

Fogel is also willfully blind to difficulties Palestinian students face, asking, "Where did the authors of the articles in the most recent *JAF* get the idea that Arab students aren't welcome in colleges and universities in Israel?" To begin with, Israel has closed Gaza's borders; for over a decade, Israel has prohibited students living in Gaza from attending universities in Israel¹⁷ and the West Bank.¹⁸ It has also prevented students from leaving Gaza to study abroad, which Human Rights Watch correctly identified as collective punishment¹⁹ (in 2007, for example, Israel granted permission to only 480 of the 1, 100 students who sought to study abroad).²⁰ Israel also severally

¹³ Adalah, "New Discriminatory Laws and Bills in Israel," (June 2011/updated October 2012) http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Discriminatory-Laws-in-Israel-October-2012-Update.pdf; Maureen Murphy, "Rights groups: anti-boycott law 'effectively a legal annexation of W. Bank,'" July 12, 2011, <http://electronicintifada.net/blogs/maureen-clare-murphy/rights-groups-anti-boycott-law-effectively-legal-annexation-w-bank>

¹⁴ Ilan Pappé, *Out of the Frame: The Struggle for Academic Freedom in Israel* (London: Pluto Press, 2010); Ilan Pappé, "Academic Freedom Under Assault in Israel," May 23-25, 2003, <http://www.counterpunch.org/2003/05/23/academic-freedom-under-assault-in-israel/>;

¹⁵ Noam Chomsky, *Fateful Triangle* (Cambridge, MA: South End Press), at p. 139

¹⁶ Jonathan Cook, "Academic Freedom? Not for Arabs in Israel," March 1, 2008, <http://www.antiwar.com/cook/?articleid=12440>

¹⁷ Gisha – Legal Center for Freedom of Movement, "Obstacle Course: Students denied exit from Gaza," July 2009, http://www.gisha.org/UserFiles/File/publications_/Students2009_Report_Eng.pdf

¹⁸ Al Mezan Centre for Human Rights, "Students from Gaza: Disregarded Victims of Israel's Siege of the Gaza Strip

A Report on Israel's Prevention of Gazan Students from Studying at the West Bank Universities," July 2010, <http://www.mezan.org/upload/10683.pdf>

¹⁹ Human Rights Watch, "US: Challenge Israel's Restrictions on Gaza Students," <http://www.hrw.org/news/2008/06/02/us-challenge-israel-s-restrictions-gaza-students>

²⁰ Human Sciences Research Council, "Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law," May 2009, http://sro.sussex.ac.uk/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf

restricts the internal and external freedom of movement of Palestinians in the West Bank.²¹ Moreover, Israel isolates Palestinians by making it difficult for foreign nationals to work in universities in the occupied territories.²² Israel restricts universities' access to their own funds, and incarcerates students and professors without charge or trial.²³ Schools in the occupied territories are vulnerable to bombing, military invasion and closure.²⁴ Finally, millions of Palestinian refugees are, in contravention of international law, systematically prevented from returning to their country,²⁵ let alone attending universities in their country.

Within Israel's education system, there is exclusion of Palestinians from decision-making roles (and prevention of the establishment of separate Palestinian Arab institutions); severe inequality in the resources allocated to Palestinian schools; and a lack of recognition of Palestinian culture, literature and history.²⁶ For example, Israel has prohibited any reference in the educational system to al-Nakba (the ethnic cleansing of 1947-49).²⁷ Palestinian students also face other forms of discrimination and exclusion in Israeli universities.²⁸

Yet, Emily Budick and Samuel Edelman claim that the boycott movement is not only harmful to the academic freedom of Israeli Jews, but to Palestinians. Budick thereby provides us with a revealing illustration of the colonial mentality in Israel. She patronizingly reminds us that there are Israeli Palestinians and states, "The boycott community and Palestinians (whether in Palestine or abroad) have no more right to determine people's allegiance and identity than the government of Israel." If respect for Palestinian identity is her concern, she should allow

²¹ B'Tselem, "Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank," August 2007, [http://www.hamoked.org/files/2012/9260_eng\(1\).pdf](http://www.hamoked.org/files/2012/9260_eng(1).pdf)

²² Ruhan Nagra, "Academia Undermined: Israeli Restrictions on Foreign National Academics in Palestinian Higher Education Institutions" (May 2003), <http://www.righttoenter.ps/pdfs/EducationReportAcademiaUnderminedMay2013.pdf>

²³ Amnesty International, "Palestinian academic given detention extension must be released, April 25, 2013, <http://www.amnesty.org/en/news/palestinian-ahmed-qatamesh-administrative-detention-israel-2013-04-25>; Addameer Prisoner Support and Human Rights Organization, "Administrative Detention in the Occupied Palestinian Territory: Between Law and Practice" (December 2010), <http://www.addameer.org/files/Reports/en-addameer-administrative-detention-between-law-and-practice-december-2010.pdf>; Right to Education Campaign, Birzeit University, "R2E Fact Sheet," April 30, 2009, <http://right2edu.birzeit.edu/news/article495>

²⁴ Human Sciences Research Council, "Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law," May 2009, pp. 232-34 http://sro.sussex.ac.uk/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf

²⁵ See e.g. United Nations General Assembly Resolutions 194, 3236.

²⁶ Yousef Jabareen, "Law, Education and Social Change: The Case of Palestinian Arab Education in Israel" (pp. 107-35); Daphna Golan-Agnon, "Inequality in Education and Discrimination Against Arab Students in Israel" (pp. 201-14), in Duane Champagne and Ismael Abu-Saad, Eds., Indigenous and Minority Education: International Perspectives on Empowerment (Negev Center for Regional Development: Beer-Sheva, Israel, 2005).

²⁷ Sawsan Zaher, "The Prohibition on Teaching the Nakba in the Arab Education System in Israel, Adalah, September 2010, <http://adalah.org/newsletter/eng/sep10/docs/Sawsan%20Nakba%20English%20final.pdf>; Adalah and ACRI: Israeli High Court Ignored the Chilling Effect Already Caused by the "Nakba Law," <http://www.adalah.org/eng/Articles/1188/Adalah-and-ACRI:-Israeli-High-Court-Ignored-the-by>

²⁸ The Alternative Information Center, "The Case for Academic Boycott against Israel," <http://palestinejournal.net/gaza/alternative-information-center-The-Case-for-Academic-Boycott-against-Israel.pdf>; Jonathan Cook, "No room for Arab students at Israeli universities," August 17, 2010, <http://www.inminds.com/article.php?id=10471>

Palestinians to choose for themselves the means of resisting injustice and forming their own identities. Similarly, Edelman worries that the boycott would “deeply affect” Israeli Arab-Palestinian students who study in Israeli universities. And Budick paints Israeli universities as the saviors of Palestinian students, claiming that “Palestinian progress” is partly dependent on Israeli academics “who contribute . . . to their education and well-being.” This argument falsely assumes that the boycott would prevent Israeli academics and Palestinian students studying at Israeli universities from participating in international conferences on the basis of nationality, which is not the case.²⁹ But more to the point, the BDS movement is a diverse grassroots initiative founded and led by Palestinians, including Palestinians living in Israel. If Budick and Edelman seek to subvert this movement, they should at least not pretend to do it for the benefit of Palestinians.

2) Is it apartheid?

Using the same tactic in arguing that Israel is not an apartheid state, Budick continues:

Israel is *not* an apartheid state; it is not a racist state; it is not a nation that denies education to its different populations; nor does it withhold essential services in the fields of education, medicine, and the like. Quite the contrary. Though likely not a top item in world news, Israeli hospitals have been receiving and treating wounded refugees from the Syrian conflict. Israeli hospitals and universities serve all its populations, plus foreign populations as well.

The reality is that Palestinians are frequently prevented from access to medical care by the wall and checkpoints in the West Bank, as well as the Israeli closure and siege of Gaza.³⁰ Perhaps Budick expects that we disregard systematic injustice because there are examples of Palestinians being treated with dignity. But the examples she deploys do nothing to support her argument that there is no apartheid in Israel (nor does Peter Haas, whose essay unfairly dismisses the boycott advocates’ use of the term as mere rhetoric, while using nothing but rhetoric himself in combatting it).

²⁹ PACBI, “Academic Freedom or Academic Privilege: In defense of the Academic Boycott of Israel,” October 5, 2013, <http://www.pacbi.org/etemplate.php?id=2257>

³⁰ Al-Haq, “14-year-old Palestinian Girl Dies en Route to Hospital after Delays at Checkpoint,” December 5, 2013, <http://www.alhaq.org/documentation/weekly-focuses/761-14-year-old-palestinian-girl-dies-en-route-to-hospital-after-delays-at-checkpoint>; Doctors Without Borders, “Gaza: Chronic Shortages of Drugs and Medical Supplies,” November 17, 2011, <http://www.doctorswithoutborders.org/news/article.cfm?id=5622>; The Electronic Intifada, “Gaza residents unable to get medical care, aid workers say,” October 25, 2007, <http://electronicintifada.net/content/gaza-residents-unable-get-medical-care-aid-workers-say/7193>; Aljazeera, “Gaza officials warn of health crisis,” November 28, 2013, <http://www.aljazeera.com/video/middleeast/2013/11/gaza-officials-warn-health-crisis-20131128145718238697.html>; Emily Lawrence, “‘Sometimes I feel my stomach will explode’: Israel subjects teen prisoner to medical negligence,” January 5, 2012, <http://electronicintifada.net/content/sometimes-i-feel-my-stomach-will-explode-israel-subjects-teen-prisoner-medical-negligence>; UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, World Health Organization, “The Impact of the Barrier on Health (July 2010) http://www.ochaopt.org/documents/ocha_opt_special_focus_july_2010_english.pdf; UNFPA, “Pregnant Women Must Get Urgent Access to Health Care in Occupied Palestinian Territory, Says UNFPA,” August 30, 2006, <http://www.unfpa.org/public/News/pid/252>

Israel's rule over historic Palestine meets the definition of apartheid under international law. Briefly, apartheid is an "institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups."³¹ Most broadly and generally, Israel's apartheid deploys legal and extralegal methods to claim Israel/Palestine for the Jewish people, and privilege Jews over the indigenous non-Jews. In Israel, apartheid's most basic manifestation is the denial to Palestinians of the right to exercise self-determination, that is, the right of legitimate residents to "meaningfully participate in decisions about sovereignty"³² and political status.³³ Although Budick purports to support equality, she limits it by acknowledging only that Palestinians have a right to "a state of their own . . . alongside Israel," as does Nelson, who thinks the Palestinian exercise of self-determination should be restricted to the West Bank and Gaza. This is not to say that one democratic secular state would be the only way Palestinians could exercise their right to self-determination, but rather that it is not Budick's nor Nelson's decision to make. The state of Israel, however, including many of its academics and their American counterparts, have normalized the idea that Israel has the right to maintain a *Jewish* state in an area where Jews are not the majority,³⁴ and then provide Jews a vast array of legal, social and economic privileges that are denied non-Jews. Along those lines, Nelson derides as "chimerical" the right of first-generation Palestinian refugees to return to Palestine even while defending the right of Jews to immigrate to Israel and maintain a "theocratic [Jewish] state" in a land where the majority is not Jewish. To borrow his language, "Apparently some transhistorical categories are more equal than others."

In service of the general goal of maintaining Israel as a Jewish state and continuing its colonization project both within Israel and in its military-occupied territories, Israel systematically discriminates against the Palestinian refugees, its non-Jewish citizens and the occupied people of the West Bank and Gaza. The following are just a few of the specific manifestations of Israel's privileging of Jews over non-Jews through the legal system, leaving aside for now the political, economic and extralegal methods of maintaining that privilege:

- a) laws permitting the confiscation of Palestinian-owned land *in Israel*³⁵ and its transfer to entities like the Jewish National Fund, whose purpose is to appropriate land exclusively for the use of Jews;³⁶
- b) laws allowing for the designation of Jewish towns as "National Priority Areas" without requiring any criteria for such designations, thereby legalizing severe inequality in the distribution of resources in the education sector, among other sectors;³⁷

³¹ Rome Statute of the International Criminal Court, Article 7(2)(h).

³² Raja Halwani and Tomis Kapitan, *The Israeli-Palestinian Conflict: Philosophical Essays on Self-Determination, Terrorism and the One-State Solution* (London: Palgrave-Macmillan, 2008), at p. 20 (chapter available at <http://www.niu.edu/phil/~kapitan/pdf/Self-determination2008.pdf>)

³³ Int'l Covenant on Civil and Political Rights, Art. 1.

³⁴ Ali Abunimah, Michael F. Brown and Nigel Parry, "Palestinian population exceeds Jewish population says U.S. government," March 1, 2005, <http://electronicintifada.net/content/ei-exclusive-palestinian-population-exceeds-jewish-population-says-us-government/5491>

³⁵ Adalah, "New Discriminatory Laws and Bills in Israel," (June 2011/updated October 2012) http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Discriminatory-Laws-in-Israel-October-2012-Update.pdf

³⁶ Palestine Land Society, "Jewish National Fund's Violation of International and Domestic Law," August 29, 2005, <http://www.palestineremembered.com/Articles/JNF/Story1513.html>

³⁷ Adalah, "New Discriminatory Laws and Bills in Israel," (June 2011/updated October 2012) http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Discriminatory-Laws-in-Israel-October-2012-Update.pdf

- c) laws allowing the provision of benefits to those who serve in the Israeli military when nearly all non-Jewish Palestinians do not serve in the military;³⁸
- d) laws allowing for the building of settlements on Palestinian land exclusively for Jewish use;³⁹
- e) laws allowing administrative detention of Palestinians in the military-occupied territories without charge or trial;⁴⁰
- f) laws giving Jews living outside Israel, but not Palestinians living outside Israel/Palestine, the right to immigrate or return to the country.⁴¹

These are some of the components of Israel's apartheid. Telling American academics that they violate academic freedom if they refuse to reinforce such a system is therefore often predicated on false assumptions about Israel.

The starkest form of Israel's apartheid is its more than 40-year military occupation of the West Bank and Gaza.⁴² When Nelson and others claim that Israel is really not an apartheid state, they are usually talking solely about the state of Israel itself, not the millions of people living in the military-occupied territories who have *no right to vote* in Israeli elections despite living under Israeli military occupation and rule. But some of the anti-boycott authors even argue that boycott of Israeli institutions in the occupied West Bank is inappropriate. Although the anti-boycott authors' assertions of historical myths are too numerous to refute comprehensively here, I will address one representative example. When Fogel argues that there is no historical basis for Palestinian "whining" about Israel's military occupation of the West Bank and Gaza, he is asking us, on his authority as a historian but without footnotes or references, to accept a propagandistic myth which is contradicted not only by the historical record but by international law. He argues,

Being a historian, I feel the need, though, to remind colleagues that the Israeli military did not wake up one morning in 1967 and decide to annex some territory just for the fun of it. It was attacked on all sides and, unlike the 1973 invasion on Yom Kippur, was prepared to successfully respond. If you have never been welcomed in your neighborhood and indeed have battled your neighbors on all fronts several times, should a group of your neighbors attack and attempt to destroy you once and for all and you successfully fend them off and secure some terrain as a kind of buffer—to

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, "Israel and The Occupied Territories," <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>; Addameer Prisoner Support and Human Rights Organization, "Administrative Detention in the Occupied Palestinian Territory: Between Law and Practice" (December 2010), <http://www.addameer.org/files/Reports/en-addameer-administrative-detention-between-law-and-practice-december-2010.pdf>

⁴¹ United Nations Committee on Economic, Social and Cultural Rights, "Concluding observations of the Committee on Economic, Social and Cultural Rights: ISRAEL" <http://unispal.un.org/UNISPAL.NSF/0/0BC7883100A95730852569AF00575179>; <http://adalah.org/eng/Articles/598/Challenging-the-Citizenship-Law-Banning-Family>

⁴² Human Sciences Research Council, "Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law," May 2009, http://sro.sussex.ac.uk/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf

say nothing of reuniting your ancient capital—might it be just a bit unseemly if those neighbors then started whining about wanting their land back?

The purpose of this assertion seems to be that although Fogel thinks Israel should withdraw from occupied territory for strategic reasons, Israel does not deserve boycott for its actions in the West Bank and Gaza. His argument is premised on historical falsehoods. Israel began the 1967 war by attacking Egypt.⁴³ Yitzhak Rabin, then Chief of Staff, admitted that there were not even preemptive grounds for the war when he said, in relation to the Egyptian concentration of forces on their own border, “I do not believe that Nasser wanted war. The two divisions he sent into Sinai on May 14 would not have been enough to unleash an offensive against Israel. He knew it and we knew it.”⁴⁴ Even if the myth Fogel relates were true, it would not justify Israel’s theft of land that did not belong to it; Fogel’s argument does not account for the well-established rule in international law of the “inadmissibility of the acquisition of territory by war.”⁴⁵ Israel’s occupation of the West Bank, Gaza, as well as parts of Syria and Lebanon, is illegal, as the United Nations has been reiterating for decades. Israel and complicit institutions that reinforce, develop and maintain that occupation deserve boycott.

Israeli universities themselves are part of this apartheid structure. Professor’s Budick’s university, which she portrays as one of the means of salvation of the Palestinian people, was built partly on 3,345 dunums of stolen Palestinian land in occupied East Jerusalem.⁴⁶ The university also censors student activities that call for recognition of Palestinian rights through, for example, banning the commemoration event for the 2008-09 invasion and massacre in the Gaza Strip.⁴⁷ The university is also directly involved in training for the Israeli General Security Service (“Shin Bet”).⁴⁸ As Archbishop Desmond Tutu put it, Israeli universities “are an intimate part of the Israeli regime, by active choice. . . . Israeli universities produce the research, technology, arguments and leaders for maintaining the occupation. . . . By maintaining links to both the Israeli defence forces and the arms industry, BGU [Ben-Gurion University] structurally supports and facilitates the Israeli occupation.”⁴⁹ And as PACBI stated, “[t]he regime and its organs—security and intelligence agencies, and the

⁴³ Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: W. W. Norton, 2000), pp. 236-250; Institute for Middle East Understanding, “FAQ on the 1967 war,” May 30, 2007, <http://imeu.net/news/article005371.shtml#1>; Jeremy R. Hammond, “Israel’s attack on Egypt in June ’67 was not ‘preemptive,’” July 4, 2010, <http://www.foreignpolicyjournal.com/2010/07/04/israels-attack-on-egypt-in-june-67-was-not-preemptive/>

⁴⁴ Hirst, D. *The Gun and the Olive Branch* (New York: Harcourt Brace Jovanovich, 1977) (1st ed.) at p. 211.

⁴⁵ See e.g. United Nations Security Council Resolution 242.

⁴⁶ United Nations Security Council Resolution 252,

<http://unispal.un.org/UNISPAL.NSF/0/46F2803D78A0488E852560C3006023A8>; Open Letter Campaign to Boycott Hebrew University, September 9, 2013, <http://donotapplyhebrewu.wordpress.com/2013/09/09/do-not-apply-campaign-to-boycott-hebrew-univ-assistant-professor-position-in-communication-and-journalism-cinema-visual-culture-media-and-discourse-studies/>

⁴⁷ Open Letter Campaign to Boycott Hebrew University, September 9, 2013,

<http://donotapplyhebrewu.wordpress.com/2013/09/09/do-not-apply-campaign-to-boycott-hebrew-univ-assistant-professor-position-in-communication-and-journalism-cinema-visual-culture-media-and-discourse-studies/>

⁴⁸ Ibid.

⁴⁹ Archbishop Desmond Tutu, “Israeli ties: a chance to do the right thing,” September 10, 2010,

<http://www.timeslive.co.za/world/article675369.ece/Israeli-ties--a-chance-to-do-the-right-thing>

occupation army in particular--are accommodated, legitimized, and their presence as well as their unquestionable authority normalized by the academy."⁵⁰ These are some of the ways Israel's universities reinforce Israel's apartheid.

In short, there is more than sufficient justification for boycott of Israeli universities. To deny the right of academics to exercise their academic freedom to oppose the oppression of Palestinians through collective action and disassociation merely reinforces that oppression.⁵¹

⁵⁰ PACBI, "Academic Freedom or Academic Privilege: In defense of the Academic Boycott of Israel," October 5, 2013, <http://www.pacbi.org/etemplate.php?id=2257>

⁵¹ Thank you to Miryam Rashid, Terri Ginsberg, Cynthia Franklin, Tomis Kapitan and Yusra Goma for their helpful feedback on this essay.